

**IN THE HIGH COURT OF NEW ZEALAND
AUCKLAND REGISTRY**

**I TE KŌTI MATUA O AOTEAROA
TĀMAKI MAKĀURAU ROHE**

**CIV-2025-404-002074
[2026] NZHC 1270**

UNDER the Broadcasting Act 1989
IN THE MATTER of an appeal against decision 2025-022 of
the Broadcasting Standards Authority
BETWEEN IAN WISHART
Appellant
AND RADIO NEW ZEALAND LIMITED
First Respondent
BROADCASTING STANDARDS
AUTHORITY
Second Respondent

Hearing: 1 December 2025
Appearances: Appellant in person
R K P Stewart KC for First Respondent
No appearance for Second Respondent (abiding Court's decision)
Judgment: 12 May 2026

**JUDGMENT OF VAN BOHEMEN J
[application for order to produce]**

*This judgment was delivered by me on 12 May 2026 at 10:30 am
Pursuant to Rule 11.5 High Court Rules*

*Registrar/Deputy Registrar
Date*

Counsel/Solicitors:
L Bodle, Radio New Zealand Ltd, Wellington
R K P Stewart KC, Auckland
A E Scott-Howman, Wellington

Copy to: I Wishart, Kaukapakapa

[1] Ian Wishart has appealed a decision of the Broadcasting Standards Authority (the Authority) in which the Authority did not uphold Mr Wishart's complaint about a broadcast by the Morning Report programme on Radio New Zealand (RNZ) about a run of hot days in Hamilton in early 2025 (the Broadcast), which was described as likely to have beaten anything the city had experienced since temperature records began.¹ The Broadcast included an interview between a RNZ reporter, Eloise Gibson, and a climate change scientist, Luke Harrington.

[2] Mr Wishart's appeal has yet to be set down for hearing. Mr Wishart has filed an interlocutory application for the production of documents. Mr Wishart seeks production of the following (the Documents):

- (a) any and all communications, including, but not restricted to emails, text messages, WhatsApp or any other electronic communications between Eloise Gibson and Luke Harrington from 13 February 2025 through to and including 7 March 2025, and any similar communications between Ms Gibson and her colleagues and/or superiors at RNZ related in any way to [Mr Wishart's] communications or Dr Harrington's input on aspects arising therefrom.
- (b) all emails, texts, messages etc RNZ possesses between Ms Gibson or anyone else internal or external to RNZ relating to the issues [Mr Wishart] first raised on Feb 13, and continuing through until the researchers cited by RNZ have reported back on their second attempted factcheck on 16 May 2025.

[3] Mr Wishart makes the application under ss 12 and 18 of the Broadcasting Act 1989 and ss 4B and 4C of the Commissions of Inquiry Act 1908.

[4] The Authority declined a similar request by Mr Wishart for the same documents because it considered it had sufficient information to assess whether the relevant broadcasting standard had been breached.

[5] RNZ opposes the application for production because it says the Documents are not relevant to the determination of Mr Wishart's appeal.

¹ *Wishart v Radio New Zealand Ltd* BSA 2025/22, 4 July 2025 [Authority Decision].

Relevant legal provisions

[6] The following provisions of the Broadcasting Act and the Commissions of Inquiry Act bear on Mr Wishart's complaint, the Authority's decision not to uphold the complaint and Mr Wishart's application for production of the Documents.

The Broadcasting Act 1989

[7] Section 4(1) of the Broadcasting Act provides:

Every broadcaster is responsible for maintaining in its programmes and their presentation, standards that are consistent with—

- (a) the observance of good taste and decency; and
- (b) the maintenance of law and order; and
- (c) the privacy of the individual; and
- (d) the principle that when controversial issues of public importance are discussed, reasonable efforts are made, or reasonable opportunities are given, to present significant points of view either in the same programme or in other programmes within the period of current interest; and
- (e) any approved code of broadcasting practice applying to the programmes.

[8] Under s 6(1)(a), every broadcaster has a duty to receive and consider formal complaints about any programme broadcast by it where it is alleged the broadcaster has failed to comply with s 4.

[9] Under s 8(1B), a complainant who is dissatisfied with the decision or any action of the broadcaster with respect to a complaint may refer the complaint to the Authority.

[10] Under s 10(2), in considering a complaint, the Authority shall provide for as little formality and technicality as is permitted by the requirements of the Act; a proper consideration of the complaint; and the principles of natural justice.

[11] Under s 12, the Authority may, when considering a complaint, exercise the powers of a commission of inquiry under ss 4B, 4C, 4D, 5, 6, 7, 8 and 9 of the Commissions of Inquiry Act as if it were a commission of inquiry.

[12] Under s 18(4), the Court must hear and determine the appeal as if the Authority's decision had been made in the exercise of a discretion.

[13] Under s 18(5)(b), when determining the appeal, the Court may exercise any of the powers that could have been exercised by the Authority in the proceedings to which the appeal relates.

Commissions of Inquiry Act 1908

[14] Under s 4B(1) of the Commissions of Inquiry Act, a commission of inquiry may receive as evidence any statement, document, information, or matter that in its opinion may assist it to deal effectively with the subject of the inquiry, whether or not it would be admissible in a Court of law.

[15] Under s 4C(1)(b), a commission of inquiry may require any person to produce any papers, documents, records, or things in that person's possession or control.

[16] Applying the above provisions to Mr Wishart's application, the question for determination is whether the Documents may, in this Court's opinion, assist it to deal effectively with the subject of the appeal.

[17] To assess that question, it is necessary to consider how the complaint arose, the Authority's decision on the complaint and the nature of Mr Wishart's appeal.

The Broadcast and Mr Wishart's complaint

[18] The following account is drawn principally from the materials attached to Mr Wishart's affidavit of 19 September 2025 filed in support of his application and contained in the Common Bundle of Documents.

[19] On 13 February 2025, RNZ's Morning Report programme included the Broadcast. The Authority described the Broadcast as follows:

[2] The segment was introduced by the RNZ presenter:

From sunny Nelson to sunny Hamilton, a climate scientist says Hamilton's recent run of hot days likely beats anything the city has experienced since temperature records began. Now Hamilton has reached highs of at least 27 degrees for the last 13 days, and that is set to continue today, yes, with a forecast high of 28. Climate change correspondent ... reports.

[3] Brief interviews with Hamilton locals followed, including:

Reporter: These Hamilton locals, unsurprised to hear they might have just had the hottest 11-day stretch on record.

Local A: I'm alright with it actually, I love the heat.

Reporter: Can you remember a hotter summer?

Local A: No, not in Hamilton anyway.

[4] Following this, the report addressed the comments of a senior climate scientist and a Meteorological Service of New Zealand (**MetService**) forecaster:

Reporter: The place once dubbed the 'City of the Future' by a marketing campaign is experiencing a taste of its own climate future, with a run of hot days which [a senior climate scientist] says is probably unprecedented.

Climate scientist: The last 10 days, well actually now 11, have been the hottest, continuous 10 or 11-day stretch, certainly of the records that I have available, they go back to sort of the early 1990s, but I think if you went further back in time as well, they'd still remain the worst on record.

Reporter: The University of Waikato lecturer says this kind of heatwave will become more common because of that blanket of human-made greenhouse gases warming the planet. Heat stress already kills more than a dozen New Zealanders a year and raises the rate of hospitalisations because of heart strain and other factors. Under [five-year-olds] and the elderly are especially at risk. Dr Harrington's previous research found cities with smaller temperature ranges such as Auckland and Hamilton might face higher risks because their temperatures are more even, making hot spells more relentless. But he says sustained hot periods can sneak under the radar of the heat alert system.

Climate scientist: It's basically consistently sitting between about 28 and 30 degrees Celsius, and it hasn't dropped below 27 for coming on 11 days and when you combine sort of lower winds and humidity into the mix then the levels of heat stress can start to be pretty pronounced.

Reporter: MetService forecaster ... says MetService issues a warning when temperatures are close to maximum for a particular city, which across most of the North Island means above 30 degrees.

Forecaster: The heat alerts that MetService has been trialling over the last few summers are designed to capture those very hot days and we're not quite talking record heat, although record heat would fall under those heat alerts, but it's not just your standard hot day either.

[5] The reporter concluded the segment with the following:

Only one day in Hamilton's recent run topped 30 degrees, but that doesn't mean it's been comfortable. [The MetService forecaster] says the city's typical February maximum temperature is 25 degrees and so far, they haven't had a day below 27. He says people should watch the next day's forecast and plan if needed. For example, going running early or late in the day, being mindful of where you park the car if you need to run errands and leave a pet inside, staying hydrated and seeking shade. The city council says it's preparing for rising heat, including looking at a system of cool shelters using facilities such as libraries.

[20] The Broadcast was initially published on the RNZ website under the heading “Hamilton’s run of hot days shatters previous record”.

Mr Wishart engages with RNZ

[21] At 8.13 pm on 13 February 2025, after researching the weather records of the Waikato Times on Papers Past,² Mr Wishart sent an email to Ms Gibson headed “Hamilton’s run of hot days shatters previous record”, in which he stated:

You just can’t cop a break.

Previous record was 24 straight days above 27C in Hamilton.

² Papers Past <www.paperspast.natlib.govt.nz/newspapers>.

[22] At 9.05 pm on 13 February 2025, Ms Gibson emailed Mr Wishart asking where the data was from and said that if she let her know what temperature record he was talking about, she would let Dr Harrington know and check it out.

[23] At 12.01 am on 14 February 2025, Mr Wishart emailed Ms Gibson attaching a temperature record for Hamilton reconstructed from the Waikato Times daily meteorological data from mid-December 1934 to 28 February 1935 with information about where the temperature readings had been taken. Mr Wishart noted that the Times used a met station operated by a large optometry firm and appeared to have asked for 2.30 pm daily readings. He noted there was a 26-day run from 15 December 1934 to 10 January 1935 where published temperatures did not fall below 80° Fahrenheit, a further 10-day run from 12 January and a further 26-day run from 26 January to 20 February. Mr Wishart said the scale of the 1934/1935 heatwave lasting 75 days, with 62 days above 80° Fahrenheit, put the 2025 heatwave into perspective. He also said that the 1935 heatwave caused large bush and peat fires.

[24] Further emails were exchanged that day between Ms Gibson and Mr Wishart about converting the Fahrenheit readings from 1934/1935 into Celsius and comparing these with the 2025 readings. Dr Harrington was also copied into some of these messages.

[25] At 10.37 am on 14 February 2025, Dr Harrington emailed Mr Wishart and Ms Gibson and commented on the information provided by Mr Wishart. The comments included the observation that comparing absolute temperatures, or sequences of absolute temperature exceedances, only made sense in the context of consistent data from the same weather station. Dr Harrington also said there was a sequence of known issues with looking at direct temperature measurements from further in the past, including changes in the type of instrumentation used and observing practices. However, Dr Harrington agreed that the 2025 event was not “record-shattering” and recommended to Ms Gibson that the word “shattered” in the headline be amended to “breaks”. Dr Harrington also stated:

... none of the above points really change the broader messaging. Even if this run of extreme days was the second- or third-ranked on record, climate change makes such events both more intense and more likely ... That also doesn't diminish the fact that the summer of 1934/35 was also very hot ...

[26] At 10.43 am on 14 February 2025, Ms Gibson emailed Dr Harrington and Mr Wishart advising that she had asked to have the headline tweaked to “breaks”.

[27] At 11.24 am on 14 February 2025, Mr Wishart emailed Ms Gibson and Dr Harrington with his observations on how account could be taken of variations in temperature readings from different sites.

[28] At 7.04 am on 15 February 2025 (a Saturday), Mr Wishart emailed Ms Gibson and Dr Harrington asking Ms Gibson if she had quoted Dr Harrington accurately in the Broadcast when referring to the “hottest continuous 10 or 11 days stretch” of hot weather in available records and, if so, asking Dr Harrington whether he stood by that quote.

[29] At 3.16 pm on 15 February 2025, Mr Wishart sent a long email to Ms Gibson and Dr Harrington in which he questioned the accuracy of the Broadcast and the validity of Dr Harrington’s comments in the light of the information provided about the 1935 heatwave. He also referred to the possibility of filing a complaint and asserted that the only responsible option for RNZ was to correct and update the Broadcast with an accurate précis of facts that readers needed for context.

[30] Further emails were exchanged on 17 February 2025. After Ms Gibson had advised that she considered Dr Hetherington’s reply and the tweak to the headline had answered the questions Mr Wishart had raised, Mr Wishart sent further substantial messages in which he challenged the accuracy of the Broadcast in light of the information he had provided and reminded Ms Gibson of RNZ Editorial Policy on accuracy and her duties as a journalist. He also copied some of these messages to RNZ’s Editor-in-Chief and Chief Executive Officer, Paul Thompson.

[31] On 20 February 2025, Ms Gibson emailed Mr Wishart stating:

We’ve been happy to add a line to the story linking to a news report from 1935 and referencing heat and peat fires from that time.

Along with that initial tweak to the headline, we consider this brings the matter to an end.

Mr Wishart's complaint

[32] On 9 March 2025, Mr Wishart filed a complaint with the Authority. The complaint ran to nine pages and included strong criticisms of Ms Gibson, RNZ and Dr Harrington. The overall thrust of the complaint was that the Broadcast was not accurate for reasons put forward by Mr Wishart. The last section challenged Ms Gibson's objectivity and asserted, by reference to another document, that RNZ had form for adopting a position aligned with the Intergovernmental Panel on Climate Change (IPCC).

[33] In a letter dated 11 March 2025, RNZ's Complaints Coordinator, Mr Chris Reid, responded to Mr Wishart's complaint.³ He noted that Ms Gibson and Dr Harrington had engaged with Mr Wishart on the issues he had raised which had resulted in the change to the headline and annotation of the story with the additional data provided by Mr Wishart. Mr Reid also referred to principle 12 of the Media Council which envisaged a publisher acknowledging and correcting errors once put on notice as to any inaccuracy, which RNZ had done. Accordingly, the complaint was not upheld.

Mr Wishart refers complaint to the Authority

[34] On 1 May 2025, Mr Wishart referred his complaint to the Authority. In a 10-page document, he referred to the Authority's Accuracy Standard and said, in effect, that the Morning Report had breached that standard by, among other things, not upholding his complaint and failing "to meaningfully correct the utterly false impressions created by its story". Mr Wishart also asserted:

The decision to hide the magnitude record breaking temperatures of the summer of 1934/35 from its audience, ostensibly to avoid changing the "broader messaging", changed the nature of the breach from "failing to correct misinformation", to "wilfully publishing disinformation by deliberate omission of material facts".

[35] Mr Wishart also referred to the Authority's Balance Standard as an alternative argument and said RNZ could have treated the disagreement with him as a contestable

³ Mr Wishart says the letter was sent on 3 April 2025. Nothing turns on this point.

debate fixable by interviewing him on his research and thus providing balanced coverage but had not done so.

[36] By letter dated 8 May 2025 to the Authority, Mr Andrew Holden, RNZ's Complaints Custodian, replied to Mr Wishart's complaint which, Mr Holden said, raised two issues:

- (a) Did the Broadcast meet the standard of accuracy at the time of the broadcast?
- (b) Did RNZ receive information after the interview that would oblige it to correct the initial broadcast, potentially through a second story on Morning Report?

[37] With respect to the first question, Mr Holden noted that the Authority's Guideline states that broadcasters should make reasonable efforts to ensure that the interview was with an authoritative expert and that Dr Harrington, among other things, was a senior lecturer in Environmental Science at the University of Waikato and was leading the formation of a Climate Extremes and Societal Impacts research group of the University.

[38] With respect to the second question, Mr Holden noted that:

- (a) RNZ's first response had been that Mr Wishart's historic temperature record was not comparable with the modern readings cited by Dr Harrington and referred to the need for temperatures to be taken at the same place because of variability between different locations.
- (b) RNZ's own investigations on Papers Past showed that the readings phoned in to the Waikato Times by an employee of a local optometrist could be significantly different from temperature readings published by a rival newspaper, the Independent. In addition, the Waikato Times readings could not be used to determine whether the heatwave lasted 11 days because the person taking the readings only phoned in six days

in a week and a spreadsheet obtained by RNZ showed no temperature data on Saturdays.

- (c) Consequently, the most RNZ could establish as a legitimate historical temperature record was a spell of hot days and peat fires in the 1930s, which NZ had added to the story line. It had also adjusted the headline at Dr Harrington's request.

Mr Wishart requests production of documents

[39] Later on 8 May 2025, Mr Wishart sent the Authority a six-page response to Mr Holden's letter and what Mr Wishart described as RNZ's "fact check" of Papers Past. Among other things, Mr Wishart said the reason the Independent's readings differed from those of the Waikato Times was that the Independent was based in Cambridge, not Hamilton, which RNZ should have known. He also said he had provided RNZ a spreadsheet of temperatures in Fahrenheit (for the period 15 December 1934 to 20 February 1935) with no Saturdays missing and another spreadsheet with the temperatures converted into Celsius, copies of which he included. Mr Wishart also provided evidence to show that temperatures for Saturdays also appeared in the Waikato Times.

[40] Mr Wishart questioned the competency of RNZ, stated his opinion that Dr Harrington must have prepared the RNZ spreadsheets and said this raised ethical questions about whether Ms Gibson had lost editorial control of her story or ever had it in the first place. Mr Wishart also asserted that the emails between RNZ and Dr Harrington would be discoverable for any High Court review and were pertinent to the Authority's adjudication in the matter. He formally requested that RNZ make full disclosure of those emails under the Official Information Act 1982 or Privacy Act 2020 and asked the Authority to make an order to produce those emails under s 12 of the Broadcasting Act if RNZ was unwilling to make the emails available for the hearing before the Authority.

[41] In a memorandum dated 10 May 2025 to the Authority, Mr Wishart asserted that RNZ had disclosed in Mr Holden's letter that it held communications relating to "the issue of whether the 2025 heatwave was a legitimate record vs the summer of

1934/35” and asserted that such communications were not privileged. At the end of the memorandum, Mr Wishart asked the Authority to issue orders to produce the documents that Mr Wishart now seeks disclosure of in the application before this Court (at [2(a)]). He also asked that the Authority hearing not be scheduled until after RNZ had complied with the orders.

[42] By letter dated 16 May 2025, Mr Holden responded to Mr Wishart’s further comments. He said he was obliged to Mr Wishart for the information about the Cambridge home base of the Waikato Independent and the weekly weather records in the Waikato Times, including Saturdays. He said he had asked RNZ’s research team to confirm this information and advised that the research had not been done by Dr Harrington or Ms Gibson. He also said he accepted Mr Wishart’s chart about the summer of 1934/35, while noting Dr Harrington’s caution about datasets.

[43] Mr Holden then said the question was whether this was material to the original broadcast and said Mr Wishart wished to argue that the 1934/35 heatwave undermined the original messaging of the Broadcast about increasing intensity and duration under climate change. Mr Holden said it did not and said the point about climate change was the verified increase in average temperatures worldwide across 12 months, which leads to increasing frequency of significant climactic events, not that any one event broke a particular record.

[44] On 20 May 2025, Mr Wishart sent a 10-page response to Mr Holden’s letter. He asserted that the case was not difficult and concerned whether RNZ should have reported the evidence of a much bigger record-breaking historical event that contradicted the main angle of their story.

The Authority Decision

[45] In the Authority Decision, the Authority noted that Mr Wishart had complained that the Broadcast breached the Accuracy Standard in the following respects:⁴

⁴ Authority Decision, above n 1, at [6].

- (a) it was inaccurate because it contained statements suggesting the run of hot days in Hamilton in early 2025 was unprecedented;
- (b) RNZ did not make reasonable efforts to ensure accuracy;
- (c) the claim the heatwave was “probably unprecedented” was the lead angle for the story and thus a “material fact”;
- (d) RNZ was obliged to correct the story when notified it was inaccurate; and
- (e) RNZ should have upheld the complaint under its own policies.

[46] The Authority noted that Mr Wishart had also sought to rely on the Balance Standard after the complaint had been referred to the Authority. However, the Authority was of the view that the original complaint, reasonably interpreted, did not raise or necessitate consideration under that standard. Accordingly, it did not consider the Balance Standard in its decision.⁵

[47] The Authority also noted that Mr Wishart had asked it to require production of the documents that are the subject of the current application to this Court. After summarising Mr Wishart’s arguments in support of the request, the Authority held, by reference to its previous decisions on similar requests,⁶ that it had sufficient information to assess whether RNZ had breached the relevant broadcasting standard; that is, the Accuracy Standard.⁷

[48] In its substantive consideration of the complaint, the Authority first considered whether the Accuracy Standard applied. It noted that the standard did not apply to statements that are clearly distinguishable as analysis, comment, or opinion, rather than statements of fact.⁸ It also noted that an opinion is someone’s view and is

⁵ At [7]–[10].

⁶ See *Ministry of Health and CanWest TVWorks Ltd* BSA 2007/12, 10 October 2007; *NZ Fire Service and MediaWorks TV Ltd* BSA 2016/17, 18 November 2016; and *Tongan Health Society and Television New Zealand Ltd* BSA 2019/54, 2 December 2019.

⁷ Authority Decision, above n 1, at [14]–[19].

⁸ At [27].

contestable, and others may hold a different view.⁹ It also noted that whether a statement is an assertion of fact or an opinion will depend on the context, presentation and how a reasonable listener would perceive the information.¹⁰

[49] The Authority said the Broadcast contained four statements that suggested the Hamilton heatwave may be unprecedented. Noting the language used (i.e. “likely”, “might have”, “probably”, “I think”), it considered that, given the source of the information (the climate scientist) and the lack of evidence provided to support the statements, reasonable listeners were likely to recognise the suggestions regarding an unprecedented heatwave to be the climate scientist’s opinion — to which the Accuracy Standard did not apply.¹¹

[50] The Authority noted that Guideline 6.1 of the Accuracy Standard requires broadcasters to make reasonable efforts to ensure opinion is not materially misleading with respect to any facts referred to or upon which the analysis, comment or opinion is based and said the guideline requires consideration of factual information relied on or referred to in coming to the opinion expressed.¹² However, it considered that the scientist, Dr Harrington, did not purport to base his opinion on fact except when he referred to his records going back to the early 1990s. Because there was no suggestion those records were inconsistent with the opinion provided and no suggestion there was any other factual basis for the scientist’s views about the period before the early 1990s, it considered Guideline 6.1 did not apply.¹³

[51] In any event, the Authority did not consider the Broadcast to be misleading by including the relevant opinion, without reference to the 1934/1935 heatwave because:¹⁴

- (a) listeners had been provided with sufficient information to assess the broadcast content for themselves;

⁹ At [27].

¹⁰ At [27].

¹¹ At [28]–[29].

¹² At [30].

¹³ At [30].

¹⁴ At [31].

- (b) the Hamilton heatwave had not been expressly attributed to climate change or presented as evidence of climate change;
- (c) Dr Harrington’s predictions about the likelihood of future heatwaves were not expressly reliant on the Hamilton heatwave or presented as evidence of climate change;
- (d) listeners were likely to understand that extreme weather events can be caused by natural conditions and to appreciate the practical challenges associated with proving the underlying cause of any given meteorological event;
- (e) Dr Harrington’s comments about the likelihood of heatwaves becoming more common were consistent with those of other experts; and
- (f) the broadcast was not about and did not discuss ways to prevent the effects of climate change.

[52] Having found the relevant statements were opinion and that the broadcast was not misleading, the Authority considered there was no need for it to go on to consider whether reasonable efforts had been made to ensure accuracy or whether RNZ had an obligation to issue a correction on being advised of the 1934/1935 heatwave.¹⁵

Mr Wishart’s appeal

[53] In his notice of appeal dated 1 August 2025, Mr Wishart says the appeal is brought in the public interest to clarify what he says is untested law on the current iteration of the Broadcasting Standards.

[54] The notice of appeal runs to 27 pages. For the purposes of this judgment, I consider only the stated grounds of appeal and not the submissions and other material that are inappropriate in a notice of appeal. Necessarily, what follows is a distillation of the grounds advanced by Mr Wishart.

¹⁵ At [33].

[55] The essential grounds of appeal are:

- (a) The Authority failed to comply with the principles of natural justice:
 - (i) by refusing to require RNZ to produce the documents that are the subject of the current application; and
 - (ii) by exhibiting partisanship; that is, it attempted to boost the RNZ case by referring to material not placed before it by the parties.
- (b) The Authority erred in law:
 - (i) by holding that Dr Harrington's reference to pre-1990 temperature records was opinion when it was a question of fact; and
 - (ii) by failing to consider that the Accuracy Standard had been breached by omission; that is, RNZ had failed to fact check its story and the easily discoverable fact was that 1935 had been New Zealand's hottest summer.
- (c) The Authority failed to consider whether RNZ had met its own editorial standards as set out in the Code of Broadcasting Standards in New Zealand.

Submissions of Mr Wishart

[56] Mr Wishart submits there are two issues that need to be addressed before the appeal is heard — whether RNZ should be compelled to produce the documents and the nature of the appeal. Although he purports to address these questions separately, his submissions on the first point also address the second in support of his contention that the Authority should have compelled production of the Documents.

[57] In relation to the first point, Mr Wishart submits that the issues on appeal are:

- (a) whether the Authority erred and/or breached natural justice in declining to order production of the Documents, and should the Authority have obtained the Documents in order to understand the full parameters of his complaint;
- (b) whether RNZ had taken reasonable steps to ensure the accuracy of the Broadcast, both before publication and after being notified of an error;
- (c) whether the expert, Dr Harrington, was mistaken or deliberately misleading about the 1934/1935 heatwave and whether his research was credible; and
- (d) whether RNZ had taken appropriate steps to correct the Broadcast when notified of the error, which was a material error for the purposes of Guideline 6.1.

[58] Mr Wishart submits the Documents are relevant to all these issues and that it would be difficult to see how the Court could decide any of the issues, especially those in (a) and (d) above, without assessing the Documents.

[59] Mr Wishart submits that this Court clearly has the power to order the production of additional documents, as confirmed by the Court of Appeal in *Comalco New Zealand Ltd v The Broadcasting Standards Authority*.¹⁶ Mr Wishart also points to the statement by Heron J in *Television New Zealand Ltd v Ombudsman* that any real investigation into the way a broadcaster has carried out their obligations under the Broadcasting Act would be extraordinarily contrived if access was not available to the surrounding circumstances when determining the complaint.¹⁷ Mr Wishart also notes that, in *Canwest TVWorks*, the Authority accepted that, under the principles of natural justice, a complainant should have the opportunity to view and comment on material that was not part of the broadcast that was the subject of the complaint.¹⁸ Mr Wishart also refers to the observations of Williams J in *Attorney-General of Samoa v TVWorks Ltd* about the circumstances in which the Authority will have failed in its

¹⁶ *Comalco New Zealand Ltd v The Broadcasting Standards Authority* (1995) 9 PRNZ 153 (CA).

¹⁷ *Television New Zealand Ltd v Ombudsman* [1992] 1 NZLR 10 at 119.

¹⁸ *Canwest TVWorks Ltd*, above n 7, at [4].

obligations under s 10(2) of the Broadcasting Act if it fails to obtain additional material sought by a complainant.¹⁹ Mr Wishart submits that the decisions in *Comalco* and *Attorney-General of Samoa* show that this Court has been critical of the Authority for not using its inquisitorial powers more.

[60] In relation to the second point, Mr Wishart submits that, despite s 18(4) of the Broadcasting Act, where an appellant has shown that the Authority had made an error or had reached a decision that was plainly wrong, the Court has a duty to hear the case *de novo* or send the decision back to the Authority for *de novo* reconsideration in accordance with s 18(5)(b) of the Broadcasting Act. He notes that, in *Chief Executive of New Zealand Customs Service v Jury*, the Court of Appeal observed that the courts have implied a right to a *de novo* hearing upon appeal if the decision appealed from did not involve a hearing or if the empowering statute provided the appellate body with the power to exercise all the powers of the authority appealed from.²⁰ Mr Wishart notes there was no hearing in the present case and that the appeal is not confined to error of law, but alleges that the Authority did not do its job right. He submits that, in such circumstances, the Authority itself is under investigation, and the Court must step into its shoes.

Submissions for RNZ

[61] Mr Stewart KC, counsel for RNZ, accepts the Court may order the production of documents in the exercise of its powers under s 18(5) of the Broadcasting Act. However, he submits the authorities cited by Mr Wishart are distinguishable because they all involved the Balance Standard. He also notes the Documents were not in RNZ's possession when the Broadcast was broadcast but were created subsequently in response to the material provided by Mr Wishart. He submits the documents are not relevant to broadcast material.

[62] Mr Stewart accepts the Documents are relevant to the steps taken by RNZ to verify the material Mr Wishart provided but says the Authority did not need them to determine whether the Broadcast required correction. He notes that the Authority had

¹⁹ *Attorney-General of Samoa v TVWorks Ltd* [2012] NZHC 131 at [74]–[75].

²⁰ *Chief Executive of New Zealand Customs Service v Jury* [2017] NZCA 356 at [58].

the evidence provided by Mr Wishart, the further information Mr Wishart provided in reply to RNZ's initial response and the additional material Mr Wishart supplied in reply to RNZ's second response, in which RNZ accepted the accuracy of Mr Wishart's temperature information. Accordingly, the Authority had all the information it needed to determine whether RNZ should have broadcast a correction in circumstances where RNZ had accepted Mr Wishart's evidence that there had been a hotter and longer continuous period of weather in Hamilton in 1934/1935 than in 2025.

[63] Mr Stewart submits that, if the Court finds the Authority was in error to find the Broadcast was not materially misleading, it will follow that RNZ has breached the Accuracy Standard because it failed to issue a correction. The steps RNZ took to verify the information provided by Mr Wishart are not relevant to that issue. More generally, Mr Stewart submits that, while Mr Wishart may wish to access the Documents because he suspects they will support his views of RNZ's journalistic standards and the credibility of the scientist RNZ relied on, the Documents are not relevant for the issues for determination on Mr Wishart's appeal.

[64] Mr Stewart also submits that the nature of an appeal from a decision of the Authority is governed by s 18(4) of the Broadcasting Act, the scope of such appeals is well-established, as confirmed by the Supreme Court in *Kacem v Bashir*,²¹ and does not entail a de novo hearing. In that regard, he submits the Court of Appeal's decision in *Chief Executive of New Zealand Customs Service v Jury* has no application.²²

Analysis

[65] I begin by considering the nature of an appeal from a decision of the Authority because the nature of the appeal sets the parameters for determining the relevance of the Documents.

[66] As Mr Stewart says, s 18(4) of the Broadcasting Act provides that the Court must hear and determine the appeal as if the Authority's decision had been made in the exercise of a discretion. In *Comalco New Zealand Ltd*, the Court held that this

²¹ *Kacem v Bashir* [2010] NZSC 112; [2011] 2 NZLR 1.

²² *Chief Executive of New Zealand Customs Service v Jury*, above n 21.

means that the appeal should only be allowed if the Authority has proceeded on a wrong principle, given undue weight to some factor or insufficient weight to another, or is plainly wrong.²³ However, as Mr Stewart has noted, the more authoritative formulation is that stated by the Supreme Court in *Kacem v Bashir*, when restating the standard test for challenges to the exercise of a discretion as set out in *May v May*:²⁴

[32] ... a general appeal is to be distinguished from an appeal against a decision made in the exercise of a discretion. In that kind of case the criteria for a successful appeal are stricter: (1) error of law or principle; (2) taking account of irrelevant considerations; (3) failing to take account of a relevant consideration; or (4) the decision is plainly wrong.

[67] The fact that s 18(5) empowers the Court, when determining the appeal, to exercise any of the powers that could have been exercised by the Authority when considering the complaint does not mean the Court can ignore s 18(4) and undertake a complete reconsideration of the complaint, without regard to the findings of the Authority.

[68] For these reasons, Mr Wishart's arguments for production of the Documents so the Court can conduct a de novo hearing are misdirected. It is clear from s 18(4) that the Court must hear and determine the appeal as if the Authority's decision had been made in the exercise of a discretion. As a matter of law, therefore, the appeal is limited to whether the Authority made an error of law or principle; took into account irrelevant considerations; failed to take account of a relevant consideration; or was plainly wrong. The Authority itself is not under investigation. The observations of the Court of Appeal in *Chief Executive of New Zealand Customs Service v Jury* about the circumstances where a de novo hearing on appeal may be appropriate do not apply.

[69] The authorities Mr Wishart cites in support of the Court exercising the powers of production under the Commissions of Inquiry Act are also of marginal relevance. Mr Wishart has not appealed the Authority's decision to consider his complaint only by reference to the Accuracy Standard because it was satisfied the Balance Standard was not required to be considered. While, in oral submissions, Mr Wishart alleged generally that the Authority "got it wrong", the whole thrust of his appeal was directed

²³ *Comalco New Zealand Ltd v The Broadcasting Standards Authority*, above n 17, at 161–162.

²⁴ *Kacem v Bashir*, above n 22, referencing *May v May* (1982) 1 NZFLR 165 (CA) at 170. See also *Television New Zealand Ltd v KW* HC Auckland CIV-2007-485-1609, 18 December 2008 at [3].

at the alleged inaccuracy of the Broadcast because it did not refer to the 1934/1935 heatwave and RNZ's failure to remedy that alleged inaccuracy.

[70] As a result, the only standard at issue on appeal is the Accuracy Standard. For that reason, decisions about disclosure in the context of complaints of lack of balance and unfairness are of limited assistance. In that regard, I note the following:

- (a) In *Comalco New Zealand*, the Court of Appeal ordered production of pre-broadcast material that had not been disclosed before the Authority because the complaint at issue related to the Balance Standard and the non-disclosure of that material had meant the Authority could not consider the issue of balance in the election and editing process.²⁵
- (b) In *Television New Zealand Ltd v Ombudsman*, the issue was whether Television New Zealand could refuse to disclose film and videotapes of a two-hour interview, of which only a three-minute segment had been broadcast, and which had led to a complaint of bias and an investigation by the Ombudsman. That was the context in which Heron J made the observation cited by Mr Wishart.²⁶
- (c) In *Ministry of Health and CanWest TVWorks Ltd*, the Authority was satisfied that the principles of natural justice meant the complainant should have the opportunity to view and comment on field tapes of interviews, of which excerpts had been broadcast, and that it should be disclosed where complaints had been made of a lack of balance and unfairness.²⁷

[71] Mr Wishart's complaint has little parallel with the circumstances of any of these complaints. As Williams J said in *Attorney-General of Samoa v TVWorks Ltd*, the question of whether the Authority — or, in this case, the Court — has an

²⁵ *Comalco New Zealand Ltd v The Broadcasting Standards Authority*, above n 17, at 162.

²⁶ *Television New Zealand Ltd v Ombudsman*, above n 18, at 108 and 119.

²⁷ *CanWest TVWorks Ltd*, above n 7, at [4] and [15].

inquisitorial responsibility is always fact reliant and depends on substantive consideration of the application of the relevant standards.²⁸

[72] Accordingly, I now consider Mr Wishart's application by reference to his specific grounds of appeal and the Accuracy Standard, the relevant sections of which are annexed to this judgment.

[73] It is plain that the Documents are not relevant to the two errors of law alleged by Mr Wishart. Documents produced by RNZ after the Broadcast had aired, after the headline on the online version had been adjusted and a link to the 1935 article added, and after Mr Wishart had filed his complaint with RNZ in accordance with s 8 of the Broadcasting Act cannot be relevant:

- (a) to whether Dr Harrington's reference in the Broadcast to pre-1990 temperature records was opinion rather than fact; or
- (b) to whether RNZ had breached the Accuracy Standard by omission by failing to fact check its story — which must apply to pre-broadcast steps.

[74] Similarly, I do not consider the Documents are relevant to whether RNZ failed to comply with its Code of Broadcasting Standards — in this case, Standard 6 — the Accuracy Standard.

[75] As Mr Stewart says, the Documents may be relevant to the steps taken by RNZ to verify the material Mr Wishart provided to Ms Gibson and Dr Harrington. That means they may be relevant to whether RNZ made reasonable efforts to ensure the accuracy of the broadcast after Mr Wishart had alerted them to the heatwave of 1934/1935. But, as is clear from Guideline 6.6, the responsibility for determining the issue of accuracy lies with the broadcaster. It follows that it is for RNZ to satisfy the Authority that the steps it took to correct any errors were reasonable. If this Court, on appeal, finds the Accuracy Standard applies and Dr Harrington's statements, whether held to be fact or opinion, were misleading, it will assess RNZ's compliance with the

²⁸ *Attorney-General of Samoa v TVWorks Ltd*, above n 20, at [76].

standard on the basis of the evidence before it. If post-publication steps are not put forward in support of asserted compliance, it is not for the Court (or a complainant) to scrutinise the adequacy of steps which, if not in evidence, are essentially irrelevant to whether RNZ complied with the standard.

[76] I am also satisfied the Documents are not relevant to Mr Wishart's alleged breaches of natural justice. A refusal to provide documents created after the Broadcast that was the subject of the complaint cannot be a breach of natural justice in relation to the complaint. In that respect, the situation in the present case is fundamentally different from those considered in *Comalco New Zealand* and in *Television New Zealand Ltd v Ombudsman*. Nor can the refusal be relevant to the allegation of partisanship, which must relate to the fact of the Broadcast and any justification advanced by RNZ in relation to the Broadcast.

Result

[77] For all these reasons, Mr Wishart's application for production of the Documents cannot succeed.

[78] In addition, I consider it likely that Mr Wishart is seeking production of the Documents for a collateral purpose or purposes: to support his criticisms of RNZ's competence and its compliance with journalistic standards, and his belief that RNZ too willingly accepts the validity of positions aligned with the findings of the IPCC and is insufficiently receptive to positions espoused by climate-change sceptics. Whatever the merits of Mr Wishart's views on those matters, they are outside the scope of his appeal, as determined in accordance with s 18(4) of the Broadcasting Act.

[79] Mr Wishart's application is dismissed.

Costs

[80] As the successful party, RNZ is entitled to its costs in defending Mr Wishart's application.

[81] In his minute of 12 September 2025, Robinson J ruled that the proceeding is category 2 for the purposes of r 14.3 of the High Court Rules 2016.²⁹ I consider the costs in this application are payable at band B in accordance with r 14.5(2).

[82] If the parties cannot agree costs, they may file memoranda of no more than four pages as follows:

(a) Any memorandum on behalf of RNZ is to be filed by 3 June 2026.

(b) Any memorandum by Mr Wishart is to be filed by 17 June 2026.

[83] I will then decide costs on the papers.

G J van Bohemen J

²⁹ *Wishart v Radio New Zealand Ltd* HC Auckland CIV-2025-404-2074, 12 September 2025 (Minute of Robinson J).

Annex: The Accuracy Standard

STANDARD 6 — ACCURACY

Broadcasters should make reasonable efforts to ensure news, current affairs and factual content:

- is accurate in relation to all material points of fact
- does not materially mislead the audience (give a wrong idea or impression of the facts).

In the event a material error of fact has occurred, broadcasters should correct it within a reasonable period after they have been put on notice.

Guidelines

6.1 The requirement for factual accuracy does not apply to statements which are clearly distinguishable as analysis, comment or opinion, rather than statements of fact. However, broadcasters should still make reasonable efforts to ensure analysis, comment or opinion is not materially misleading with respect to any facts:

- referred to; or
- upon which the analysis, comment or opinion is based.

6.2 The standard is not concerned with technical or other points unlikely to significantly affect the audience's understanding of the content as a whole.

6.3 The assessment of whether the broadcaster has made reasonable efforts to ensure accuracy includes consideration of the following, where relevant:

- the source of material broadcast (eg a reputable organisation or an authoritative expert; or social media or third-party content from a non-reputable or non-authoritative organisation or person which may require additional care or steps to be taken by the broadcaster)

- whether the broadcast was live or pre-recorded
- whether there was some obvious reason to question the accuracy of the programme content before it was broadcast
- whether the broadcaster sought and/or presented comment, clarification or input from any relevant person or organisation
- the extent to which the issue of accuracy was reasonably capable of being determined by the broadcaster
- the effect of any subsequent or follow-up coverage (eg where information has been updated or corrected as part of a developing story; or there is a delay between the time of broadcast and when the content has been accessed)
- the level of the broadcaster's editorial control over the content.

...

6.6 Where an obligation to correct a material error of fact arises, the broadcaster may correct it in such manner as is reasonable (eg via broadcast or its website) taking into account:

- the nature and impact of the error
- whether the relevant topic is the subject of ongoing updates and developments in which the correction could appear
- the impact of any other media coverage on the likelihood of the audience being misled
- when the error is identified (and any impact of the passage of time on its newsworthiness).