

BEFORE THE BROADCASTING STANDARDS AUTHORITY

Decision No: 107/93

Dated the 2nd day of September 1993

IN THE MATTER of the Broadcasting Act 1989

AND

IN THE MATTER of a complaint by

PAUL FUDAKOWSKI

of Porirua

Broadcaster

RADIO NEW ZEALAND LIMITED

I.W. Gallaway Chairperson

J.R. Morris

R.A. Barraclough

L.M. Dawson

DECISION

Introduction

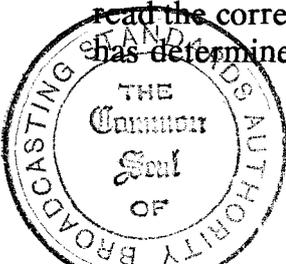
Discussions as to the release of a guideline pamphlet about child abuse and its application by various state agencies were broadcast on National Radio's *Nine till Noon* on 14 and 15 April 1993.

Mr Fudakowski complained to Radio New Zealand Ltd that the broadcasts were in breach of broadcasting standards because among other matters, no balancing view was given.

Responding that the information elicited from the interviewees was related to factual and procedural issues, RNZ declined to uphold the complaint that the item was lacking in balance and objectivity. Dissatisfied with that response, Mr Fudakowski referred the complaint to the Broadcasting Standards Authority under s.8(1)(a) of the Broadcasting Act 1989.

Decision

The members of the Authority have listened to the items complained about and have read the correspondence (summarised in the Appendix). As is its practice, the Authority has determined the complaint without a formal hearing.



Interviews with Dr Maris O'Rourke, Secretary for Education, and representatives from the Police and the Department of Social Welfare about the release of a pamphlet giving guidelines on how to recognise and deal with child abuse were broadcast on RNZ's *Nine till Noon* programme on National Radio on 14 and 15 April 1993. Mr Fudakowski complained that the broadcasts were in breach of broadcasting standards because they lacked balance and objectivity, did not respect the principles of law and employed a deceptive programme practice. He noted that because a contrary viewpoint was not given, the propriety of Social Welfare and Police policy was not challenged. Expressing his concern about the validity of current investigative techniques, Mr Fudakowski pointed out that there was a great deal of controversy - now known as the Assessment Controversy - over how to elicit information from children about possible abuse and that such a sensitive and emotive subject demanded an objective investigation. He suggested that the two radio interviews were little more than advertisements which promoted and justified the official policy.

RNZ reported that it had assessed the complaint against standards 1.1(f), 1.1(i) and 1.1(j) of the Radio Code of Broadcasting Practice. Those standards require broadcasters:

- 1.1(f) To respect the principles of law which sustain our society.
- 1.1(i) To show balance, impartiality and fairness in dealing with political matters, current affairs and all questions of a controversial nature, making reasonable efforts to present significant points of view either in the same programme or in other programmes within the period of current interest.
- 1.1(j) To avoid the use of any deceptive programme practice which takes advantage of the confidence listeners have in the integrity of broadcasting.

#### **Standard 1.1(f)**

In his complaint to RNZ, Mr Fudakowski tentatively suggested that he believed the items might have breached standard 1.1(f) because the law in the area was still uncertain and recent academic opinion from the United States had questioned the validity of an approach which combined therapy with investigatory techniques in child abuse cases.

Rejecting the standard 1.1(f) complaint, RNZ explained that it was unable to discern anything which jeopardised the principles of law or which incited a breach of law and order.

The Authority took the view that the standard did not apply on the facts. It noted that the subject concerned policy issues only and was not concerned with the application of principles of law.



**Standard 1.1(i)**

Arguing that because the academic theories about counselling, retributive justice and the assessment controversy were not debated during the interviews, Mr Fudakowski claimed that the items were lacking in balance and objectivity. He pointed out that the whole subject of dealing with child abuse allegations was one which was surrounded with controversy and different viewpoints. He argued that instead of simply inviting the interviewees to promote the policies and guidelines espoused in the Department of Education's publication, the interviewer should have challenged its stance and questioned whether those procedures and guidelines were appropriate. Mr Fudakowski maintained that the broadcasts breached the standard because no reference was made to the background controversy nor was the policy itself challenged. He stressed that the interviews came across as advertisements for the authorities.

RNZ responded that there was no significant expression of controversial opinion in either of the items because they concerned a factual event (the release of the guideline pamphlet) and gave factual coverage of officially applied principles and procedures to do with the reporting of alleged child abuse. It described the interview on 14 April as one which gave background information on the process behind the development of the pamphlet. It argued that although the subject the pamphlet dealt with was controversial, the broadcast did not centre on that, dealing only with the preparation and dissemination of the pamphlet. Because no opinions were expressed and no issues were raised, it maintained that there was nothing which had to be balanced.

With reference to the 15 April interview, RNZ claimed that the sole thrust of that item was to obtain and present factual information about the implementation of the policies. Suggesting that possibly one comment (about the paramountcy principle - ie that the interests of the child are paramount) might be regarded as opinion, RNZ did not accept that it was a controversial view, since that principle is enshrined in legislation such as the Children Young Persons and their Families Act 1989. It declined to uphold the complaint that the item was in breach of standard 1.1(i).

The Authority was inclined to the view that the two items appeared to be a public relations exercise for the three government departments involved. However, it was not the Authority's role to rule on quality or journalistic methods. It accepted that RNZ had the editorial discretion to present information in the straightforward question and answer form adopted by the interviewer.

The Authority also accepted RNZ's argument that factual information, not opinion, was conveyed, and considered that in the context of imparting information about the release of the guideline pamphlet, it was not necessary to provide all of the background to the debate. It was the Authority's view that the items were not in breach of the standard requiring balance and objectivity. Accordingly the Authority declined to uphold the complaint that the item was in breach of standard 1.1(i).



**Standard 1.1(j)**

Mr Fudakowski described the items as deceptive because they failed to mention any of the controversial aspects of the content of the pamphlet. In his view they took advantage of the confidence which listeners have in the integrity of broadcasting and were accordingly in breach of the standard.

In rejecting this aspect of the complaint, RNZ's response was that the standard was only applicable when the broadcaster deliberately intended to deceive.

The Authority also rejected the standard 1.1(j) complaint, although for different reasons from RNZ. It would refer RNZ to a recent decision (Decision No: 27/93) in which a comparable standard in the Television Code of Broadcasting Practice was assessed and where the Authority concluded:

A breach of standard 7 (1.1(j)) does not require a finding that the broadcaster intended to use a deceptive programme device - the use of such a practice is sufficient.

Despite its disagreement with RNZ on this point, in the Authority's opinion, no deceptive programme practice was employed in the items which are the subject of this complaint. Although it acknowledged that because of the limited ambit of the two broadcasts listeners would not have heard all of the information on the topic, it considered that the concerns raised by the complainant were directly and appropriately addressed under standard 1.1(i) discussed above.

**For the reasons set forth above the Authority declines to uphold the complaint.**

Signed for and on behalf of the Authority

  
Iain Gallaway  
Chairperson  
2 September 1993



## Appendix

### Mr Fudakowski's Complaint to Radio New Zealand Limited

In a letter dated 17 April 1993, Mr Paul Fudakowski of Porirua complained to Radio New Zealand Ltd that the broadcast of items on two consecutive mornings in National Radio's *Nine Till Noon* on 14 and 15 April 1993 were in breach of broadcasting standards.

The discussions centred on the release of a pamphlet about recognising child abuse and included interviews with representatives of some of the government agencies which were responsible for developing and implementing the guidelines described in the pamphlet.

He claimed that because a contrary point of view was not given, the manner in which the procedures were handled was not challenged. He described a phenomenon known as Sexual Abuse Allegations in Divorce (SAID), and, quoting from a publication on the subject, explained that it was necessary for professionals in the field to differentiate between their roles as investigator and therapist. Noting that the interviewed social worker emphasised the importance of counselling, he pointed out that that course was contrary to the advice given in the article. He quoted from another publication the opinion that the disclosure interview might employ techniques which in themselves were counter-productive.

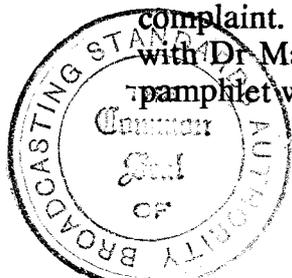
In conclusion, he argued the importance of presenting objective and balancing opinions on this difficult and emotive issue.

In a second letter to RNZ, dated 19 April, Mr Fudakowski claimed that in failing to acknowledge what was now known as the Assessment Controversy, the items were lacking in balance and objectivity and breached the requirement that broadcasters avoid using any deceptive broadcasting practice which takes advantage of the confidence listeners have in the integrity of broadcasting. He acknowledged that the fault was probably unintentional, but explained that the subject was complex and emotive and had far-reaching implications. Expressing his concern about the validity of current investigative techniques and procedures, he maintained that the interviewees should have been challenged.

A third letter, dated 29 April, advised RNZ that Mr Fudakowski wished to proceed with a formal complaint. He maintained that the propriety of Social Welfare and Police policy should have been questioned.

### RNZ's Response to the Formal Complaint

In a letter dated 28 April 1993, RNZ responded informally to Mr Fudakowski's complaint. It explained the background to the two interviews, the first of which was with Dr Maris O'Rourke, Secretary for Education, who outlined the contents of the pamphlet which her department had released. RNZ noted that the content of the



interview was factual and informational and no opinions were given. The second interview, given the following day, RNZ explained, was designed to answer the question of how child abuse was dealt with by the authorities. Representatives from the Police and the Department of Social Welfare were interviewed. According to RNZ, the information elicited dealt with procedural issues and was entirely factual.

RNZ argued that the type of information which was conveyed was simply factual accounts of policies and procedures and did not require balancing in any form. It advised Mr Fudakowski that he had no substantive basis for a formal complaint.

On being advised that Mr Fudakowski was pursuing a formal complaint, RNZ made a formal response in a letter dated 5 July 1993.

It rejected the complaint that the items were in breach of standard 1.1(j), observing that in the past the Authority has interpreted that standard as referring to only deliberate intent to deceive. It also rejected the standard 1.1(f) complaint, being unable to determine anything in the broadcasts which jeopardised the principles of law.

Turning to the standard 1.1(i) aspect of the complaint, RNZ affirmed its earlier letter in which it had advised that the items gave factual coverage only. The first item, it wrote, gave background information about the release of the pamphlet. It acknowledged that the subject matter was controversial, but noted that the item did not centre on that controversy. It declined to uphold the complaint that this item breached standard 1.1(i).

With reference to the second item, RNZ wrote:

the sole thrust of the item was to obtain and present factual information concerning procedures and the implementation of policies, There is no significant debate or discussion and no advocacy of different viewpoints on a controversial issue, and no discussion or advocacy of those policies.

It explained that the facts were elicited by question and answer and were not subject to interpretation, except possibly for the final comment regarding the protection of the child who was being assessed as paramount. RNZ noted that though this might seem to be the opinion of Ms Leary (from the Department of Social Welfare), in fact it was a guiding principle. RNZ did not believe that this constituted "the expression of a controversial view". It declined to uphold this aspect of the complaint.

### Mr Fudakowski's Referral to the Broadcasting Standards Authority

Dissatisfied with RNZ's decision, in a letter dated 12 July 1993, Mr Fudakowski referred his complaint to the Broadcasting Standards Authority under s.8(1)(a) of the Broadcasting Act 1989.

Mr Fudakowski challenged RNZ's interpretation of the items, arguing that discussion



of controversial issues demanded objectivity, scepticism and open-mindedness and that the interviews given were more like advertisements and their objectivity was accordingly compromised.

He maintained that the failure of the items to discuss the controversy surrounding the issue took advantage of the confidence listeners have in the integrity of broadcasting and was therefore in breach of standard 1.1(j) and he likened the interviews to free advertising for the authorities. Mr Fudakowski questioned whether intent was a necessary pre-requisite for breach of this standard.

Referring to RNZ's explanation that the issue of the Paramountcy principle was possibly one which presented an opinion, Mr Fudakowski claimed that RNZ's reference was deeply offensive to him "and a sinister attempt to offend against that very same principle, and as such is emotionally abusive of our children collectively." He alluded to his own experience in the position of a party in family court proceedings and his frustration at being dealt with by questionable policy.

He repeated his contention that the items lacked objectivity because they omitted to refer to the Assessment Controversy.

#### **RNZ's Response to the Authority**

As is its practice, in a letter dated 16 July, the Authority sought the broadcaster's response to the complaint. Its reply is dated 20 July.

RNZ drew the Authority's attention to new material introduced by Mr Fudakowski in his Complaint Referral form where he referred to other broadcasts by RNZ on retributive justice, which, it pointed out, were not the subject of the current complaint.

RNZ summarised the complaint as being one "which takes issue with an editorial decision concerning the reason for, and thrust and nature of, the item/s; and that is not a matter for formal complaint." It acknowledged that Mr Fudakowski was entitled to wish that RNZ's coverage had included wider aspects which concerned him, but observed that was not the object of the broadcasts which did not call for an examination into the apparently controversial matters.

#### **Mr Fudakowski's Final Comment**

In a letter dated 23 July Mr Fudakowski acknowledged his personal interest in the subject of the discussion, but questioned whether that necessarily diminished the validity of his opinion. On the contrary, he argued, it gave him a right to offer an opinion. He repeated his contention that the items were biased, emphasising that he did not believe the lack of balance to be intentional. He agreed with RNZ's interpretation of his complaint which had appeared to conclude that he wished for an in depth expose on the subject. He raised two further examples of broadcasts which raised debatable issues.

