

BEFORE THE BROADCASTING STANDARDS AUTHORITY

Decision No: 11/91
Dated the 18th day of April 1991

IN THE MATTER of the Broadcasting Act 1989

AND

IN THE MATTER of a complaint by

G.A. TOWN
of Wellington

Broadcaster
TELEVISION NEW ZEALAND
LIMITED

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

DECISION

Introduction

An item on the *Holmes* programme on 25 June 1990, broadcast at 6.30 pm on TV1, included an interview with a Mr Fred Angell. During the interview, Mr Angell admitted that he had been involved with the smuggling of birds. The item informed the viewers that, at the time of the interview, the police wished to speak to Mr Angell about his alleged bird smuggling activities but had been unable to locate him.

Mr Town's Complaint to Television New Zealand Limited

Mr Town wrote to TVNZ on 7 July 1990 to lay a formal complaint. TVNZ's behaviour, he said, in interviewing a person wanted by the police without informing the police of the time and place of the interview was deplorable and irresponsible. He added that it was everybody's duty to assist the police.

TVNZ's actions, he argued, breached the programme standards in the Broadcasting Act 1989. The provisions to which he referred were s4(1)(a) and (b) which read:

Every broadcaster is responsible for maintaining in its programmes and their presentation, standards which are consistent with -



- (a) The observance of good taste and decency; and
- (b) The maintenance of law and order;

Mr Town concluded that the announcement on the *Holmes* programme, that a tape of the interview had been made available to the police, was not an excuse for not informing the police in advance of the interview to allow them to apprehend an alleged offender.

TVNZ's Response to the Formal Complaint

Mr Town was advised in a letter from TVNZ dated 4 September 1990 that TVNZ's Complaints Committee had not upheld the complaint at its meeting on 29 August. TVNZ wrote:

... the interests of journalism and the public's right to know on the one hand, and the interests of the police and the upholding of the law on the other are not always complementary.

It continued by pointing out that the extent of public knowledge about the community would be rapidly reduced if a journalist was required to inform the police of every contact with individuals who or organisations which might be operating outside the law.

The current issue was not "confidential sources" which journalists frequently protected, but one of not betraying confidences about the precise whereabouts of a wanted person. The interview, TVNZ continued, had revealed some unique information about bird smuggling and the Complaints Committee agreed that it had been inappropriate to inform the police of Mr Angell's whereabouts. The Committee also noted that:

... the news team did not place any obstacles in the way of the police. It might be said that by showing Mr Angell's face to a national news audience, *Holmes* made it impossible for him to remain at large for long.

It also pointed out that Mr Angell was arrested about 10 days later and had since pleaded guilty to a number of bird smuggling charges.

Mr Town's Complaint to the Broadcasting Standards Authority

As Mr Town was dissatisfied with TVNZ's decision, he referred the complaint to the Broadcasting Standards Authority on the 17 September under s8(a) of the Broadcasting Act. He later completed the Authority's Complaint Referral Form in which he alleged, that by conducting and screening an interview with a person wanted by the police, without informing the police:

TVNZ adopted quite different standards of public responsibility to that expected of any citizen.

He continued:



To deliberately conceal this information from the police is tantamount to deliberately hindering the police which in itself is an offence. For this to be done by a public organisation is not only inexcusable but sets a shocking example of social behaviour.

Referring to TVNZ's letter of 4 September, he maintained that the duty of maintaining law and order generally coincided with supporting the police. Accepting with reluctance the principle of protecting confidential sources, he contrasted this with the "indefensible" behaviour of giving publicity to an alleged offender. It was necessary, he said, to balance the confidentiality principle with the public interest, and information about bird smuggling did not justify the public expense incurred in the 10 days between the broadcast and Mr Angell's arrest. A "journalistic coup" did not justify "polite contact with a known criminal", and he concluded by deploring the example set by TVNZ in ignoring its duty to assist the police.

TVNZ's Response to the Authority

The Authority referred the complaint to TVNZ in a letter dated 19 September 1990. TVNZ responded in a letter dated 28 February 1991 - 23 weeks later. It repeated the points that the police were shown a tape of the interview prior to its broadcast and that nationwide exposure of the man would reduce his ability to remain in hiding. It added that the interview did not give assistance to the man nor hinder his apprehension. "As such this can in no way be contrary to the maintenance of law and order."

It stressed that TVNZ had not said in its 4 September 1990 letter that the interests of the police and upholding the law were not complementary. The point was that the interests of the police and the interests of journalism could vary sometimes. Further, television journalism might involve filming situations where the law was being broken without journalistic intervention. This could occur when demonstrations erupted into violence as had happened during the Springbok tour. TVNZ described the complainant's speculation about its motives as unworthy cynicism. It also rejected the complainant's assumption that a police squad was actively seeking the interviewee.

[The police] simply waited for him to make an appearance. There was no "high cost to the taxpayer" in "tracking down an offender" as suggested by the complainant.

TVNZ concluded:

Interviewing people suspected of committing offences does not run contrary to the law of the land. It has been an ingredient of both print and broadcasting journalism over many years, admittedly on infrequent occasions. Both the BBC and the new Independent Television Commission ... have guidelines specifically designed to cover such interviews.

The relevant section of the ITC guidelines were supplied, as was a guideline from the American Network, ABC. The former stated the broadcast of an interview with a



criminal needed careful consideration to decide whether the interview was justified in the public interest. The latter guidelines on the other hand, said that, in the interests of the independence of the press, it disapproved of most forms of cooperation with government agencies.

Mr Town's Final Comment to the Authority

In his letter of 6 March 1990, Mr Town expressed his disapproval at the length of time TVNZ had taken to respond to the Authority's referral of his complaint. Describing much of TVNZ's response as irrelevant, he said the issue was simple:

[W]hy should the media (and in this case TVNZ) adopt a different and lower standard of behaviour and social responsibility than that expected of any citizen in New Zealand?

TVNZ, he said, had referred to the "public interest" as a justification for the interview. That, he wrote, was so much "twaddle".

TVNZ's reliance on the defence of "public interest" is a cynical perversion of the phrase and they completely fail to show how the public interest was served by screening such an interview. The public interest would have been far better served by TVNZ revealing the whereabouts of the wanted person they were in direct contact with so that he could have been promptly apprehended.

Decision

The Authority finds inexcusable the length of time it has taken TVNZ to respond to a number of referrals, of which this is a glaring example, i.e. TVNZ took more than five months to reply to the Authority's reference of the complaint to it. It records its displeasure and that it will advise TVNZ that it expects a prompt response to future referrals. In the event that a prompt response is not received, it will determine a complaint without any further input from the Company.

The Authority has studied the correspondence and carefully considered the arguments put forward by Mr Town in support of his complaint and by TVNZ in response. All members have viewed the item on the *Holmes* programme which gave rise to the complaint.

Before examining the details of the complaint, the Authority believes that it is important to record the factual background.

Mr Angell, an admitted bird smuggler then being sought by the police for questioning, approached TVNZ and offered to give an interview. Mr Angell did not seem to be shy about publicity and, the item recorded, he had previously telephoned the Customs Department, as TVNZ described it, to "tease" Customs Officers. At the time of the interview, the Customs Department and the Department of Conservation as well as the



police wished to interview Mr Angell. The programme was not explicit as to whether a warrant had been issued for Mr Angell's arrest in regard to his alleged bird smuggling activities. However, the item implied that a warrant for Mr Angell's arrest might well be extant as he had breached the bail conditions for some other charges he was facing.

During the interview, Mr Angell admitted that he had been actively involved in bird smuggling for some years although he did not reveal explicitly his involvement in the smuggling of keas, the current issue of public interest. Mr Angell added that he expected to be sent to prison for bird smuggling. The item recorded that he had been fined for that activity in Australia in 1986 and since his deportation to New Zealand some two - three months before the interview, the Customs Department had been following his activities closely. Furthermore, shortly before the recent attempt to smuggle the keas out of New Zealand, the car which Mr Angell was driving and which carried some keas, had been stopped near Dunedin by the police but had been allowed to go. (Later newspaper records show that Mr Angell pleaded guilty to a number of charges under the Animals Protection Act 1960 in respect to a number of keas.)

Section 4(1)(a) and (b) of the Broadcasting Act 1989 are the provisions relevant to this complaint. They are printed in full at the beginning of this decision.

Focusing on paragraph (b) initially, the Act requires broadcasters to maintain standards consistent with the maintenance of law and order. It does not require broadcasters to maintain law and order. This point is important when assessing whether the programme breached the requirements of the legislation. As a consequence of the wording of the section, the Authority is required to look at the common law standards applicable to journalists.

For a summary of the existing legal position, the Authority has relied on New Media Law in New Zealand by J.F. Burrows (O.U.P., Auckland, 1990). Professor Burrows writes (p. 394):

In the course of his or her duties a reporter may well come into possession of information of interest to the police and other authorities yet feel that disclosure would prejudice one of his or her regular sources of information. It is an interesting and difficult question how far the law can require a reporter - or indeed anyone else - to divulge information.

After discussing disclosure requirements in the courts and before statutory bodies, the discussion turns to disclosing information to the police. Burrows then cites Lord Parker C J in Rice v. Connolly [1966] 2 QB 414 at 419 (on p. 400):

It seems to me quite clear that though every citizen has a moral duty or, if you like, a social duty to assist the police, there is no legal duty to that effect, and indeed the whole basis of the common law is the right of the individual to refuse to answer questions put to him by persons in authority, and to refuse to accompany those in authority to any particular place, short, of course, of arrest.

Burrows states that the general rule is that no one is obliged to answer questions put to



them by the police.

Accordingly, the Authority concludes that, conditional on the lack of a specific legal requirement pertaining to the particular situation, TVNZ was not legally obliged to advise the police of its contact with Mr Angell.

With regard to the specific facts applying to this instance, Mr Angell was later convicted of charges under the Animals Protection Act 1960. That Act is concerned with the protection of animals and it gives inspectors appointed under it extensive powers. However, as the interview with Mr Angell did not take place on an occasion when animals (keas in this case) were being cruelly treated, TVNZ was not under a legal obligation to inform the police of its contact with Mr Angell. It should be noted that the Authority would not, in the case of an explicit legal obligation, accept an argument from TVNZ that disclosing information would be a breach of confidentiality between the interviewee and itself. Legal obligations would take priority. Nevertheless, taking into account the facts relevant to this complaint, the Authority declines to uphold the complaint that the programme breached the maintenance of law and order standard in s4(1)(b).

There remains the important question whether the programme breached the good taste and decency standard (s4(1)(a)). The complainant focused on TVNZ's ethical duty and Lord Parker in the judgment quoted above refers to every citizen's moral or social duty to assist the police.

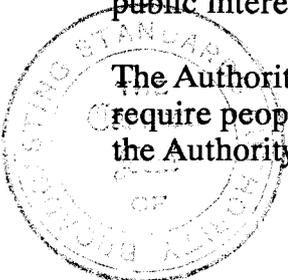
By way of introduction to this discussion, the Authority recalls its definition of good taste and decency provided in Decision No: 2/90.

In the Authority's view the concept of good taste and decency in a given situation or context pertains to conformity with such standards of propriety as the Authority considers to be in accord with generally accepted attitudes, values and expectations in New Zealand society.

The Authority also notes that TVNZ, unlike both the BBC and the Independent Television Commission, does not have guidelines about the acceptability of interviewing criminals. It must also be noted though that any such guidelines may not have been relevant to this situation. Mr Angell was wanted for questioning about bird smuggling and although an arrest warrant apparently existed for breaching bail, the programme item was not explicit whether Mr Angell was an alleged or a convicted offender on those other charges.

The issue relevant to this complaint is whether a programme showing an interview with a person convicted of bird smuggling in 1986 and again wanted for questioning for that type of activity breached the good taste and decency standard when balanced with the public interest as measured by the information disclosed during the interview.

The Authority agrees with the complainant that the good taste and decency standard may require people to assist the police. Furthermore, assisting the police is an attitude which the Authority considers New Zealanders may expect of broadcasters. TVNZ records that



it was approached by Mr Angell. That in itself does not justify the broadcast of the item as TVNZ could have declined to undertake the interview. TVNZ notes that a tape of the interview was supplied to the police before the interview was broadcast. The information on the tape may have been useful to the police - but, the Authority believes, not as useful as advice about Mr Angell's whereabouts. On the other hand, the Authority accepts that the police were not undertaking a massive "man-hunt". Moreover, not being informed of the interview in advance probably did not involve the police in great expense in their continuing efforts to locate Mr Angell and the Authority also accepts the point made by TVNZ that showing Mr Angell's face to a national television audience could well have contributed to his ultimate arrest. Further, the Authority does not accept, because of the public service component of the interview, the complainant's argument that the interview was broadcast solely in the desire for a journalistic "scoop".

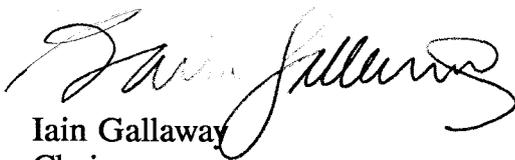
The kernel of the complaint is whether the public service aspect of the interview outweighed TVNZ's moral duty to assist the police. TVNZ argued that information about the extent of and techniques used in bird smuggling, then an issue of high public interest, was otherwise unobtainable. The complainant noted that this information would have been duly revealed in court.

In reaching a decision, the Authority is aware that most New Zealanders first, would expect broadcasters not to hinder the police and secondly, to value and accept the ideal of the freedom of the press. In view of the fact that Mr Angell at the time of the interview had not been charged with or convicted in New Zealand of any offence in regard to the specific matters referred to, although he had been convicted and sentenced for a similar crime in Australia, the Authority, after due deliberation, considers that the current standards of propriety were not offended by the broadcast of this programme item.

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

Nonetheless, the Authority is firmly of the opinion that this type of programme should not be encouraged and that clear guidelines are necessary in the Television Code of Broadcasting Practice about the acceptability of broadcasting interviews with alleged offenders sought by the police for questioning.

Signed for and on behalf of the Authority


Iain Gallaway
Chairperson



18 April 1991