

BEFORE THE BROADCASTING STANDARDS AUTHORITY

Decision No: 117/93

Dated the 8th day of September 1993

IN THE MATTER of the Broadcasting Act 1989

AND

IN THE MATTER of a complaint by

R.L. KERR
of Wellington

Broadcaster
TV3 NETWORK SERVICES
LIMITED

I.W. Gallaway Chairperson
J.R. Morris
R.A. Barraclough
L.M. Dawson

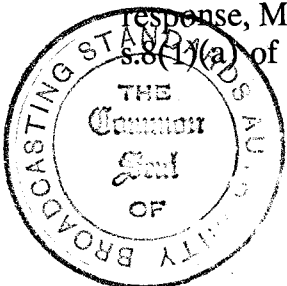
DECISION

Introduction

MMP was the subject of an item on TV3's news programme, *Nightline*, broadcast between 10.30 - 11.00pm on Wednesday 12 May 1993. It referred to a debate on the topic between Colin Clark, a supporter of MMP, and Roger Kerr, an opponent, at the Wellington Chamber of Commerce.

Mr Kerr, Executive Director of the New Zealand Business Roundtable, complained to TV3 Network Services Ltd that the item was not impartial, objective or fair. It suggested that the business people who opposed MMP did so because, under the present system, they used politicians to get wealthy. Further, it implied that the complainant was part of a morally corrupt process.

Arguing that the item was an informed opinion piece, not a news report, and that the item's theme was that the debate about electoral reform would be a fight between responsible parties, TV3 declined to uphold the complaint. Dissatisfied with TV3's response, Mr Kerr 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 viewed the item 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.

Electoral reform was the subject of an item on *Nightline*, TV3's late evening news, on 12 May. Including footage of a debate at the Wellington Chamber of Commerce between the complainant and Mr Colin Clark, respectively supporters of the FPP and MMP systems, it referred among other matters to the fact that big business and most of the present members of Parliament supported FPP. It also suggested that MMP supporters held the high moral ground on the issue.

Mr Kerr complained that the item was neither impartial nor correct. It had suggested first, he continued, that as an active supporter of FPP he was neither impartial nor correct, and secondly, that big business supported the present system as it used politicians to become wealthy. That was a point, he added, which Mr Clark had not advanced during the debate although the news item had presented it as a fact. Mr Kerr alleged that the item was also incorrect in portraying the proponents of MMP as honourable and selfless and the supporters of FPP as acting from the basis of self-interest.

As a general point, he criticised the item for perpetuating what he called the "false and corrosive myths about the relationship between business and politicians".

TV3 assessed the complaints under standards G1, G4, G6 and G14 of the Television Code of Broadcasting Practice. The first three require broadcasters:

- G1 To be truthful and accurate on points of fact.
- G4 To deal justly and fairly with any person taking part or referred to in any programme.
- G6 To show balance, impartiality and fairness in dealing with political matters, current affairs and all questions of a controversial nature.

The final standard reads:

- G14 News must be presented accurately, objectively and impartially.

Emphasising that the item was "an informed opinion piece", TV3 said that there were substantial differences between a news report of an event and a commentary on the surrounding arguments. Accordingly, as a commentary, it had not been required to comply with the requirements for impartiality. In addition, TV3 pointed out that the views about the links between politicians and big business were advanced by a politician portrayed during the item. It had not, TV3 continued, accused Mr Kerr of personally taking part in a morally corrupt process but had expressed an opinion based on a widely held perception about the links between business and politicians. TV3 later advised the Authority that the commentary status of the item was apparent from the news presenter's



reference in the introduction to "Inside Politics predicts ...".

On the basis of insufficient evidence apparent during the broadcast, Mr Kerr rejected TV3's argument that the item was "an informed opinion piece". Whereas he had not expected that his debate with Mr Clark would be reported in full, he described the broadcast as one which had advanced entertainment at the expense of information and journalistic standards.

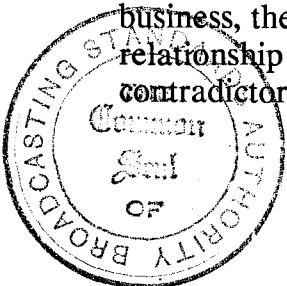
The Authority was required to decide initially whether the item was a news report or an opinion piece. It accepted that electoral reform was the item's theme and that the debate between Mr Kerr and Mr Clark had been used as background material. Furthermore, the arguments advanced by the respective parties were matters which were newsworthy. The Authority observed that the item complained about included not only some of the arguments about FPP and MMP but also commented on the merit of them. That took the item beyond the confines of a news report.

In considering the status of the item, the Authority noted the presenter's introduction and the caption which after stating "Inside Politics", recorded: "Steve Christiansen reporting". The Authority accepted that the style of "Inside Politics" might be well known to regular viewers but considered that if an item is taking an editorial stance, that approach has to be made clear to casual viewers as well. Opinion pieces, the Authority observed, frequently involve the commentator talking directly towards the camera but that had occurred on this occasion only by way of introduction. In addition, the film clips were shown in a style which most viewers would have assumed belonged to a news story rather than a commentary. Within this format, they could well have accepted as facts the assertions which were made. Taking these matters into account, the Authority decided that the item was substantially presented as a news report rather than as an opinion piece and on that basis determined the complaint.

The Authority then considered that the issues raised by the complainant could be summed up in two questions: was the electoral debate presented in a balanced way? And had the item dealt with the complainant fairly? Pursuant to this approach, the Authority was of the view that the issues raised under standards G1 and G14 - accuracy and impartiality - were subsumed under the balance requirement of standard G6.

The Authority first assessed the standard G4 requirement to deal fairly with people referred to. It did not accept the argument that the item suggested that Mr Kerr was morally corrupt by taking part in a morally corrupt process. However, it was prepared to accept that, because of the position he held, doubt was cast on the altruism and, consequently, on the veracity of his argument. On the basis, the Authority decided that the broadcast breached standard G4 when referring to the complainant.

In considering the alleged contravention of the balance requirement in standard G6 and while it was not required to rule on the precise relationship between politicians and big business, the Authority agreed that the material which suggested a morally questionable relationship should not have been advanced without some supporting evidence and contradictory arguments. As an example of such material, the item stated:



Roger Kerr tried to hijack the moral high ground, when he talked to Wellington businessmen but it really belongs to MMP supporters. They've exposed the political and business links that have created great wealth for a few.


By presenting only one side of the argument and by not appearing to give the proponents of another perspective an opportunity to rebut it, the Authority concluded that the item was unbalanced to the degree that it breached standard G6.

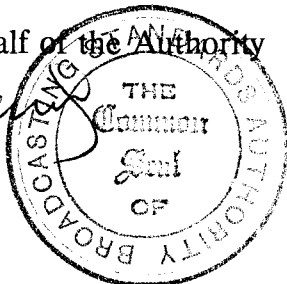
For the reasons above, the Authority upholds the complaint that the broadcast by TV3 Network Services Ltd of an item on *Nightline* on 12 May 1993 breached standards G4 and G6 of the Television Code of Broadcasting Practice in that it cast doubt on the veracity of Mr Roger Kerr, a proponent of FPP, and as it did not give the proponents of FPP the opportunity to rebut some of the arguments advanced by the supporters of MMP.

The Authority declines to uphold any other aspects of the complaint.

Having upheld a complaint, the Authority may impose an order under s.13(1) of the Broadcasting Act 1989. It does not intend to do so on this occasion as although the item was unfair to Mr Kerr and was unbalanced, it does not regard the breaches as major ones because the item contained elements of an opinion piece. Broadcasters must be careful to make a clear distinction between news items and commentary. If that distinction is not made with absolute clarity, the Authority might well adopt a less sympathetic approach to broadcasters should similar complaints arise in the future.

Signed for and on behalf of the Authority


Iain Gallaway
Chairperson



8 September 1993

Appendix

R.L. Kerr's Complaint to TV3 Network Services Limited

In a letter dated 17 May 1993, Mr Roger Kerr, Executive Director of the New Zealand Business Roundtable, complained to TV3 Network Services Ltd about an item on *Nightline* entitled "The Gloves are Off" broadcast between 10.30 - 11.00pm on 12 May.

He said that the item, which dealt with the presentation of views on electoral reform given by Colin Clark and himself to the Council of the Wellington Chamber of Commerce, breached standards G1, G4, G6 and G14 of the Television Code of Broadcasting Practice. Furthermore, he described the item as a journalistic "beat-up" of an extremely important issue when the reporter's preconceptions were introduced into a rational and civil debate.

He listed his complaint on three grounds. First, he said, it was not impartial as the dominant theme of the broadcast suggested that the opponents of MMP were the two main political parties and big business which had used politicians to get wealthy. Giving that impression had included showing Winston Peters using negative terms to describe the opponents of MMP. That impression, Mr Kerr added, was not part of Mr Clark's presentation so that "fact" had been inserted into the programme by the reporter.

By way of a summary on the point that the item breached standards G6 and G14, Mr Kerr wrote:

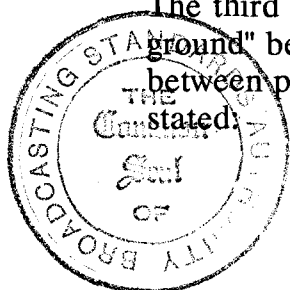
By implication, and notwithstanding your introduction, the proponents of MMP were portrayed as honourable, selfless people commanding the high moral ground. Is that the way TV3 sees the difference between the two sides?

As the second ground of the complaint, Mr Kerr said the reporter was "blatantly incorrect" when he said:

Roger Kerr tried to hijack the moral high ground, when he talked to Wellington businessmen but it really belongs to MMP supporters. They've exposed the political and business links that have created great wealth for a few.

Expressing his concern about the value-laden terms used, Mr Kerr said that he had not been dealt with fairly and this part of his complaint was made under standards G1, G4, G6 and G14.

The third point, he wrote, referred to the broadcast's claim that the "high moral ground" belonged to the supporters of MMP because they had exposed the links between politicians and business people which had created wealth for a few. He stated:



It is neither factual, objective nor impartial. In addition it was not fair to me because it implied that, as Executive Director of the NZBR, I am part of this morally corrupt process.

That aspect of the complaint also referred to standards G1, G4, G6 and G14.

Referring to Decision No: 26/90 on a complaint from the New Zealand Business Roundtable about the *Frontline* programme "For the Public Good", he argued that the item "The Gloves are Off" echoed the *Frontline* programme in that it perpetuated false and corrosive myths about the relationship between business and politicians.

TV3's Response to the Formal Complaint

TV3 advised Mr Kerr of its Complaints Committee's decision in a letter dated 8 July. It reported that the complaint had been assessed under the nominated standards.

It began:

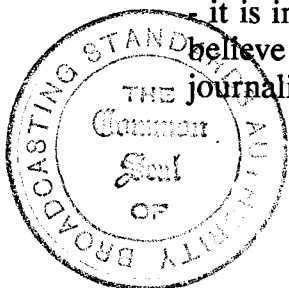
From the outset, it should be noted that the segment was an informed opinion piece presented by the reporter in his *Nightline* column. It was neither a beat-up nor a product of journalistic preconception. In a democracy run for the benefit of all, differing views are permitted.

Explaining that the item was not a news report on the Chamber of Commerce debate, TV3 noted that it was rare for an opinion piece to be impartial.

The introduction, TV3 continued, set out the dominant themes which were that there would be a fight between responsible sides about electoral reform. TV3 disputed the allegation that the item conveyed the fact that business leaders opposed MMP as the present system was a source of great wealth. Rather, using a legitimate journalistic practice, that opinion had been inserted as an introduction to the comment from Winston Peters.

Repeating that the item was an opinion piece, TV3 declined to uphold the complaint and stated:

It appears you have reached the conclusion that you, personally, because of the position you hold, have been accused of taking part in a morally corrupt process. As mentioned previously, it is quite legitimate in a commentary to express an opinion, especially when based on an already widely-held perception it is immaterial who agrees/disagrees with that perception. We do not believe you have bolstered your argument by associating TV3 with the past journalistic practices of a competitor.



Mr Kerr's Complaint to the Broadcasting Standards Authority

As he was dissatisfied with TV3's response, in a letter dated 19 July 1993, Mr Kerr referred his complaint to the Broadcasting Standards Authority under s.8(1)(a) of the Broadcasting Act 1989. He enclosed a transcript of the item complained about.

Mr Kerr stated that he maintained his arguments in his original complaint and added several submissions in response to TV3's decision to decline to uphold the complaint.

First, because of a lack of evidence he rejected TV3's argument that the item was an "informed opinion piece". It was presented, he continued, as a news report. Furthermore and regardless of the item's status, he expressed the opinion that TV3 was under an obligation to be impartial.

As the second point, a verbatim report of the debate was not expected but as the debate was rational and less volatile than had apparently been expected, he said that a "beat-up" was broadcast in the interests of entertainment but at the expense of information and journalistic standards.

Finally, by maintaining that the item was an opinion piece, TV3 accepted that "anything goes" by way of statement and claim. On that basis, he continued, it was acceptable for TV3 to accuse him of taking part in a morally corrupt process. He added:

They further support the justification by adding (without providing a shred of evidence for the claim) that the opinion is based on a "widely-held" perception. These accusations are false and reprehensible and in our understanding go far beyond accepted standards under the Codes of Broadcasting Practice, specifically codes 1, 4, 6 and 14.

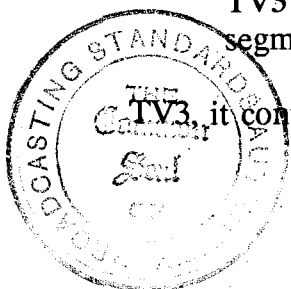
TV3's Response to the Authority

As is its practice, the Authority sought the broadcaster's response to the complaint. Its letter is dated 21 July 1993 and TV3's response 30 July.

TV3 stated that "Inside Politics" had been a regular Wednesday night opinion segment of *Nightline* and the presenter, on introducing it, referred to the segment's "prediction". It repeated:

We reiterated that the segment complained of was not intended to be a verbatim report on the debate of which the complainant was a part. The segment focused on some of the issues surrounding MMP v FPP. Whilst the complainant has chosen to couch his argument in somewhat emotive language, TV3 remains perfectly happy with the content and manner in which the segment was presented.

TV3, it continued, declined to comment further.



Mr Kerr's Final Comment to the Authority

When asked if he wanted to respond to TV3's comment, in a letter dated 6 August 1993 Mr Kerr maintained that the item had to be viewed from the viewers' perspective. On that basis:

- (i) the journalist was known to be a member of the TV3 parliamentary team, not a commentator;
- (ii) the item was presented as a report rather than having the presenter speaking directly into the camera as a "commentator" would have done; and
- (iii) even as a piece of commentary, it contained factual errors that meant that the item lacked balance, impartiality and fairness.

