

BEFORE THE BROADCASTING STANDARDS AUTHORITY

Decision No: 14/91

Dated the 1st day of May 1991

IN THE MATTER of the Broadcasting Act 1989

AND

IN THE MATTER of a complaint by

HOUSING CORPORATION
OF NEW ZEALAND

Broadcaster
TELEVISION NEW ZEALAND
LIMITED

I.W. Gallaway Chairperson

J.B. Fish

J.L. Hardie

J.R. Morris

DECISION

Introduction

On 7 February 1990, an item included in the *Holmes* programme broadcast by Television New Zealand Limited between 6.30 pm and 7.00 pm, reported that the Housing Corporation of New Zealand (HCNZ) had asked the police to investigate certain activities of a company called Eastland Homes and its Lagoonside development in Whakatane. Included in allegations made against the developer by interviewees was that the company had encouraged HCNZ applicants to make false deposit declarations to obtain mortgage advances. The programme also questioned the quality of workmanship in some of the houses which had been erected on sections of the development with the assistance of HCNZ finance.

On 19 February, the *Holmes* programme featured an item which showed a representative of the developer visiting some of the homes concerned in an endeavour to remedy some of the building flaws and which provided further apparent examples of shoddy workmanship. It also included an interview between Mr Holmes and the Minister of Housing, the Rt Hon Jonathan Hunt, during which the Minister was asked whether he was aware that a Mr Dreifuss, a former director of the company that developed Lagoonside, had:



1. Hosted HCNZ staff on a fishing trip;
2. Hosted HCNZ staff at his lakeside holiday home for substantial amounts of time.

Mr Holmes then asked a third question, i.e. :

3. Was it true that Mr Dreifuss had provided HCNZ staff with personal mortgage finance?

HCNZ's Complaint to TVNZ Ltd

On 1 March 1990, Mr Robert Carter, Director General of HCNZ, wrote to TVNZ Ltd stating that the Corporation had been defamed by the *Holmes* programme broadcast on 19 February; that the Minister had not been notified of the questions in advance and had no opportunity to rebut or correct the allegations at the time they were put to him; and that the Minister's subsequent written denial was read at the end of the programme by the presenter whose body language and innuendo indicated clearly that he did not believe the Minister's denial.

Mr Carter made four complaints. These were:

First That questions were put to the Minister in a manner from which the viewing public would infer that the situations and events described in the questions were matters of fact.

Secondly That the programme was not truthful and accurate on points of fact in stating that a Mr Dreifuss had made personal loans to members of the HCNZ staff and that staff had spent substantial amounts of time at his holiday home. This was in contravention of section 4(1)(e) of the Broadcasting Act 1989.

Thirdly That TVNZ had not dealt justly and fairly with the Corporation in that it implied that Corporation Staff acted outside the bounds of good business practice by accepting personal favours from a building contractor.

Fourthly That the current affairs/news programme was not presented accurately, objectively and impartially in implying that HCNZ as mortgagee was responsible for standards of building without also examining the extent of local authority responsibilities.

The Corporation sought the publication of a statement to the effect that certain comments made on the *Holmes* item of 19 February were based on false information and completely untrue and this was to be accompanied by an expression of regret and apology.

TVNZ's Response to the Formal Complaint

On 11 April 1990 TVNZ wrote to Mr Carter stating that its Complaints Committee had



considered the complaint under section 4(1)(e) of the Broadcasting Act and had identified the following relevant standards in the Code of Broadcasting Practice for Television:

- standard 1: To be truthful and accurate on points of fact;
- standard 4: To deal justly and fairly with any person taking part or referred to in any programme;
- standard 6: To show balance, impartiality and fairness in dealing with political matters, current affairs and all questions of a controversial nature;
- standard 12: News must be presented accurately, objectively and impartially.

● TVNZ backgrounded the broadcasts of 7 and 19 February and then responded to each aspect of the complaint.

Standard 1

TVNZ's Complaints Committee did not believe that the manner in which the questions were put to the Minister implied that the situations and events described in the question were matters of fact.

Those questions were put by Mr Holmes in these terms:

- (1) "Minister, I wonder are you aware that a Mr Dreifuss, until last month a director of Eastland Developments in Whakatane, entertained top Housing Corporation people from Rotorua on his boat and used to include them in his annual fishing trip - are you aware of that?"

● and

- (2) "Are you aware that this very same Mr Dreifuss has a holiday home at a lake and the Housing Corporation people spend what has been described to me as substantial amounts of time there?"

The Committee concluded that both questions were put in the belief that the allegations had substance and noted that the second question was put in a descriptive manner because the length of time spent at Mr Dreifuss' home was uncertain.

The third question, i.e.,

"Has Mr Dreifuss, to your knowledge, given personal mortgage finance to them - these people from the Housing Corporation?"

was not delivered as a statement, the Committee explained, but as a question containing an allegation to which the Minister was invited to respond.



TVNZ also stated that the questions were not notified to the Minister in advance because it was not journalistic practice to do so and that, as the interview with the Minister was recorded two hours before the programme, time was provided for a preliminary investigation and response on the programme. TVNZ also stated that the interpretation of Mr Holmes' body language was a subjective matter, that during the reading of the Minister's statement he had to clear his throat and that his distraction was caused by movement off camera concerning information just received about a Wellington earthquake.

Finally, the company dealt with the other areas of complaint including the specific allegation that section 4(1)(e) of the Act had been breached in that the programme was not truthful and accurate on points of fact in respect of the statements that Mr Dreifuss had made personal mortgage finance available to staff of the Housing Corporation who had also spent substantial amounts of time at his home. The company emphatically denied the further complaints, and made the following additional points:

1. The programme was in the public interest. The Minister was the proper speaker from whom to seek comment and, as the interview was pre-recorded, time was available to provide answers to questions on the same programme.
2. The responsibility of local authorities had been properly investigated and stated by the interviewer and the question asked of the Minister as to whether the HCNZ was "equipped to do the job" was a valid one.

The company advised Mr Carter that its Complaints Committee did not believe that there had been any breaches of the standards in question and that his complaint had not been upheld.

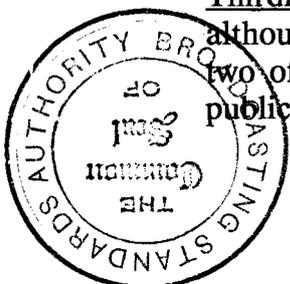
HCNZ's Complaint to the Broadcasting Standards Authority

On 30 April, Mr Carter referred his complaint to the Authority, pursuant to section 8 of the Broadcasting Act, being dissatisfied with TVNZ's Complaints Committee's decision on the following grounds:

First That TVNZ had, for some 12 days, "sat on" the information which prompted the questions addressed to the Minister i.e. from 7 February (the date of the screening of the first programme) to 19 February and that the springing of the information on the Minister two hours before the programme went to air was not acceptable.

Secondly The question put as a statement that Housing Corporation Staff had spent time at Mr Dreifuss' holiday home was completely without substance.

Thirdly The matter of HCNZ staff obtaining mortgage finance from Mr Dreifuss, although put as a question, was the third of a sequence of three questions the first two of which contained statements of fact and so would be taken by the viewing public to contain a statement of fact also. It was completely untrue.



Fourthly The time of two hours allowed the Minister to conduct a preliminary investigation and prepare a response was totally inadequate. Proper journalistic practice of checking the facts would have precluded the questions being put on air.

Fifthly Professional news broadcasters seldom have to clear their throats and the manner in which Mr Holmes did so was a demonstration of his disbelief of the Minister's statement. The non-verbal message was quite plain and did not require subjective interpretation.

Sixthly The statement that local authorities were "really only responsible for ensuring the structural soundness of buildings" is incorrect. They have much wider responsibilities, including the enforcement of standards set by their own district schemes and by-laws. It has never been the responsibility of mortgagees to police construction of buildings.

Mr Carter also made reference to his complaint that the programme did not deal justly or fairly with the Corporation Staff and mentioned that the Corporation's Rotorua Staff had been unnecessarily embarrassed by the programme and its Rotorua Manager's health had been affected to the extent that he had to take leave.

Mr Carter subsequently submitted a Complaints Form referring to his letters (of complaint to TVNZ and to the Authority) for the reasons for his original complaint and why he was dissatisfied with the decision of the broadcaster. He also confirmed his preference to appear before the Authority to give evidence or make further submissions in support of his complaint in the event of the Authority deciding to hold a formal hearing.

TVNZ's Response to the Authority

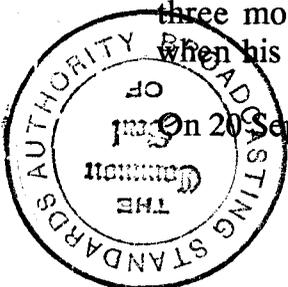
On 9 August 1990, TVNZ responded to Mr Carter's letter referring his complaint to the Authority.

It denied that it had "sat on" information, stating that the confidential information which was the subject of the questions put to the Minister was received less than ten minutes before his interview. The remainder of the response was a repetition of and expansion on its original arguments together with expressions of concern regarding comments made by the complainant as to the broadcaster's journalistic motives, standards and ethics.

Further Correspondence

On 21 August 1990, Mr Carter wrote to the Authority expressing concern at the length of time taken by TVNZ to reply to the Authority's letter of 10 May 1990 i.e. exactly three months. He refrained from further comment, stating that he wished to attend when his complaint was heard by the Authority.

On 20 September 1990, the Authority wrote to HCNZ's legal advisor explaining that the



Authority's policy to date had been to hear complaints without formal hearings.

On 12 November 1990, Mr Carter wrote again commenting on TVNZ's response to the Authority in answer to his complaint. In this letter, the complainant stated: "It's an incontrovertible fact that Housing Corporation Staff did not spend substantial amounts of time in a holiday home owned by Mr Dreifuss at a lake". (The underlining is the Authority's). In his original letter of complaint dated 30 April he said "Corporation staff have never spent any time at any holiday home of Mr Dreifuss". He also rejected TVNZ's arguments and expanded on a number of his previous statements and comments.

The Authority sought clarification from Mr Carter as to which of his statements regarding time spent at Mr Dreifuss' house was correct. He replied on 15 February 1991 confirming that the statement "Corporation staff have never spent any time at any holiday home of Mr Dreifuss" was correct. TVNZ subsequently accepted this assurance unreservedly and added that it was media practice world-wide to put questions seeking verification or denial of matters which independent journalistic inquiry cannot immediately determine.

Decision

The Authority noted Mr Carter's preference to appear before the Authority to give evidence or make further submissions in support of the complaint. Pursuant to s.10 of the Broadcasting Act 1989 which permits the Authority, if it thinks fit, to determine a complaint without a formal hearing, the Authority's usual practice is to determine complaints without a formal hearing or receiving oral submissions. It saw no compelling reason to vary this practice in this instance.

The most serious aspects of this complaint are Mr Carter's allegations that the programme was not truthful and accurate on points of fact in suggesting that Mr Dreifuss had made personal loans to members of the HCNZ staff and stating that staff had spent substantial amounts of time at his holiday home. TVNZ has argued that no statements of fact were made about those matters because Mr Holmes mentioned them in questions put to the Minister of Housing.

The Authority has no difficulty in finding that the question "Are you aware that this very same Mr Dreifuss has a holiday home at a lake and the Housing Corporation people spend what has been described to me as substantial amounts of time there?" contained a clear statement of fact with which the Minister was being acquainted. TVNZ suggested that Mr Holmes' reference to the amount of time spent being substantial was not a statement of fact. However, in light of TVNZ's subsequent unreserved acceptance that no member of staff spent any time at Mr Dreifuss' home, it only served to exacerbate the degree of fault on its part.

The situation is different as far as the other question which is the subject of the complaint is concerned, i.e.

Has Mr Dreifuss to your knowledge given personal mortgage finance to them - these



people from the Housing Corporation?

Clearly, this question does not contain a statement of fact but Mr Carter argued that as it was the third in a sequence of three questions, the first two of which contained statements of fact, it would be taken by the viewing public to contain a statement of fact also, which according to the HCNZ was completely untrue. TVNZ remains unconvinced as to the untruth of this allegation but it has declined to reveal information to support its validity. Accordingly, the Authority has no option other than to accept Mr Carter's statement. The Authority also accepts Mr Carter's argument that the viewing public would interpret this third of three questions as containing a statement of fact.

For the above reasons the Authority upholds the complaints that the second and third questions put to the Minister breached the truth and accuracy requirements of standard 1 of the Television Code of Broadcasting Practice.

The Authority then had to consider whether there had been a breach of the standard 4 requirement "To deal justly and fairly with any person taking part or referred to in any programme". Under this standard, the Authority dealt with two areas of the complaint.

The first related to the Corporation staff, in that the programme implied that they acted outside the bounds of good business practice by accepting personal favours from a building contractor. The Authority considers that its upholding of the complaint under standard 1 above adequately deals with the position as far as the staff are concerned and accordingly this area of the complaint is not upheld.

The second area of complaint under standard 4, but not specified as such, relates to the treatment of the Rt Hon Jonathan Hunt, Minister of Housing in the programme. Should the Minister have been notified of the questions in advance i.e should a period of notice longer than 2 hours have been given between the time of the Minister's interview and the programme going to air? The Authority considers that the Minister reacted admirably to the challenge both during the interview and in the manner in which he gleaned sufficient information in the time available to allow an explanation and denial to be read by the presenter at the end of the programme. The Authority does not uphold this area of the complaint as the Minister agreed to appear on the programme and responded to the questions posed within the time available without reserving the right to elaborate on any of his answers after further investigation. In short, the Authority considers that the Minister's apparent satisfaction with the manner in which he was treated negates the present complaint.

The complainant also objected to the manner in which the Minister's denial was read by Mr Holmes "whose body language and innuendo indicated clearly that he did not believe the Minister's denial". The Authority, however, accepts TVNZ's explanation of the reasons why Mr Holmes was distracted while reading the Minister's statement.

TVNZ appears to have dealt with this issue under standard 6 which requires balance, impartiality and fairness in dealing with political matters, current affairs and all questions of a controversial nature. The Authority considers that the programme did not breach standards 4 or 6.



Finally, the alleged breach of standard 12 related to the programme's implication that the Housing Corporation was responsible for standards of buildings without also examining the extent of local authority responsibilities. Whilst the Corporation's sensitivity is fully appreciated, particularly in view of what else had been said in the programme, the Authority was not convinced that the statements made concerning the responsibility for building standards breached the requirement of accuracy, impartiality and objectivity. The Authority again comments that standard 12 refers only to "news" whereas this programme was a current affairs one and TVNZ should have considered this aspect of the complaint in terms of standard 1 and/or standard 6.

For the reasons set forth above, the Authority declines to uphold the complaint that the programme breached standards 4, 6, and 12 of the Television Code of Broadcasting Practice.

Order

The Authority upholds the part of the complaint that the second and third questions put to the Minister breached standard 1 of the Television Code of Broadcasting Practice and orders TVNZ to broadcast on Channel One between 6.00 pm and 7.00 pm on a weekday within seven days of the date of this decision a brief summary, approved by the Authority, of this decision.

Signed for and on behalf of the Authority


Iain Gallaway
Chairperson

1 May 1991

