

BEFORE THE BROADCASTING STANDARDS AUTHORITY

Decision No: 28/91

Dated the 18th day of July 1991

IN THE MATTER of the Broadcasting Act 1989

AND

IN THE MATTER of a complaint by

L.J. MCKAY  
of Riverton

Broadcaster  
TELEVISION NEW ZEALAND  
LIMITED

I.W. Gallaway      Chairperson  
J.B. Fish  
J.L. Hardie  
J.R. Morris

DECISION

Introduction

An item on *One Network News* on TV1 on 30 December 1990, broadcast by Television New Zealand Ltd, featured a radio journalist who claimed on good authority that Mr Roger Douglas and Mr Geoffrey Palmer would receive knighthoods in the New Year Honours due to be announced the following day. The journalist, Mr Geoff Sinclair, stated on the item:

... if Roger Douglas gets a knighthood in the New Years Honours every decent New Zealander should go out to the loo and throw up.

TVNZ upheld Mr McKay's complaint that this comment breached the requirement imposed by s.4(1)(a) of the Broadcasting Act 1989 that broadcasters maintain standards consistent with the observance of good taste and decency, but declined, and has continued to decline, his request for an apology and a retraction. Mr McKay complained to the Broadcasting Standards Authority under s.8(a) of the Broadcasting Act 1989 about TVNZ's refusal to broadcast an apology and retraction.



## Decision

The Authority has studied the correspondence relating to this complaint (summarised in the appendix) and carefully considered the arguments advanced by Mr McKay in support of his complaint and by TVNZ in response. All the members have viewed the item that was broadcast on *One Network News* on 30 December 1990.

The Authority notes that TVNZ's Complaints Committee upheld the complaint that the item's broadcast breached s.4(1)(a) of the Broadcasting Act 1989 which requires broadcasters to maintain standards which are consistent with:

- (a) The observance of good taste and decency.

The Authority also notes that the Act does not require television broadcasters to broadcast the findings of their Complaints Committees other than the requirement in standard 17 of the Television Code of Broadcasting Practice. This standard requires the correction of significant errors of fact at the earliest opportunity.

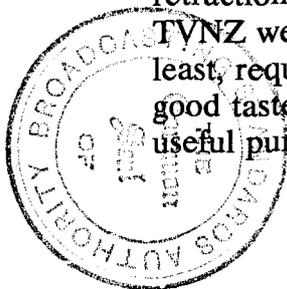
Further, Mr McKay wrote in a postscript in his letter of formal complaint to TVNZ:

I noticed the attempt by TV1 in the news the next night to give a more balanced view on the Douglas affair by inviting Ken Douglas and Bob Jones to comment (even though their opinions were predictable) but this in no way mitigates the lapse into bad taste the previous evening.

Mr McKay in his letter referred explicitly to an alleged breach of the good taste and decency standard, although the correspondence contains a number of references to balance. The Authority has assessed the complaint in accordance with the standard nominated, but observes that the broadcast on 31 December appeared to provide the balance required by s.4(1)(d) of the Act, at least to Mr McKay's satisfaction.

While upholding Mr McKay's good taste and decency complaint, TVNZ declined to broadcast the apology requested on the grounds that he was not entitled to an apology as he was not the person referred to in the item. Broadcasting standards are provided in the public interest and TVNZ, in upholding the complaint, acknowledged that the item breached such a standard. An apology, therefore, would be addressed to the public in general - not to Mr McKay in particular. As Mr McKay pointed out, he is entitled to make a complaint under the Broadcasting Act as a member of the public. Any particular offence he may feel as an individual about a specific matter is an issue to be taken into account when assessing the complaint and possible remedies - it does not question the eligibility to complain.

In deciding whether TVNZ should now be ordered to broadcast an apology and retraction, the Authority was influenced by the practicalities of the situation. If TVNZ were required to make such a broadcast, it would reopen the matter or, at least, require an allusion to a broadcast which TVNZ acknowledged breached the good taste and decency requirement. The Authority believed that it would serve no useful purpose to resurrect the item. That is not to say in other instances that there



may be breaches of good taste and decency where a later apology is appropriate. But in the Authority's opinion, this is not one of them. These points are also relevant to Mr McKay's request for a retraction. In addition, the Authority agrees with TVNZ that as TVNZ was the reporter, not the originator, of the comment complained about, an apology but not a retraction would be the appropriate remedy. However, as noted, the Authority did not consider an apology to be appropriate in this instance.

Further, as TVNZ acknowledged its error in this case, the Authority assumes that it has learned from that without the need for the further publicity which would inevitably occur if TVNZ were required to broadcast an apology and/or a retraction.

In summary, the Authority took into account, first, the broadcast which occurred on the evening following the offending item, secondly, the absence of any legal obligation on a broadcaster (except on errors of fact or pursuant to an order from the Authority made upon upholding a complaint) to broadcast a correction, and thirdly, its preference that the issue not be reopened. It then concluded that it would now be unreasonable to require TVNZ to broadcast an apology and/or retraction.

**For the foregoing reasons, the Authority declines to uphold the complaint.**

Signed for and on behalf of the Authority



I.W. Gallaway  
Chairperson

18th July 1991



**APPENDIX****Mr McKay's Complaint to Television New Zealand Limited**

Mr McKay made a formal complaint to TVNZ Ltd in a letter dated 4 January 1991. He accepted that as it came from an unembargoed source, it was news for TVNZ to report the proposed award for Mr (now Sir) Roger Douglas. However, as he held Mr Douglas and his achievements in high regard, he objected strongly to the broadcast of the radio announcer's opinion that New Zealanders should vomit at the announcement.

Although TVNZ had attempted to balance the item the following evening by inviting comment from Mr Ken Douglas and Sir Robert Jones, this had not mitigated the broadcast's bad taste and he demanded an apology and retraction from TVNZ.

**TVNZ's Response to the Formal Complaint**

TVNZ advised Mr McKay on 4 March 1991 that its Complaints Committee had assessed the complaint under s.4(1)(a) of the Broadcasting Act 1989 which requires broadcasters to maintain standards consistent with good taste and decency.

Although the comment had already been broadcast on Radio Pacific and published in the Dominion Sunday Times ("a quality newspaper"), the Committee upheld the complaint as it considered that the comment breached the good taste and decency standard.

TVNZ concluded that an apology and retraction was not warranted in the circumstances, particularly as a more balanced view was broadcast the following evening.

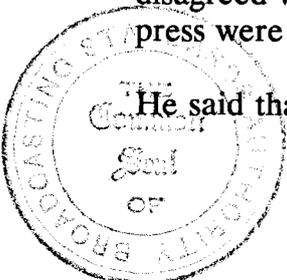
**Mr McKay's Complaint to the Broadcasting Standards Authority**

As Mr McKay was dissatisfied with TVNZ's decision not to make an apology and retraction, on 20 March 1991 he referred the complaint to the Broadcasting Standards Authority under s.8(a) of the Broadcasting Act 1989. He wrote:

I cannot accept that the TVNZ Complaints Committee can uphold my complaint, that this item grossly infringed the observance of balance, good taste and decency and then not to grant me the apology I sought.

He disagreed with TVNZ's statement that many viewers would identify with Mr Sinclair's remarks although accepting that some viewers might do so. He also disagreed with the reference to the publication in the Dominion Sunday Times as the press were not subject to the requirements in the Broadcasting Act.

He said that the item:



... raises a basic issue for the Broadcasting Standards Authority to consider. Whether it is proper for Television New Zealand to air a programme which by its own admission failed to observe the balance good taste and decency as required by the Act and fail to make a murmur of apology for its action because it claims to have screened a more balanced programme the following evening, or whether each programme stands alone as to balance, decency and good taste.

In the Complaint Referral Form he completed for the Authority, Mr McKay maintained that TVNZ could not insult people in public and recant in private.

### TVNZ's Response to the Authority

As is the Authority's practice, TVNZ was asked to comment on Mr McKay's complaint. The request is dated 10 April 1991 and TVNZ's reply is dated 14 June.

The response pointed out that the complaint about good taste and decency had been upheld. The Complaints Committee had not considered a complaint about balance but, nevertheless, the broadcast the following evening had ensured that the balance requirement of s.4(1)(d) of the Act was fulfilled. Indeed, Mr McKay had accepted that the comments on the following evening had provided a more balanced view.

With regard to the request for an apology, TVNZ stated that this request was unjustified as the complainant was not the person mentioned on the item.

With regard to a retraction, TVNZ said, first, that it was unlikely that the maker of the comment would wish to change his strongly held view, secondly, that the broadcast of the comment at a later hour may have resulted in the complaint being dismissed, and thirdly, it would be absurd to retract a statement on television when it had appeared in the press.

It concluded that its decision not to broadcast either an apology or a retraction was appropriate.

### Mr McKay's Final Comment to the Authority

Mr McKay's comments on TVNZ's response to the Authority is dated 23 June 1991.

He insisted that the item as broadcast was unbalanced, noting that none of the commentators the following evening had specifically addressed the remarks to which he objected.

He was, he said, a personal friend of the Douglas family and challenged TVNZ's suggestion that he was not entitled to bring the complaint in his own name. He sought an apology for himself and fellow New Zealanders offended by the reported remarks. A retraction, combined with an apology, would record TVNZ's regret at

having broadcast the comment. Higher standards through legislation, he said, were justifiably expected of television than those required of the press, because of the former's pervasive influence.

He maintained that as TVNZ had upheld his complaint, he was entitled to an apology and a retraction.

