

BEFORE THE BROADCASTING STANDARDS AUTHORITY

Decision No: 23/90

Dated the 19th day of October 1990

IN THE MATTER of the Broadcasting Act 1989

AND

IN THE MATTER of a complaint by

CINDY FLOOK

of Wellington

(on behalf of the

New Zealand National Party)

Broadcaster

TELEVISION NEW ZEALAND

LIMITED

I.W. Gallaway Chairperson

J.B. Fish

J.L. Hardie

J.R. Morris

DECISION

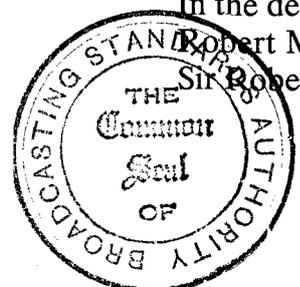
Introduction

On 15 October 1990, the Secretary General of the National Party, Mrs Cindy Flook, made a formal complaint to Television New Zealand Limited about an advertisement broadcast on behalf of the Labour Party concerning the National Party's health and defence policies.

The Advertisement

In the segment dealing with the National Party's health policy, the advertisement showed a photograph of Mr Bolger on the left of the screen with the caption "No Cuts?" underneath and a photograph of Ruth Richardson on the right with the caption "Yes, Cuts" underneath. An accompanying the voice-over stated "A man who says he won't cut health spending ... Only Ruth Richardson says he will".

In the defence policy segment, viewers were shown adjacent photos of Mr Bolger and Sir Robert Muldoon with the words "No Nukes?" below Mr Bolger and "Yes, Nukes" below Sir Robert. The accompanying voice-over stated "A man who says he'll keep us nuclear-



free ... Only Sir Rob Muldoon predicts he won't".

The Complaint

Mrs Flook alleged that the advertisement was false, misleading and deceptive in two aspects.

The first concerned the claim that Ruth Richardson had said that the Party would make cuts in the Health Vote. Mrs Flook noted that Ms Richardson was not the Party's Spokesperson on Health, "but even if she were, she never said yes to cuts". Ms Flook also said that "not one dollar will be cut from the vote" and attached a copy of a policy statement entitled National Party Policy on Hospitals.

The second part of the complaint concerned National's Defence Policy and the claim in the advertisement that Sir Robert Muldoon had predicted that Mr Bolger would not keep New Zealand nuclear-free. Ms Flook noted that Sir Robert was not the Party's Spokesperson on Defence and denied that "... he said yes to nukes ...".

TVNZ's Response

TVNZ's Complaints Committee considered the complaint in the context of the provision of the Advertising Code of Ethics which requires truthful presentation in advertisements (see further below).

The Committee upheld that part of the complaint which had referred to the defence policy segment featuring Sir Robert Muldoon. The written statement attributed to Sir Robert could not be supported and the Labour Party was advised that the advertisement could not be screened in its present form. The Labour Party was invited to resubmit the advertisement in a form which complied with the actual statements made by Sir Robert Muldoon.

As to the health policy segment, the Committee found that the caption accompanying Ms Richardson's photo in the advertisement - i.e. "Yes, Cuts" - was supported by comments made during a radio interview in April 1989. With regard to Mrs Flook's assertion that Ms Richardson was not the Party's Spokesperson on Health and that Ms Richardson had never said "yes to cuts", the Committee considered that on the basis of a National Business Review article, published in April of this year, and a study of a transcript of a Radio New Zealand interview with Ms Richardson on 8 April 1989, the advertisement's claim with regard to the cutting of health expenditure could be sustained. It was accepted that Ms Richardson was not the Party's Spokesperson on Health but given the context of the statement in the advertisement, this factor was not seen by TVNZ as having relevance.

TVNZ's decision was conveyed to Ms Flook in the early evening of 16 October.



Referral of the Complaint to the Authority and TVNZ's Comments

Ms Flook was not satisfied with TVNZ's decision, particularly on the Richardson segment of the complaint, and on 17 July referred the matter to the Authority. She requested that the Authority order TVNZ to take "corrective action" to withdraw the advertisement, in its entirety, from further broadcast and to broadcast a statement correcting the allegedly false impressions it had created.

Ms Flook continued to maintain, as she had to TVNZ, that Ruth Richardson is not National's Spokesperson on Health and that she had never said "yes to cuts" in health expenditure. In the latter connection, Ms Flook noted the Ms Richardson's comments during the RNZ interview in April 1989 were " ... restructuring of health will, in fact, ensure that you've got a savings of the order of \$600 million ... ". Ms Flook averred that "restructuring" is not the same as "cuts", and that the National Party would reinvest any savings from restructuring into the health sector. A copy of an extract from a speech by Mr Bolger at a public meeting in Hastings on 9 October, in which he stated that "We will not cut one dollar out of the health budget", was also attached.

Invited to comment on Ms Flook's referral of this matter to the Authority, TVNZ provided the Authority on 18 July with evidence which, in its view, supported the inclusion of the "Yes, Cuts" statement in the Richardson segment of the advertisement. This evidence consisted of copies of the RNZ interview of 8 April 1989 and the NBR article of April 1990.

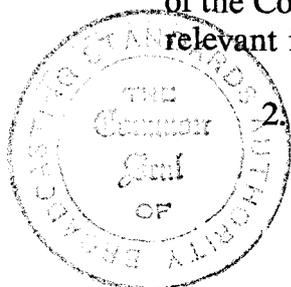
As to Ms Flook's request for "corrective action", TVNZ advised that in the light of the details contained in the company's substantive reply to the complainant, the company believed that there is cause for withholding the transmission of the advertisement [only] until the Sir Robert Muldoon segment is amended to meet the provisions of the CAP Advertising Code of Ethics.

Decision

The first issue that calls for determination is whether or not the broadcast of the Ruth Richardson segment of the advertisement breached TVNZ's statutory obligation, as a broadcaster, to maintain standards consistent with the Codes of Broadcasting Practice for Television approved by the Authority under the Broadcasting Act 1989. Those Codes require broadcasters to observe, amongst other things, the Codes of Advertising Practice adopted by the Committee of Advertising Practice where they are applicable to television advertising.

TVNZ advised Ms Flook that her complaint had been considered in the context of the CAP Advertising Code of Ethics " ... in that the advertisement in question might be false, misleading and deceptive". Although TVNZ did not specify the particular provision(s) of the Code applicable to the complaint, the Authority considers that the most likely and relevant is that provision which reads, in part, as follows:

Truthful presentation - Advertisements must not contain any statement or



visual presentation which directly or by implication, omission, ambiguity or exaggerated claim is misleading or deceptive, is likely to deceive or mislead the consumer, or makes false and misleading representation ...

The Authority has studied the text of the advertisement carefully and has concluded that the broadcast of the Ruth Richardson segment did not constitute a breach of the above-quoted provision of the CAP Advertising Code of Ethics.

In reaching its conclusion, the Authority was mindful of the following considerations:

1. The crux of the issue is whether Ms Richardson subscribes to the view that a National Government will "cut" Government spending on health.
2. It is not relevant to a determination of the issue on the above provisions that Ms Richardson is not the National Party's Spokesperson on Health and that the Leader of that Party is on record as saying that "We will not cut one dollar out of the health budget".
3. Ms Flook's contention that "Under National's Health Policy not one dollar will be cut from the vote (copy of policy attached)" would not appear to be directly supported by statements in the paper entitled National Party Policy on Hospitals forwarded by Ms Flook. Even it were, it would not be pertinent to a determination of Ms Richardson's views on this issue. Similarly, Ms Flook's statement that National would "reinvest any savings from restructuring into the health sector", even if it had been supported by the policy paper or any other material provided to the Authority, would not necessarily have been relevant to a determination of Ms Richardson's own views.
4. Mr Bolger's statement that "We will not cut one dollar out of the health budget" is unambiguous and unequivocal. This was acknowledged in the voice-over in the advertisement which said "A man who says he won't cut health spending" at the same time as his photo flashed onto the screen accompanied by the questioning caption "No, Cuts?". There is nothing untoward in the use of an interrogative in the context of an advertisement of this sort - the highlighting by one Party of the perceived policy differences between members of another Party is commonplace and can be expected to be exploited to the full in an election campaign.
5. Ms Flook contended that Ms Richardson had never said "Yes" to cuts but did not supply anything by way of speeches or statements by Ms Richardson which might have made her viewpoint as clear and as unambiguous as her Leader's.
6. Ms Richardson had the opportunity to make her viewpoint clear when she was interviewed by Ms Kathryn Asare on her "Saturday" programme on Radio New Zealand. An examination of that part of the transcript of the interview which deals with "cutting Government spending" reveals that Ms Asare spoke on 2 occasions (excluding her concluding remarks) and used the word "cuts" (or a variant) to describe National's policy on the reduction of Government



expenditure, particularly in the health area, on 7 of those 12 occasions. Those instances were as follows:

Interviewer: The other point you make - cutting Government spending.

...

Interviewer: Now that contradicts your policy of cutting Government spending because superannuation is such an enormous chunk of the spent (sic) ...

...

Interviewer: So is the bulk of the cutting going to go in that area?

...

Interviewer: Lets look at the financial side of those things. Can we look at where these cuts will be made? For example, what proportion of the Health vote will be cut under National.

...

Interviewer: ... we will be able to make these cuts in Government spending which is one of the major planks of what the National party is saying ...

Richardson: A major plank is smaller Government.

Interviewer: Now how much, what proportion of the health budget, of the welfare Budget will be cut?

...

Interviewer: That point is accepted. However, you're saying that you're doing that to reduce Government spending in certain areas. So I repeat the question -by how much?

Richardson: We are looking in respect of social welfare ... looking at superannuation in particular. When we last costed the Policy to raise the age of eligibility to 65 in the 1987 election, over time that saves \$13 billion.

Interviewer: And in percentage terms?

Richardson: A restructuring of health will, in fact, ensure that you've got savings of the order of \$600 million ...

...

Interviewer: But you said that we needed certainty. It would be helpful to have the certainty of knowing by how much, what proportion you intend to cut.

Richardson: Well, you see, I think you are asking the wrong question - and I say sincerely, we have clearly signalled we will rein in Government expenditure ...

Ms Richardson had ample opportunity to decry, in forthright terms had she so wished, the use of the term "cut" (or its variants) to describe National's policies on reducing Government expenditure, but she did not do so. Nor did she use the opportunities open to her emphatically to deny that a National Government would "cut" the health vote or budget.



7. Ms Richardson was seen in the transcript to have used the words "A restructuring of health, will, in fact, ensure that you've got a savings of the order of \$600 million". Her use of the word "savings" in this context is entirely consistent with the truism that in the world of political point and counterpoint, one's own Party's policies will bring about "savings" while another Party's policies will involve "cuts", both views being euphemisms in the present context for reductions in Government spending. It may also explain why Ms Richardson neither challenged the repeated use of the word "cut" (and its variants) nor denied, clearly and unambiguously, that such "cuts" would be made to the Health Vote.

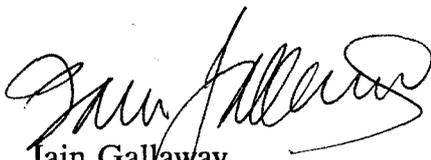
8. Ms Richardson had been described by Mike Jaspers in the NBR article referred to by TVNZ as being "passionate about pruning government spending. Health is a prime target." Ms Flook did not provide information which might have confirmed that this statement, in her view, did not accurately reflect Ms Richardson's position on reducing government spending on health.

9. In the absence of any material such as an extract from a subsequent statement by Ms Richardson which may have served to clarify further her views on this issue, the "Yes, Cuts" caption in the advertisement appears to be sustainable.

The Authority therefore concluded that the inclusion in the advertisement of the "Yes, Cuts" caption below the photograph of Ms Richardson, in juxtaposition to the photograph of Mr Bolger and his "No Cuts" caption, did not constitute a statement or visual presentation which was, in terms of Ms Flook's allegation and the provisions of the relevant provision of the CAP Code of Advertising Ethics, false, misleading or deceptive.

For the foregoing reasons, the Authority declines to uphold the complaint and, as a consequence, declines to make the order concerning "corrective action" sought by the complainant.

Signed for and on behalf of the Authority


Iain Gallaway
Chairperson



19 October 1990