

BEFORE THE BROADCASTING STANDARDS AUTHORITY

Decision No: 5/92

Dated the 10th day of February 1992

IN THE MATTER of the Broadcasting Act 1989

AND

IN THE MATTER of a complaint by the

AUCKLAND DISTRICT LAW SOCIETY

Broadcaster

TELEVISION NEW ZEALAND
LIMITED

I.W. Gallaway Chairperson

J.R. Morris

R.A. Barraclough

L.M. Dawson

DECISION

Introduction

The financial transactions between a Mr and Mrs Michell and an Auckland law firm, Oliphant Bell & Ross, featured on TV1's *Fair Go* programme on 3 September 1991. The programme dealt with the Michells' attempt to recover the sum of \$40,000 which they had earlier asked the law firm to invest on their behalf. The programme said that it appeared that the law firm had broken the Law Society's Solicitors' Nominee Company Rules. On the day that the programme was broadcast, the Michells recovered all their money at which time they asked *Fair Go* not to proceed with the item. The programme concluded with Mr Philip Alpers, *Fair Go*'s presenter, stating that, despite the Michells' request, the item had been broadcast in the public interest.

The Auckland District Law Society complained to Television New Zealand Ltd that the programme breached standards 1, 4 and 6 in the Television Code of Broadcasting Practice requiring factual truth and accuracy, dealing with people referred to justly and fairly, and balance, impartiality and fairness. The *Fair Go* programme broadcast on 24 September 1991, referring back to the item about the Michells, explicitly corrected one detail given on the 3 September item. Although there was a reference to the Law Society's complaint, the correction was not linked to the complaint.

As TVNZ declined to uphold most of the complaint, the Society referred it to the Broadcasting Standards Authority under s.8(a) of the Broadcasting Act 1989. The



Society also referred to the Authority the two aspects of the complaint which had been upheld as it was dissatisfied with the action TVNZ had taken.

Decision

The members of the Authority have viewed a tape of the items on *Fair Go* on 3 and 24 September 1991, read the transcripts of the programmes and have read the correspondence (summarised in the Appendix). The members have also noted that TVNZ, in its review of 1991, stated that *Fair Go* on 3 September was the television programme with the fifth highest viewing audience for the year. (Dominion 10.1.92)

Both items on *Fair Go* dealt with a complaint from a Mr and Mrs Michell in which they requested *Fair Go's* help to recover the sum of \$40,000 which they had asked a law firm to invest on their behalf. The issue was featured on the 3 September programme and the follow-up item broadcast on 24 September explicitly corrected one detail given on 3 September. Although that was a reference to a complaint from the Auckland District Law Society, the item did not link the correction to the complaint. Indeed, the item suggested that the correction was made as a result of new material.

On the basis that the 24 September item was broadcast as a result of its complaint but that the action taken did not meet its concerns, the Society's complaint to the Authority referred to both the original programme on 3 September and to the correction broadcast on 24 September. TVNZ pointed out that the Society had requested a retraction and an apology in its initial complaint but neither was given on the 24 September programme. Consequently, TVNZ continued, the Society could not complain about the action taken and, if dissatisfied with the second broadcast, should have initiated a new complaint rather than incorporate it into its first complaint.

The Authority accepts the Law Society's arguments on this point. The Society complained about the 3 September programme and the 24 September item was broadcast as a result of a finding by TVNZ's Complaints Committee. Thus the Authority accepts that it has jurisdiction to investigate and review the broadcast as, under s.8(a) of the Broadcasting Act 1989, a complainant may refer a complaint to the Authority if dissatisfied with the broadcaster's decision or if dissatisfied with the action taken by the broadcaster. In this case, the Society expressed considerable dissatisfaction with TVNZ's action taken as a result of its complaint.

The Law Society stated that the programme on 3 September breached standards 1, 4 and 6 of the Television code of Broadcasting Practice. It also listed seven specific complaints. TVNZ has stressed that the complaints do not challenge the central facts of the item and that each of the seven facets complained about had allegedly breached each of the three standards listed. Implicit in TVNZ's observation is the view that the different standards have differing impacts with regard to each of the seven specific complaints. That implication is accepted by the Authority as will be apparent from its findings.

Standards 1, 4 and 6 require broadcasters respectively:



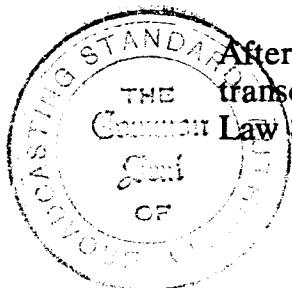
1. To be truthful and accurate on points of fact.
4. To deal justly and fairly with any person taking part or referred to in any programme.
6. To show balance, impartiality and fairness in dealing with political matters, current affairs and all questions of a controversial nature.

The Society's specific complaints dealt with the following matters:

- 1) That *Fair Go* had given insufficient notice to the Society to allow it to prepare an adequate response - predominantly a standard 4 matter.
- 2) That the preview material printed in the New Zealand Herald and supplied by *Fair Go* contained factual errors - standard 1.
- 3) That while TVNZ's Complaints Committee upheld the Society's complaint that the programme did not give the reason, supplied by fax, for the Society's non-appearance, the item broadcast on 24 September dealing with the Committee's decision did not announce that the belated reference to the Society's non-appearance of 3 September was now broadcast because of the Society's complaint - standard 4. Moreover, the Society said, that omission added to the item's distortion of the facts.
- 4) That the Committee's finding upholding the complaint that *Fair Go* on 3 September had not mentioned the Society's fax advising the programme that the Michells had withdrawn their complaint to the Law Society was not broadcast on 24 September. The Society found outrageous, first, the lack of any mention of this finding on the 24 September item and, secondly, that item's suggestion that the Law Society and the legal firm were responsible for the original error - standards 4 and 6.
- 5) That by reading selected extracts from a letter dated 19 March 1991 from the Society to the Michells, *Fair Go* implied that the Society had not treated the Michells' complaint seriously - standards 4 and 6.
- 6) That *Fair Go* implied that the Society had been involved in the settlement of the Michells' complaint and in the Michells' request for what TVNZ described as a "buy off" - standards 1, 4 and 6.
- 7) Finally, that *Fair Go* had not kept the Society informed of the Michells' complaint - standard 4.

1) **Insufficient notice**

After studying the correspondence carefully, viewing the items and reading the transcripts, the Authority concluded that both *Fair Go* and the Auckland District Law Society seemed to have insufficient appreciation of each other's functions.



Because of that, it was possible to understand why the Society argued that *Fair Go* should alter its schedule to allow time for a busy Society to prepare an adequate response. Similarly, *Fair Go's* argument that the Society should be able to respond promptly to an issue about which it should be familiar displays insufficient awareness on its part of the numerous issues with which the Law Society deals.

Despite the Authority's view that a breakdown in communications seems to have been responsible for this aspect of the complaint, it concluded that, as the Society's staff includes fulltime professional personnel, it should be capable of responding publicly with 48 hours notice when the point at issue is not unduly complex. The Authority also considered, as a corollary to this point, that standard 4 required *Fair Go* to broadcast the reasons given by the Society and others for not responding to its requests. In this decision, that aspect of the Society's complaint is dealt with in point 3) below. Despite the lack of awareness of each other's role disclosed in the papers, on the basis that the Society should have been able to meet the programme's relatively straightforward requests, the Authority declines to uphold the complaint under standard 4 that the Society was given insufficient notice of the complaint by TVNZ. This matter arises again in point 7) below.

2) The preview in the New Zealand Herald

As TVNZ pointed out, the content of a newspaper article is not a matter of broadcasting standards. As it is outside its jurisdiction, the Authority declines to determine the complaint about the communication between TVNZ and the New Zealand Herald and the item published in the paper.

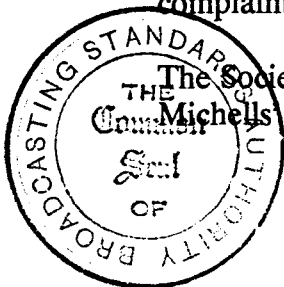
3) The Society's fax at 12.08pm on 3 September

TVNZ's Complaints Committee upheld the Society's complaint that the item on 3 September should have referred to the reason why the Society declined to appear on *Fair Go* that evening - i.e. because the dispute between the Michells and the law firm had been settled. As will be apparent from its comment under point 1 above, the Authority concurs totally with that decision.

When referring its complaint to the Authority, the Society objected to the way the reason for declining was broadcast on the 24 September. Not only did it fail to refer to the complaint, but it also suggested that the Society had given another reason for its refusal.

After viewing both items, the Authority agrees with the Society that *Fair Go* on 24 September did not fairly present either the fax or the decision of the Complaints Committee. Accordingly, the Authority upholds this aspect of the complaint under standard 4.

The Society also claimed that *Fair Go's* script suggested that it failed to treat the Michells' complaint seriously. That aspect of the complaint will be considered



under point 5) below.

4) The Society's fax at 2.55pm on 3 September

The Society complained that *Fair Go* ignored the Society's fax which advised it that the Michells had withdrawn their complaint to the Society against the law firm. This aspect of the complaint was also upheld by TVNZ's Complaints Committee as it believed that as the programme had referred to the Michells' filing a complaint, it was incumbent on *Fair Go* to report its withdrawal.

In its referral, the Society described the omission on the 24 September item of any link between the complaint and the correction as outrageous and stated that the "correction" had sought to imply that the programme's original error had occurred because the Society had deprived the programme of the full facts. After reading the transcript, the Authority agrees with the Society that *Fair Go's* circuitous phrases did in fact convey that impression. The Authority believes that it was totally unacceptable to broadcast a correction in such a way as to suggest that someone else was responsible for the error. In the Authority's opinion, such an action exacerbates the original error.

Accordingly, the Authority upholds the complaint that the misleading way in which *Fair Go* reported the finding of its Complaints Committee about the 2.55pm fax on 3 September breached standards 4 and 6.

5) The Society's attitude to the Michells' complaint

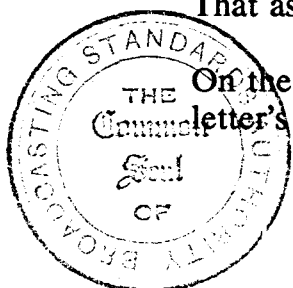
The Society maintained that the supercilious way in which extracts from its letter of 19 March 1991 to the Michells were read out on the 3 September broadcast was designed to leave viewers with the impression that the Society had been cavalier in its treatment of them. It provided a copy of the letter in question.

TVNZ disputed the allegation. It described the reading style as neutral and maintained the extracts provided an accurate summary of the letter's content. When referring the complaint to the Authority, the Society referred both to the immediately preceding comment made by *Fair Go's* presenter and the specific phrases omitted, and argued that the editing of the letter was irresponsible and bordering on dishonesty.

TVNZ refused to accept the Society's contention arguing that the editing was entirely appropriate and that its appropriateness was confirmed with hindsight.

In considering the tone of the presentation, the Authority accepted that it may have been supercilious to start with but a neutral tone had later been adopted. That aspect of the complaint, although marginal, was not upheld.

On the question whether the extracts read out conveyed a fair summary of the letter's contents, after studying the letter in full, a majority of the Authority



agreed with the Society that the extracts read out on *Fair Go* implied that the Society was cavalier in its attitude to the Michells. The minority, believing that the extracts conveyed the import of the Society's letter, agreed with TVNZ that *Fair Go's* editing had been responsible. (A summary of the points in dispute can be found in the discussion on point 5 in the Appendix - particularly on page iv.)

Accordingly, a majority of the Authority upholds the complaint that in reading out selected extracts of the Society's 19 March letter, *Fair Go* breached standards 4 and 6 by implying that the Society had not treated the complaint seriously.

6) The Society's involvement in the settlement of the Michells' claim against the law firm

It is not disputed that the item said that the Michells had been "bought off" and that attempts had been made to hush things up. The Society, noting that it had been advised these comments were untrue, said that it had not been a party to the settlement nor to the Michells' subsequent actions. However, it complained forcefully about the item's innuendo that it had been involved.

TVNZ, quoting the script, rejected the complaint. It added that the Society was incorrect in asserting that the Michells had not been "bought off". The Society, quoting a lengthy portion of the script, said the item did not either confirm or deny the Society's presence at the meeting at which the dispute between the Michells and the law firm was settled. Accordingly, a viewer could well have concluded that it was organised and conducted by the Society. TVNZ said the programme had not mentioned what role, if any, the Society had played as these matters were not known to it.

Having viewed the programme and read the transcript, the Authority acknowledged that the inference drawn by the Society could be taken but that it required making some substantial assumptions rather than merely drawing implications from the context of the item. Thus, the Authority declines to uphold this aspect of the complaint under standards 1, 4 and 6.

7) The respective roles of *Fair Go* and the Law Society

The Society complained that *Fair Go* made insufficient efforts to find out from the Society the progress of the Michells' complaint and, accordingly, was unfair to the Society. TVNZ, pointing out that a law firm, not the Society, had been the object of the complaint, maintained that the Society had been given ample opportunity to participate and had declined *Fair Go's* requests on some matters.

In its referral of the complaint to the Authority, the Society stated that *Fair Go* was the type of programme which had a responsibility to act fairly but had not done so on this occasion. TVNZ responded by listing the communication between *Fair Go* and the Society to indicate the programme's efforts to inform the Society of the complaint - although not the object of the complaint - and to seek its assistance.



In the Authority's view, this aspect of the complaint refers again to the point raised in 1) above that the correspondence revealed an insufficient appreciation by *Fair Go* and the Society of each other's roles.

On the one hand, *Fair Go* seemed to be eager to maintain its role as the consumer's campaigner and to resolve a dispute and the Society's 19 March letter to the Michells could well be interpreted by a lay person as an excuse for inaction rather than a responsible response to a dissatisfied customer.

On the other hand, the Society objected to *Fair Go's* cavalier dismissal of its efforts. In the Authority's view, that dismissal indicated the broadcaster's lack of appreciation of the Law Society's role in resolving complaints of this variety.

In determining this aspect of the complaint, the Authority acknowledges that *Fair Go's* structure may be weighted in favour of the complainant. It agrees with the Society that this means that the programme must act with heightened responsibility. Nevertheless, it believes that a professional organisation involved with *Fair Go* as a party against which a complaint is made (or which is involved in some way with a complaint) must also respond responsibly. On this occasion the Authority concluded that *Fair Go's* actions did not amount to a breach of the broadcasting standards.

For the reasons set forth above, the Authority upholds the part of the complaint that items on *Fair Go* broadcast on 3 September and 24 September 1991 breached standards 4 and 6 of the Television Code of Broadcasting Practice in that the Auckland District Law Society was not dealt with justly and fairly and the items failed to show balance, impartiality and fairness in (a) referring to the Society's fax which gave its reasons for not appearing on the programme and (b) referring to the Society's fax which advised *Fair Go* that the Michells had withdrawn their complaint to the Law Society. A majority of the Authority upholds the part of the complaint that the item breached the same standards by suggesting that the Society had not treated the Michells' complaint seriously.

However, the Authority declines to determine or declines to uphold the complaint that the items broadcast breached standards 1 of the Code or that, beyond the finding noted in the previous paragraph, breached standards 4 and 6.

Having upheld some aspects of the complaint, the Authority considered whether or not it should make an order under s.13(1)(a) of the Broadcasting Act 1989 directing that the broadcaster broadcast a statement relating to the complaint. It decided not to do so because the Law Society was not the principal organisation to which *Fair Go's* investigation referred in its 3 September 1991 programme. The law firm of Oliphant Bell & Ross was in that position and references to the Law Society, although important, were somewhat peripheral to the programme's actions on behalf of the Michells.

Further, and as a subsidiary point, this decision has noted that *Fair Go* and the Society



both displayed an insufficient appreciation of the constraints under which each other works. In the Authority's opinion, that reduces the weight of the Society's request for a retraction and an apology.

Signed for and on behalf of the Authority



Iain Gallaway
Chairperson



10 February 1992

Appendix

Auckland District Law Society's Complaint to Television New Zealand Ltd

In a letter dated 9 September 1991, the Auckland District Law Society complained to Television New Zealand Ltd about an item broadcast on TV1's *Fair Go* programme on 3 September. The item had dealt with some financial transactions between a Mr and Mrs Michell and the Auckland law firm of Oliphant Bell & Ross.

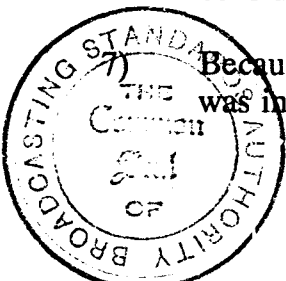
The Society listed its specific complaints.

- 1) TVNZ had not given the Society reasonable and adequate notice of its request for the Society to appear on the programme on the evening of Tuesday 3 September. The invitation had been issued on the afternoon of Friday 30 August which allowed the Society less than two working days to prepare a response.
- 2) The advance publicity supplied by *Fair Go* to the paper, the NZ Herald, and published on 3 September, besides confusing the New Zealand Law Society with the Auckland District Law Society, contained four errors of fact.
- 3) The programme omitted any reference to the Auckland District Law Society's president's fax sent to *Fair Go* at 12.08pm on 3 September which explained why the Society was not appearing on the programme.
- 4) The programme omitted any reference to the Auckland District Law Society's fax of 2.55pm on 3 September advising *Fair Go* that the Michells had withdrawn their complaint to the Society.
- 5) *Fair Go's* use of quotations from the Society's letter of 19 March 1991 to the Michells were read in a supercilious manner and were selected to leave the impression that the Society had not treated the complaint seriously. The full letter, the Society continued, disclosed a number of other important matters, including the Society's serious attitude. It continued by stating that it was irresponsible to the point of dishonesty to broadcast select quotations and:

The manner of presentation of these passages was unfair and seriously lacking in balance and the Society considers that this was done with the intention to mislead viewers.

- 6) The programme asserted that at a meeting on the 3 September the Michells had been "bought off" and placed under pressure to "hush things up". The Society said not only had it been advised that those assertions were incorrect but also the innuendo that the Society was involved in some way was considered defamatory.

7) Because *Fair Go* had not advised the Society of the details of the complaint it was investigating, the programme did not present an accurate representation of



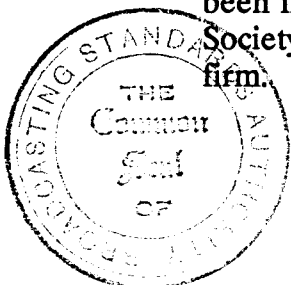
the Society's position in regard to the complaint from the Michells.

The Society concluded by stating that the programme breached standards 1, 4 and 6 of the Television Code of Broadcasting Practice. They require factual truth and accuracy, dealing with people referred to justly and fairly, and balance, impartiality and fairness. The Society requested a retraction and apology to be broadcast on *Fair Go* during the current series.

TVNZ's Response to the Formal Complaint

TVNZ advised the complainant of its Complaints Committee's decision in a letter dated 3 October 1991. It made the following comments with regard to the specific complaints.

- 1) TVNZ's Complaints Committee had difficulty in understanding the complaint about "eleventh hour tactics" as the Society's response was sought to only one question and that dealt with an issue with which the Society was familiar. Further, the Society had neither advised that it was unable to respond within the time limits imposed nor requested more time. TVNZ had not delayed its approach to the Society having only interviewed the Michells on the morning of 30 August.
- 2) The Complaints Committee declined to determine the complaint about the article in the NZ Herald as it was written by a newspaper journalist and was not a broadcast.
- 3) The Committee upheld the aspect of the complaint that the programme should have broadcast the reason why the Law Society had declined to participate on the programme. It was upheld under standard 4 which requires that people referred to be dealt with justly and fairly.
- 4) Under the same standard, the Committee also upheld the aspect of the complaint that the broadcast had dealt with the Society unfairly by not referring to its fax to *Fair Go* advising that the Michells' complaint about the law firm had been withdrawn as the matter had been settled.
- 5) The Committee considered the extracts from the Society's 19 March letter had been read in a neutral manner and did not imply that the complaint was not being taken seriously by the Society. Further, TVNZ added, as the omissions from the letter dealt with matters of marginal significance, quoting selected extracts did not result in an unbalanced or unfair programme.
- 6) TVNZ disagreed with the Society that the item implied that it had in any way been involved in a "hush up". Indeed, the programme did not suggest that the Society had been present at the meeting between the Michells and the law firm.



- 7) TVNZ pointed out that the Society had never requested a copy of the complaint which had been directed at the law firm - not the Society. Further, the Society, despite a written request, had not supplied any material to *Fair Go*.

TVNZ concluded by noting that its Complaints Committee's decisions, including the areas in which the complaint was upheld, were broadcast on *Fair Go* on the evening of the day (24 September) that the Committee had reached its decisions.

Auckland District Law Society's Complaint to the Broadcasting Standards Authority

As the Society was dissatisfied with TVNZ's decisions, in a letter dated 31 October 1991 it referred the complaint to the Broadcasting Standards Authority under s.8(a) of the Broadcasting Act 1989.

The Society pointed to the high ratings enjoyed by *Fair Go* and its consequent broad impact. In these circumstances, it added, the programme had a weighty obligation to ensure that all parties, especially those complained about, had an opportunity to prepare and respond properly. However, as the programme was structured to assist complainants at the expense of "complainees", it was inherently unfair. That situation had been highlighted by the Consumers' Institute some 10 years previously and required, the Society argued, special care to ensure that "complainees" received a "fair go".

In dealing with the specific aspects of its complaint, the Society used the numbering system taken from its initial letter of complaint to TVNZ on 9 September 1991.

- 1) *Fair Go's* single question to the Society in its fax left open the possibility of further questions. The extensive discussions between the Michells and the Society during the previous year showed that it was a complex issue which was not susceptible to succinct answers. The Society's decision recorded in its 19 March letter to the Michells reflected its decision at that time, not necessarily if the situation had changed subsequently. The Society agreed that it had not requested more time because, it added, *Fair Go* should have been given it adequate time initially and, moreover, *Fair Go* had been determined to abide by its own timetable. The Society found ironical that it had been given two working days to respond to a complaint while TVNZ had taken more than a month to respond to the Society's complaint about *Fair Go*. It recorded:

In summary, the Auckland District Law Society maintains that two working days is an inadequate, unreasonably and unnecessarily short time in which to expect any complainee to consider and prepare a response to an invitation to present a defence on a live television programme of the nature of *Fair Go*. It is unfair and unjustified.

The Society persisted with its complaint about the preview in the newspaper, maintaining that both the NZ Herald and TVNZ were responsible for the

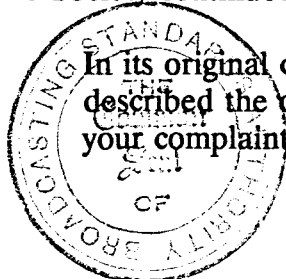


material printed about the item.

- 3) Although TVNZ had upheld the complaint about the item's lack of reference to the reason why the Society declined to appear, that finding had not been broadcast on *Fair Go* on 24 September in the item referring to the complaint. The Society complained about that omission and, in addition, the distortions on the 24 September item.
- 4) The Society also complained that, although TVNZ had upheld the complaint about the programme's failure to refer to the Society's 2.55pm fax, the 24 September item had omitted any mention of the point and suggested that the item's incorrect statement on the first programme had been the Society's and the law firm's responsibility.
- 5) The Society maintained that the extracts from its letter of 19 March 1991 to the Michells were read selectively to suggest the Society's cavalier response to their complaint and, furthermore, had been read superciliously. The 19 March letter contained five substantive paragraphs which recorded respectively:
 - a) The complaint had been taken seriously and, as a result, the Society was monitoring the operations of the law firm's nominee company.
 - b) The Society's role was disciplinary one. "Your complaint against Oliphant Bell & Ross is that they were negligent in the manner in which they dealt with your investment moneys. There also appears to be a breach of the Solicitors Nominee Company Rules."
 - c) The Society required evidence of gross negligence to prosecute and "Based on your complaint alone", the Society did not believe that charges were justified.
 - d) The Michells could bring civil action for negligence.
 - e) Monitoring would continue and the Michells would be advised of the Society's further action.

With reference to the quotations selected, the Society noted that *Fair Go's* presenter's lead-up had dealt with alleged negligence and a flagrant breach of the Solicitors Nominee Company Rules and then she asked a rhetorical question which implied that the Society had dismissed the Michell's complaint as a technical breach. Further, the reading did not suggest that the quotes were part of a longer letter.

The Society continued:



In its original complaint to Television New Zealand, the Society described the deletion of the words "also" [para b) above] and "Based on your complaint alone" [para c) above] from the paragraphs quoted by

Fair Go as "irresponsible to the point of dishonesty". ...

Here the word "also" means in addition to the serious matter of the solicitor acting negligently.

The deletion of the word "also" conveys the opposite meaning, namely that, from the Society's perspective there was just "a technical breach".

The deletion of the words "Based on your complaint alone" is perhaps less serious, but nonetheless conveys an incomplete impression of the Society's position.

The Society also described the programme's use of rhetorical questions and its editing of the letter as irresponsible to the point of dishonesty.

- 6) The Society, quoting the script and recounting the circumstances with which TVNZ would have been familiar, maintained its complaint that the item suggested that the Society had been present at the meeting at which the settlement with the Michells was made and, consequently, had been a party to "buying the Michells off".
- 7) The Society continued to state that it had not been advised of the details of the complaint. If it was not the party complained about, as TVNZ had written, why had it been asked to supply information and to take part in the programme? The Society denied that it had declined to provide information - for the reason that it had not received a request.

The Society concluded that it had been advised by TVNZ's Complaints Committee on 24 September that "The shortcomings as identified, should be remedied by the programme which was to go to air that evening". However, the Society concluded:

For the reasons stated earlier, the Society denies that this requirement was met or conveyed in any true sense and offers this to the Authority as a further ground for complaint against *Fair Go* and Television New Zealand.

TVNZ's Response to the Authority

As is its practice, the Authority sought the broadcaster's response to the complaint. The request is dated 1 November 1991 and TVNZ's reply, 25 November.

TVNZ began by noting, first, that the Society had listed only once the standards allegedly breached and, consequently, TVNZ had assessed the seven aspects of the complaint against each of the three standards mentioned. Secondly, the Society had not challenged the central facts covered in the *Fair Go* item to which the complaint related. TVNZ then dealt with the seven aspects of the Society's complaint.

Arguing that the popularity or otherwise of *Fair Go* was irrelevant to the



Society's complaint, TVNZ added that the programme's structure had been changed considerably in the past decade to allow more scope to parties complained about. It continued:

Fair Go's prime aim is not so much to resolve problems but to make New Zealand citizens better informed with regard to the myriad of commercial transactions they can encounter in everyday life. The particular item which led to the Society's complaint concerned a contributory mortgage arranged by a firm of solicitors - not the first time we must point out that such security has resulted in a letter to *Fair Go*.

Moreover, TVNZ stated, *Fair Go* took care to abide by the broadcasting standards and legal counsel oversaw each programme.

TVNZ argued that it did not employ "eleventh hour tactics" and, in addition, a resolution to the dispute within four days would contradict the Society's concern about complexity. It disputed the other points made by the Society and maintained that the notice of the forthcoming programme when compared with the demands made on other groups, was sufficient in the circumstances. Consequently, the Codes had not been breached.

- 2) TVNZ denied that it had provided the NZ Herald with false information and maintained that the contents of a newspaper article were not a broadcasting standards matter.
- 3) TVNZ repeated that this aspect of the complaint had been upheld, that there was no obligation upon TVNZ to broadcast the findings of its Complaints Committee and that the Society's suggested interpretation of the broadcast on 24 September was difficult to understand.
- 4) It was better, TVNZ maintained, for the second broadcast to correct an earlier mistake rather than announce that a complaint had been upheld. As with the Society's comments about point 3, its comments about the 24 September broadcast, TVNZ argued, raised distinct issues from the complaint about the 3 September broadcast. Consequently, they should be dealt with in a separate formal complaint to TVNZ rather than being added to the complaint about the earlier programme.
- 5) Nothing in the Society's submissions, TVNZ wrote, convinced it that the extracts had been read superciliously or had been selected to give the impression that the Society had adopted a cavalier attitude. It continued:



Clearly the crux of the Society's letter to Mr and Mrs Michell was that the matter was "a technical breach" and we have no doubt that the common average viewer would have realised that this quotation was part of a longer letter. ...

The letter to the Michells gave no indication of what action the Society was prepared to take in relation to the matter. The Society really said that it was up to the Michells to bring their own civil action against the firm of Oliphant Bell & Ross.

Nothing occurred as far as Television New Zealand is concerned during the following months to alter this view of the position. In fact, in hindsight, the editing appears to have been entirely appropriate. And tight editing of material is an accepted journalistic practice across all media.

- 6) There was nothing in the programme, TVNZ said, to suggest that the Society had been represented at the meeting between the Michells and the law firm. Indeed, in view of the Society's declining an invitation to appear on the programme, TVNZ did not know what role it had taken but the item did not suggest that the Society had been involved.
- 7) The law firm was the object of the Michells' complaint and, after unsuccessfully seeking the Society's assistance, they had gone to *Fair Go*. The Society, said TVNZ, was incorrect in describing itself as the "complainee".

TVNZ advised the Authority of the time and purpose of the telephone calls and faxes between the Society and *Fair Go* in relation to the item.

Auckland District Law Society's Response to the Authority

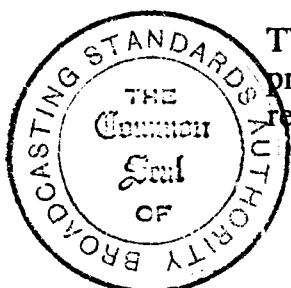
When asked for comment on TVNZ's response, in a letter dated 13 December the Society maintained that the Authority should be able to review the second programme on 24 September, as well as the original programme, as the latter programme exacerbated the situation.

- 1) The Society argued that because of *Fair Go's* nature and popularity, it had a greater responsibility than other programmes for accuracy and fairness. Two working days, it continued, was insufficient time to prepare an adequate response. Again it contrasted this time span with the length of time taken by TVNZ to respond to the Society's complaint, noting:

Surely TVNZ are not saying that the *Fair Go* programme was of such importance that every other activity of the Society should be shelved to answer the *Fair Go* enquiry.

It disputed TVNZ's point that, as lawyers are required to respond promptly in other areas in cases of urgency, the Society should have done so to the *Fair Go* enquiry. The *Fair Go* item about the Michells, it said, was not a matter of urgency. It concluded the point:

TVNZ's position appears to be that it is acceptable for its highest rating programme to televise a complaint on a complex issue affecting the reputations of others on the basis of its own research and to offer the



other parties in the matter only two working days to respond and in that time to make a decision whether to respond in writing or to appear on the programme. That is clearly unfair and unreasonable.

- 2) The Society said that it had confirmed that the New Zealand Herald's reporter's sole source of information was the *Fair Go*.
- 3) & 4) The Society acknowledged that TVNZ had no obligation to admit mistakes but believed that a responsible broadcaster would do so in the interests of fairness. The Society also acknowledged that the Michells' complaint had been put right but that this did not mean, contrary to TVNZ's argument, that the broadcasting standards matters had also been put right.
- 5) *Fair Go*, the Society maintained, had been unfair in the selections read from its 19 March letter. "Tight editing", it added, was not an excuse for quoting out of context.
- 6) The Society argued that *Fair Go* should have asked whether the Society knew of the meeting on Tuesday morning at which the settlement was arranged. Further, although the Society had later advised *Fair Go* that the claim was settled, it was not informed that *Fair Go* intended to proceed with the item.
- 7) The Michells, contrary to TVNZ's allegations, had received assistance from the Society. Further, as the Michells had not spoken to the Society about the programme, the Society was unaware whether the Michells had waived legal privilege. It went through the communications between *Fair Go* and the Society and criticised *Fair Go* for its efforts in attempting to keep the Society informed about the programme.

The Society stated that TVNZ had broadcast the item after the complaint had been withdrawn and in a manner which did not deal with the Society fairly. It concluded:

The irresistible conclusion that the Society has come to is that *Fair Go* was determined to televise the programme about the Michell complaint and in particular in regard to the fact that a solicitors' nominee company was involved and in spite of the settlement between the Michells and Oliphant Bell & Ross, and the withdrawal of the complaint to the Society, it wished to proceed with the pre-publicised item come what may and whether or not it was fair in its treatment of the material it had received.

With regard to the subsequent programme on 24 September, although the Society had asked for an apology and the Committee had upheld part of the Society's complaint, the Society was not advised that the programme would be screened, nor of its content and *Fair Go* was not prepared to admit on public television that the Committee has found it in error. That exacerbates the original complaints.

