

BEFORE THE BROADCASTING STANDARDS AUTHORITY

Decision No: 22/90

Dated the 18th day of October 1990

IN THE MATTER of the Broadcasting Act 1989

AND

IN THE MATTER of a complaint by

ROGER C. GREGG

of Christchurch

Broadcaster

TELEVISION NEW ZEALAND

LIMITED

I.W. Gallaway Chairperson

J.B. Fish

J.L. Hardie

J.R. Morris

DECISION

Introduction

This complaint arose from the broadcast on 14 October 1989 of a programme on TV1 called "Prospects", a documentary which examined the anti-mining protest movement on the Coromandel Peninsula. The film was independently produced by Pit Productions of Wellington and was purchased and screened by TVNZ Ltd in the normal way.

Mr Gregg considered that the programme was unbalanced and lacking in objectivity and that it contained factual errors, distortions and inaccuracies. He therefore made a formal complaint to TVNZ Ltd.

Mr Gregg's Complaint to TVNZ Ltd

On 17 October 1989, Mr Gregg wrote to TVNZ formally complaining about the "Prospects" programme. The basis for his complaint was that

1. The content of the programme was factually incorrect.
2. The programme purposely distorted a number of mining aspects and objectives.
3. There was no reply or balance given by a pro-mining group.



4. There was no objective comment at all, either in or accompanying what is simply the anti-mining propaganda called the "documentary".
5. TVNZ should not have broadcast such a biased, factually incorrect and distorted commentary on an issue of concern to New Zealanders.

Mr Gregg offered to provide further comments in respect of his allegations. He also asked TVNZ to "redress the imbalance" by giving equal air time to the mining industry's viewpoint.

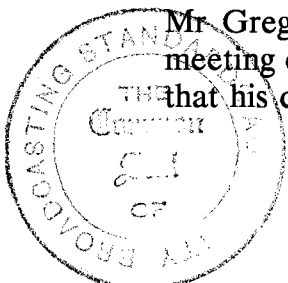
In response to a request from TVNZ on 26 October 1989 to specify what segments of the programme related to his allegations of inaccuracy, distortion, bias, imbalance, etc, Mr Gregg wrote to TVNZ on 17 November 1989 making, inter alia, the following points:

1. One example of factually incorrect content was the assertion [by Ms Margaret Pye] that "should this company decide to mine, there is nothing that the company can legally do to stop them".
2. One example of distortion was Dr Stella Perry's discussion of water quality. "Discharges from streams in the vicinity of or downstream from current operations, simply are not polluted, contrary to Dr Perry's assertions".
3. There was no balanced input into the programme. The only industry comment was the highly-edited comment from one man, Mr Peter Roberts.
4. That the programme was not objective was testified to by the fact that the Peninsula Watchdog Group actively promotes the sale and screening of the programme as "a tool to be used at Meetings".
5. There was no substantive comment from any of the pro-mining people who constitute over half of the people in the Coromandel Peninsula (see the 1988 survey by Mr Graham Lee M.P.).
6. The mining industry should have had equal time to put its views.

#### **TVNZ's Response to Mr Gregg's Complaint**

On 15 December 1989, TVNZ advised Mr Gregg that his complaint was not heard at the December meeting of its Complaints Committee as its preliminary investigation had not been completed. It was explained that as the programme in question was an independent production, and had not had any TVNZ Ltd input, it had been necessary to follow-up various points with the production house in question. Unfortunately, the producer had been overseas and difficult to contact. TVNZ regretted the delay.

Mr Gregg's complaint was, however, discussed by the Complaints Committee at its meeting on 24 January 1990 and in a letter dated 1 February TVNZ advised Mr Gregg that his complaint had not been upheld.



TVNZ informed Mr Gregg that his complaint had been considered in the context of [what are now] Programme Standards 1 and 6 of the Codes of Broadcasting Practice for Television. These standards respectively require broadcasters to be truthful and accurate on points of fact and to show balance, impartiality and fairness in dealing with political matters, current affairs and all questions of a controversial nature.

It was explained to Mr Gregg at the outset that his complaint was similar to one received from the New Zealand Mining and Exploration Association and that "as our reply to the Association comprehensively covers the matters which also give your concern, this letter will cover the points you make but in a broader context".

As to the content of TVNZ's reply to the Association, this has been summarised by the Authority in a companion Decision issued today concerning the NZMEA's referral to the Authority of its complaint concerning "Prospects" (see Decision No:21/90). The Authority's summary is as follows:

1. The programme was in the nature of a documentary. The Committee had noted that it was essentially the story of the protest movement and its environmental concerns in the Coromandel and not of mining per se. It set out to explain the rationale of the movement, the activities of the mining companies and the feelings of the local community. Mr Roberts' comments were brief, partly because the NZMEA stance was only partially relevant to the item and partly because his statements were a succinct and accurate representation of the mining companies' position.
2. While the film credits fitted with the premise of the documentary being a story of the protest movement, it was acknowledged that the credits could give an unacceptable image of bias. But since the programme was examining the fight that was taking place against mining, the special thanks message was not seen by TVNZ to be incongruous.
3. A bias of sorts would inevitably be seen in the programme simply because it was the story of a protest movement. The Committee noted that, according to the TVNZ production library records, there had been 13 news items on the subject of mining during the first 11 months of 1989. A balance of viewpoint and public understanding would inevitably arise from such broad coverage. As to the suggestion that TVNZ should allow representatives of the mining industry to redress the balance, the Committee could see no reason why the NZMEA should not commission its own documentary and submit it to TVNZ for consideration.

With regard to the allegations of factual inaccuracies, etc, TVNZ replied as follows:

1. Dr Stella Penny's comments were considered to be of an historical nature. Given that there is currently no mining on the Coromandel itself (the only operating mine being at Waihi), her concerns were clearly those of pre-existing pollution.



2. As to the comments of Ms Tanya Popp, it was noted that she, too, was "clearly proffering an opinion". In context, she was one of five people expressing their worries about potential mining.

3. While Margaret Pye's comment was technically incorrect, it was an opinion proffered in the light of the protest movement not succeeding in opposing the granting of any exploration licence. The camera reflected an honestly-held opinion.

4. Maurice Cowan was formerly Deputy Mayor of Waihi and his segment was included to look at the impact of the open-cast mine in Waihi as one indication of what a fully-fledged mine might mean to the Coromandel. He was expressing his genuine viewpoint and exercising a freedom of speech to which he is entitled on a matter of not only public interest but public concern relating to the environment.

The 1986 survey was seen by TVNZ as being mentioned in the context of it being the catalyst for residents to go to the Planning Tribunal, not as any definitive claim of accuracy. It was noted that the survey was conducted only among Coromandel residents whereas Mr Lee's survey covered his entire electorate.

In summary, the Complaints Committee was satisfied that in the broader context the pro-mining view had been explored. In spite of some reservations about production aspects of the programme, TVNZ did not consider, given the nature of the topic and taking the overall picture into consideration, that Programme Standards 1 and 6 had been breached. A reasonable opportunity was given a mining representative to present significant points of view in the programme. Accordingly, Mr Gregg's complaint was not upheld.

#### **Mr Gregg's Complaint to the Broadcasting Standards Authority**

Mr Gregg was "absolutely dissatisfied" with TVNZ's decision and, in a letter dated 21 February, referred his complaint to the Authority together with a completed Complaint Referral Form. He considered the decision "to be often incorrect as to fact and biased as to interpretation of the programme in question". Further, the purpose of "Prospects" was not that stated by the Complaints Committee.

Mr Gregg also objected "to the manner of TVNZ's reply. Fobbing me off with a letter meant for another party is unacceptable and demeaning to my mana".

Mr Gregg also noted that he intended to elaborate on his objections at the appropriate time and place as determined by the Authority.

A copy of Mr Gregg's letter was passed to TVNZ for comment.



### TVNZ's Response to the Authority

TVNZ responded to Mr Gregg's letter on 17 July and at the outset noted that it had some difficulty in responding because Mr Gregg had failed to give details as to why he was "absolutely dissatisfied" with the Complaints Committee's decision.

The Authority was also invited to contemplate whether, in withholding such details, Mr Gregg had denied TVNZ the opportunity of making a "proper statement of defence".

As to the suggestion that Mr Gregg had been "fobbed off" in the manner he described, TVNZ said that its letter to him went into more detail than was actually called for by his complaint and that this was done as something as a courtesy, as a gesture of goodwill.

Finally, TVNZ submitted that

On the basis of the complainant's inadequate identification of the reasons for dissatisfaction with the Complaints Committee's decision, the company would submit that it does not have a case to answer, nor has the Authority sufficient details upon which to conduct a review of the company's findings. In these circumstances the company would invite the Authority to invoke the provisions of section 11 of the Act.

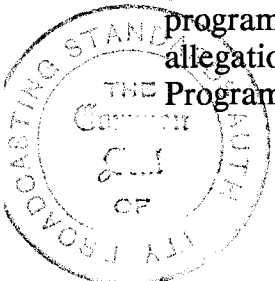
TVNZ's response was sent to Mr Gregg on 18 July for a final comment before the Authority began its consideration of the complaint. No response has been received from Mr Gregg.

### Decision

The Authority has already alluded to the fact that a companion Decision on an almost identical complaint by the New Zealand Mining and Exploration Association about the "Prospects" programme is also being issued today (see Decision No: 21/90). For reasons which will become apparent, the Authority has decided not to exercise its power under section II to decline to determine this complaint.

Many of the Authority's comments in that Decision apply in equal measure to Mr Gregg's complaint. However, as the two Decisions will stand alone, the Authority will - where necessary - draw upon passages from the NZMEA Decision that are applicable to its determination of the present complaint.

In Decision No: 21/90, the allegation was that of a breach of section 4(1)(d) of the Act, which requires broadcasters to maintain in their programmes and in their presentation, standards which are consistent with 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. In the present complaint, the allegation of bias and lack of balance was examined by the broadcaster in the context of Programme Standard 1 of the Codes of Broadcasting Practice for Television and the



allegations relating to factual inaccuracies and distortion were examined in the context of Programme Standard 6 of the Codes.

Programme Standards 1 and 6 provide as follows:

In the preparation and presentation of programmes, broadcasters are required:

1. To be truthful and accurate on points of fact
- ...
6. To show balance, impartiality and fairness in dealing with political matters, current affairs and all questions of a controversial nature.

Although these standards stand separately from the statutory responsibility contained in s.4(1)(d) of the Act, they are for all practical purposes - and certainly for the purposes of the present Decision - identical with the responsibilities placed by s.4(1)(d) on a broadcaster.

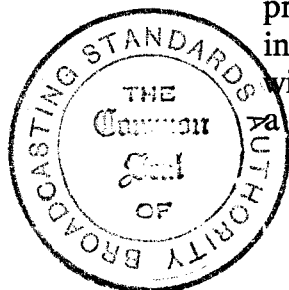
Taking first Mr Gregg's allegations of lack of objectivity, bias and imbalance in "Prospects" and the lack of opportunity for reply on behalf of the pro-mining faction - allegations also made by the NZMEA - the Authority considers it appropriate to refer to its findings in this regard as recorded in Decision No: 21/90. These were as follows:

The Authority considered that the programme "Prospects" was indubitably about a controversial issue of public importance, a view borne out by the fact supplied by TVNZ, that there had been 13 news items on mining in the first 11 months of 1989.

It observed that the programme was principally made up of a series of interviews with at least twenty people opposed to mining. Five extracts were included from an interview with Mr Peter Roberts (the nominated spokesperson for the complainant NZMEA) but, in total, these occupied some 45 seconds of the programme's 25 minute running time. Further, while the Authority agrees with TVNZ that Mr Roberts is "articulate" and that his comments were "succinct", it considers that the editing and the brevity of the interview extracts served to trivialise his views.

In light of the programme's clear focus upon anti-mining views and the fact that it was broadcast in isolation - i.e. without a "follow-up" programme focusing upon the views of those in favour of mining - the Authority formed the view that, unless the programme was not represented to be a balanced documentary, its broadcast would have breached s.4(1)(d) of the Broadcasting Act 1989.

Accordingly, the Authority examined the opening sequences of "Prospects" in order to determine whether the credits gave any indication of the stance the programme would take with regard to goldmining. There was no such indication; indeed, opening credits were almost non-existent. "Prospects" begins dramatically with a variety of visual sequences of gold (ingots, effigies, jewellery, coins etc) and a voice-over which begins: "The Oxford Dictionary defines gold quite simply as



'the most precious metal ...' ". The only written words to appear are "Prospects" and, later, "Coromandel Gold" before the local scenes and interviews begin.

Consequently the Authority is of the view that there was nothing in these opening sequences to indicate anything other than that a balanced programme could be expected.

Although realising that it would be of incidental significance, the Authority pursued the matter by studying the advance publicity for "Prospects", as presented in the print media, in order to consider whether or not this contained any flagging of the stance of the programme. Not even in the two readily available sources was any expectation aroused that the programme would be partisan. The synopsis prepared by Pit Productions and supplied to the Authority by TVNZ states "we were exploring the contrasting opinions of the mining companies and the local population". The "Listener" description was of a "documentary about the Coromandel Peninsula and the concerns of the people who live there". Nowhere in this publicity was there any indication that the programme was to be principally made up of a series of interviews with people opposed to mining.

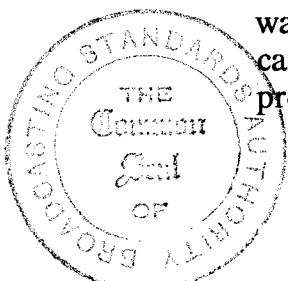
As a result of the programme's imbalanced attention to the views of the pro- and anti-mining positions and its failure to signal the nature of its content, the Authority believes that the broadcast of "Prospects" clearly failed to meet the requirements of s.4(1)(d) of the Broadcasting Act: the opportunity given in the programme for the pro-mining point of view to be presented was not "reasonable".

Just as the Authority upheld the NZMEA's complaint that the broadcast of "Prospects" breached the responsibility placed on TVNZ by s.4(1)(d) so, too, does the Authority now find that the broadcast breached Programme Standard 6.

**For the above-quoted reasons, but with the reservations referred to below, the Authority upholds the complaint that the broadcast of the programme breached Programme Standard 6 of the Codes of Broadcasting Practice for Television.**

In Decision No: 21/90, the Authority referred to two Decisions of the Broadcasting Tribunal that had been drawn to its attention by TVNZ and went on to make certain additional points. As these points apply equally to the above finding on Programme Standard 6 and because they also touch upon Mr Gregg's desire to see TVNZ give equal time to the mining industry to put its views, the relevant passage will be quoted in full. The passage reads as follows:

The Authority notes the principles referred to in the Broadcasting Tribunal Decisions 10/90 and 12/90 and further recognises implications in regard to documentary programmes which could be drawn from those Decisions. The Authority therefore makes the additional point that had the introduction to the "Prospects" programme or, perhaps, even the advance publicity, signalled that it was a documentary presenting a particular perspective on a single topic - in this case the anti-mining lobby on the Coromandel Peninsula - then opportunities to present another viewpoint within the same programme would not have been



necessary. TVNZ would then have been editorially responsible for determining whether or not a programme "in reply" was required within the period of current interest. In view of the long term nature of the struggle between the pro- and anti- mining groups, defining the period of current interest could be a vexing question for the broadcaster to resolve.

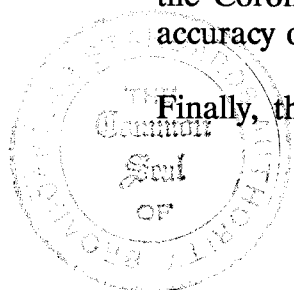
The Authority considers that the presentation of community programmes should not be inhibited by this Decision but rather that it highlights the need for adequate signalling of programme content. Had this occurred in regard to "Prospects" the allegedly "anti-mining" final credits referred to would have been acceptable. As broadcast, without adequate flagging, these credits were considered to exacerbate the lack of balance in the programme. The Authority notes TVNZ's preparedness to screen a programme on behalf of the pro-mining faction, provided it is of adequate quality.

With regard to allegations of factual inaccuracies and distortions, Mr Gregg cited statements of Ms Margaret Pye and Dr Stella Penny. As these same statements were also challenged by the NZMEA as being factually incorrect and misleading, it is appropriate to quote the Authority's views on these (and other) such statements as recorded in Decision No: 21/90. The relevant passage reads as follows:

The Authority considers that the implications which could be drawn from Dr Penny's comments would be dependent upon a viewer's knowledge of mining in the Coromandel. It has examined the remaining allegations of inaccuracy in light of Programme Standard 1 of the Codes of Broadcasting Practice for Television which requires broadcasters "to be truthful and accurate on points of fact". The Authority has weighed the differing viewpoints in regard to the complainant's allegations. On the one hand, the NZMEA says that the statements are factually incorrect. On the other hand, the anti-mining people were clearly seen as giving their personal interpretations of the matters under discussion; they were presented in the programme as putting forward their own views of the facts. The Authority notes that Programme Standard 3 requires broadcasters "to acknowledge the rights of individuals to express their own opinions". It is of the view that, given the controversial nature of the programme's subject matter, the alleged "factual errors" were opinions of the facts, earnestly put forward by their proponents and presented in accordance with Programme Standard 3.

The Authority has considered the reference in Mr Gregg's letter of 17 November 1989 to the lack of comment from the "pro-mining people who constitute over half the people of the Coromandel Peninsula (Survey by Graham Lee MP) or from the mining industry active in the area". The Authority is of the view that this is simply a further example of questions raised above in relation to Programme Standard 6 and that, as a consequence, no further comment is required other than to note that the Lee Survey would have been irrelevant to the programme as it was conducted in an area beyond as well as including the Coromandel Peninsula. It also notes that there was no editorial support for the accuracy or otherwise of the 1986 Survey; it was simply referred to.

Finally, the Authority notes that on the Complaint Referral Form completed by Mr





Gregg, he objected to the manner of TVNZ's reply to his initial complaint, stating that "fobbing me off with a letter meant for another party is unacceptable and demeaning to my mana". The Authority notes that TVNZ stated in its letter of 17 July that its earlier letter, based on its reply to the NZMEA complaint, went into Mr Gregg's complaint "more fully and in greater detail than was called for on the basis of [Mr Gregg's] stated grounds" and that its inclusion was "something of a courtesy". While sustaining a degree of sympathy for Mr Gregg's view, the Authority nevertheless noted that TVNZ expressed its regret that its "gesture of goodwill may have misinterpreted as demeaning" to Mr Gregg's mana. The Authority accordingly sees no need for further action on this matter.

Signed for and on behalf of the Authority



Iain Gallaway  
Chairperson

18 October 1990

