

BEFORE THE BROADCASTING STANDARDS AUTHORITY

Decision No: 16/91  
Decision No: 17/91  
Decision No: 18/91  
Dated the 29th day of April 1991

IN THE MATTER of the Broadcasting Act 1989

AND

IN THE MATTER of complaints by

HON. SIR ROGER DOUGLAS

AND

HON. RICHARD PREBBLE

AND

RT. HON. DAVID LANGE

Broadcaster  
TELEVISION NEW ZEALAND  
LIMITED

I.W. Gallaway	Chairperson
J.B. Fish	
J.L. Hardie	
J.R. Morris	
Sir David Beattie	Co-opted Member
G.F. Whitehead	Co-opted Member

**Introduction**

On Sunday 29 April 1990, a programme produced by Television New Zealand Limited and entitled "For the Public Good" was broadcast on TV1's *Frontline*. As a result, TVNZ received eight formal complaints including one from the then Prime Minister, the Rt Hon (now Sir) Geoffrey Palmer, which was made on his own behalf, that of the Government and four Cabinet Ministers of the day (the Rt Hon David Lange, the Hon (now Sir) Roger Douglas, the Hon Richard Prebble and the Hon David Caygill).

Two of the other complaints were made by the New Zealand Business Roundtable and the Treasury. After TVNZ's Complaints Committee reached decisions upon those



complaints, they were referred to the Broadcasting Standards Authority for investigation and review and are the subject of the Authority's Decisions No: 26/90 and No: 27/90. The present decisions, on the remaining complaints referred to the Authority about "For the Public Good", have been delayed by preliminary matters which required determination. As well, the Authority's task with respect to the remaining complaints has been complicated by the fact that each of the remaining complainants has commenced defamation proceedings against TVNZ as a result of the broadcast of "For the Public Good".

### **The Complaints Referred to the Authority**

Although the former Prime Minister made the original complaint to TVNZ on behalf of himself, the Government and four Cabinet Ministers of the day, he and the other Cabinet Minister complainants proceeded independently in referring their complaints to the Authority for investigation and review, pursuant to s.8(a) of the Broadcasting Act 1989. As a result, the Authority received, within the limitation period prescribed by the Act, referrals from the Rt Hon Sir Geoffrey Palmer, the Rt Hon David Lange, the Hon Sir Roger Douglas and the Hon Richard Prebble.

### **Preliminary Matters**

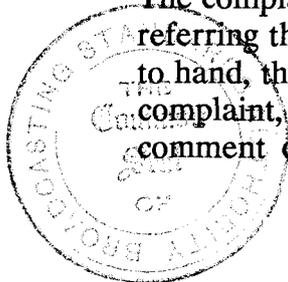
#### **(a) The Authority's Decision Not to Hold a Formal Hearing**

As is explained in full in Decision No: 26/90, the New Zealand Business Roundtable, in referring its complaint to the Authority, requested that a formal hearing be held. Being unable to consider this request in isolation from the fact that several other complaints had been referred to it about "For the Public Good", the Authority sought each complainant's view of the desirability or otherwise of a formal hearing being conducted. None of the present complainants expressed a preference for a formal hearing and, for reasons which are set out in Decision No: 26/90, the Authority decided at its meeting on 11 and 12 July 1990 not to hold one. All complainants were notified of the decision shortly thereafter.

Later, at the request of the Business Roundtable, the Authority reviewed its decision not to hold a formal hearing and confirmed it. For the record, however, it should be noted that some weeks after the original decision was confirmed, two of the present complainants expressed dissatisfaction with the decision.

#### **(b) TVNZ's Submission that the Authority Decline to Determine or Defer the Determination of the Complaints**

The complainants took varying amounts of time to elaborate in writing their reasons for referring their complaints to the Authority. However, as each completed referral came to hand, the Authority forwarded it to TVNZ for its comments. In this way, Mr Lange's complaint, which was elaborated by letter dated 24 July 1990, was referred to TVNZ for comment on 27 July; Sir Roger Douglas's complaint, elaborated by letter dated 19



September, was referred to TVNZ on 8 October; and Mr Prebble's complaint, elaborated by letter dated 5 September, was referred to TVNZ on 13 September. For reasons which will emerge, Sir Geoffrey Palmer did not avail himself of the opportunity to elaborate upon the reasons for the referral of his complaint.

By letters dated 18 October 1990, TVNZ supplied its comments on the complaints of Mr Lange and Sir Roger Douglas. With respect to each, TVNZ's first submission was that the Authority should either decline to determine the complaint pursuant to s.11(b) of the Broadcasting Act 1989, or defer considering it until the conclusion of the High Court proceedings for defamation commenced by the complainant. The reasons for TVNZ's submission were explained in its letter of response to Sir Roger Douglas's complaint, as follows:

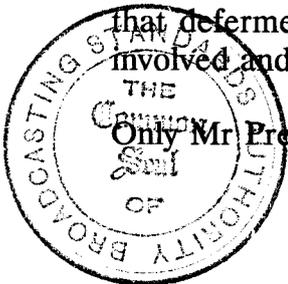
As with previous complaints where damages claims have been lodged, the company would point out that the Authority will be addressing disputed matters of fact and comment which will be subject to a hearing in the High Court where there is a possibility that the company may be liable for damages with regard to the same broadcast. A double jeopardy situation exists which it is submitted runs contrary to a reasonable interpretation of what constitutes natural justice (section 10(2)(c) of the Act). In these circumstances the company would ask that the Authority exercise the powers available to it under s.11(b) of the Act and not determine the matter or, alternatively, withhold reaching a determination until such time as the matter has been resolved in the High Court where evidence will be taken and the parties may be subject to cross-examination in pursuit of the truth of allegations contained in the complainant's claim, some of which coincide with points made in this particular complaint.

Anticipating that TVNZ would, in due course, make the same submission with respect to the complaints of Sir Geoffrey Palmer and Mr Prebble, the Authority had a preliminary discussion of the matter at its meeting on 1 and 2 November.

It was resolved there to give each of the complainants who had commenced defamation proceedings in respect of "For the Public Good", the opportunity to make written submissions to the Authority upon the matters raised by TVNZ. It was also resolved to inform those complainants of the Authority's preliminary view that, because of the time which might be involved, it would be inappropriate for it to defer considering a complaint until the conclusion of the High Court action brought by that complainant. Further, it was resolved to ask each complainant to supply the Authority with a copy of his Statement of Claim filed in the High Court.

Accordingly, by letter dated 2 November, the Authority asked the complainants to supply comments, by November 12, upon TVNZ's submission that the Authority should either decline to determine the complaints or defer determining them until the conclusion of the relevant court proceedings. The letter also stated the Authority's preliminary view that deferment would be inappropriate because of the lengthy delays which could be involved and requested a copy of each complainant's Statement of Claim.

Only Mr Prebble and Sir Geoffrey Palmer made substantive comments in response to



the Authority's letter. Sir Roger Douglas did not respond at all and while Mr Lange, in forwarding a copy of his Statement of Claim, promised that any comments he had would be made on time, no further comments were received from him.

Mr Prebble's and Sir Geoffrey Palmer's comments on TVNZ's submission were at variance with one another. Mr Prebble, by letter dated 7 November, supplied his Statement of Claim and vigorously opposed the submissions that the Authority should either decline to determine or defer considering his complaint. He stated:

As to your request for my comments on the matters raised by TVNZ there is an obvious answer. No question of double jeopardy arises because the remedies in each matter are totally different.

The Court case concerns my individual reputation and the remedy is monetary damages.

This complaint in front of the Authority concerns Broadcasting Standards. The complaint is entirely based on matters set out in the Broadcasting Act. The law states that broadcasters must in the public interest observe certain standards, such as accuracy and fairness. The law exists not just to be fair to individuals but in the public interest to ensure that the people of New Zealand receive a certain quality in broadcasting.

....

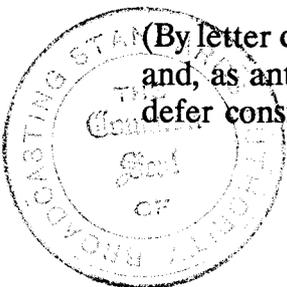
The civil action may not be heard for over a year. It is always possible that a civil action may never be heard, for example there may be a settlement. This means the public interest is in fact dependent on a ruling from the Broadcasting Standards Authority. A ruling in perhaps two years time makes a mockery of the time limits and the sense of urgency that is contained in the Broadcasting Act.

It would be quite extraordinary and totally contrary to the clear intention of Parliament if TVNZ could escape the provisions of the law merely because a civil action has been commenced. ...

While it is probable that some facts and some comment will be common to both the complaint and the civil action, that by itself does not constitute double jeopardy.

My hope that the Court case may be heard in the next twelve months could be wrong. As there are a number of Court actions and possible appeals, if the double jeopardy argument is upheld then the Authority might not hear the matter for three years. A three year delay would be totally unacceptable.

(By letter dated 9 November, TVNZ responded to the referral of Mr Prebble's complaint and, as anticipated, submitted that the Authority should either decline to determine or defer considering it.)



By contrast to Mr Prebble's views, Sir Geoffrey Palmer, by letter dated 22 November, supported the submission that the Authority should defer considering his complaint until the conclusion of the defamation proceedings. Further, he refused to supply his Statement of Claim to the Authority on the basis that the matters in issue in Court and before the Authority were independent and fell to be considered under different principles and legislation.

At its December meeting, the Authority gave further attention to these preliminary matters and confirmed its intention:

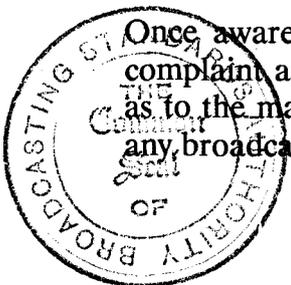
- (a) to proceed to consider and determine those aspects of the remaining *Frontline* complaints which did not involve disputed questions of fact likely to be in issue in the Court proceedings; and
- (b) to decline to determine any disputed questions of fact and the issues depending upon them, in exercise of the power conferred by s.11(b) of the Broadcasting Act 1989, in deference to the Court's superior ability to resolve those questions.

By letter dated 13 December, the four complainants were notified of the Authority's intentions. In addition, Sir Geoffrey Palmer, who had not yet filed with the Authority an elaboration of the reasons for referring his complaint to the Authority, was asked to clarify his intentions with regard to the pursuit of his complaint.

Sir Geoffrey responded by letter dated 13 December. He stated that although he was entitled to have his broadcasting standards complaint and his defamation action determined concurrently, he had acceded to TVNZ's wish that the Authority defer its proceedings. He maintained that, in those circumstances, the Authority's decision not to defer was "wrong in law and manifestly unjust in fact". However, because he was not willing to take the matter to Court to be resolved, Sir Geoffrey advised that he was, under protest, finally and irrevocably withdrawing the referral of his complaint to the Authority.

Thereafter, the Authority was in a position to begin an in-depth investigation of the complaints of Messrs Lange and Prebble and Sir Roger Douglas. Of most relevance for present purposes is the fact that Mr Lange's complaint raised, for the Authority's investigation and review, every aspect of Sir Geoffrey Palmer's original complaint which had not been upheld by TVNZ's Complaints Committee. In the course of examining Mr Lange's complaint, therefore, the Authority was faced with the same issues which it would have had to consider in the context of Sir Geoffrey's complaint, had he not withdrawn it. During that exercise, it became apparent to the Authority that a large number of matters of fact relevant to a review of the complaint were likely to be in issue in one or more of the defamation actions commenced in the High Court.

Once aware of the high degree of overlap between the issues raised by Mr Lange's complaint and the issues in the defamation actions, the Authority revised its intentions as to the manner in which it should proceed. Thus, rather than declining to determine any broadcasting standards matters which were dependent on disputed questions of fact



likely to be in issue in one or more of the defamation actions, the Authority was persuaded to the view that it should, instead, defer the determination of those matters until the conclusion of the defamation actions. The advantage in deferring, the Authority considered, was that the public interest in the range of broadcasting standards matters raised by Mr Lange's complaint would - eventually - be upheld whereas declining to determine those matters would effectively dismiss the public's interest in those matters.

Having revised its intentions and, by so doing, arriving at the position advocated by Sir Geoffrey Palmer, although for different reasons, the Authority was bound to offer Sir Geoffrey the opportunity to revive the referral of his complaint to the Authority. This it did by letter dated 8 April 1991. Sir Geoffrey had not replied by the time these Decisions were issued.

From the foregoing account of the protracted and involved process by which the Authority has reached the point at which it can publish its determinations on the remaining complaints about "For the Public Good", the following summary of its position can be presented.

- The Authority will not decide disputed questions of fact which are likely to be in issue in the defamation actions for the reason that the High Court is in a superior position to determine those questions.

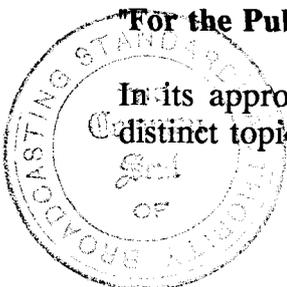
- The Authority will defer considering those broadcasting standards matters which depend on such disputed questions of fact until the conclusion of the relevant defamation actions. At that stage, it will adopt the Court's findings of fact in making its broadcasting standards decisions. If, however, any disputed questions of fact are left unresolved at the conclusion of the Court actions, eg because of settlements reached between the parties, the Authority will consider afresh how best it should proceed.

The Authority is well aware that the manner of proceeding which it has adopted leaves unresolved, for the present, many broadcasting standards issues which were raised by the complainants. However, it considers that its approach is the only one which fairly protects both the interests of the parties to the Court actions and the public interest in broadcasting standards. Much as the public interest must be deferred in the present circumstances, the Authority believes that its Decisions Nos: 26/90 and 27/90 have, to a considerable extent, preserved the public interest in the broadcasting standards matters raised by "For the Public Good".

**For the above reasons, the Authority rejects the submission made by Television New Zealand Ltd that the Authority should exercise the power conferred by s.11(b) of the Broadcasting Act 1989.**

**"For the Public Good"**

In its approximately 46 minute running time, "For the Public Good" dealt with two distinct topics, namely:



- the funding of New Zealand political parties' election campaigns (with particular emphasis on the funding of the Labour Party's campaign prior to its re-election to government in 1987); and
- the lack of any formal requirement in this country that Members of Parliament declare their private interests.

The complaints referred to the Authority by the present complainants concern the programme's treatment of both topics whereas the complaints referred by the New Zealand Business Roundtable and the Treasury, earlier decided by the Authority, focused only on the programme's treatment of the first topic. That focus was reflected in the explanation given, by way of introduction to the Authority's Decisions upon those complaints, of its view of the style and impact of "For the Public Good". The major part of that explanation is reproduced below. The Authority has refrained from expanding it to include an appraisal of the programme's treatment of the topic of Members of Parliament's private interests for the reason that that matter will be in issue in at least two of the defamation actions commenced as a result of the broadcast of "For the Public Good".

In Decisions Nos: 26/90 and 27/90, the Authority described "For the Public Good" in these terms:

The programme's format involved extensive use of extracts of interviews with politicians and ex-politicians, businessmen, present and past Labour Party executives and political and economic commentators. As a proportion of its total running time, approximately 60% of "For the Public Good" comprised interview extracts. The remaining portion of the programme was comprised largely of voice-over statements made by the reporter to the accompaniment of film of related events. A small proportion of the programme comprised reconstructions of events referred to by the reporter, and other visual effects created for the programme. Occasionally, those and other scenes were screened to the accompaniment of music.

The foregoing account of the programme gives no indication of the impact which it had, or seemed to be designed to have, on its audience yet, in the Authority's view, that impact was such that it cannot be ignored in any assessment of the complaints referred to it. Although the reasons for its view of the programme as a whole will be explained below, in summary it can be said that the Authority considers that "For the Public Good" gave the clear impression that leading businessmen had bought favours from the post-1987 Labour Government. Moreover, the programme achieved that effect despite a dearth of supporting facts. The Authority agrees with the statement in the Dominion editorial of 24 May 1990:

The programme was a closely contrived package of suggestion and innuendo, embroidered with emotive language and suggestive camera shots.



From the moment when the "Frontline" presenter introduced the programme, it was indicated that matters which had been kept hidden from the public and which were detrimental to its interests would be revealed. If any viewers doubted that they had understood the presenter correctly, those doubts would have been allayed immediately the reporter began reading her script - for it was threaded through with emotive figures of speech consistent with the exposure of improper dealings. By way of example, the opening lines of the reporter's script were as follows:

Away from the public gaze there is a dark side to New Zealand politics.

Over the past six years, almost unquestioned, a group of highly-placed businessmen, politicians and public officials has dominated the processes of democracy in this country.

For six years the public has accepted at face value the government's assurances that what's good for business was good for us all.

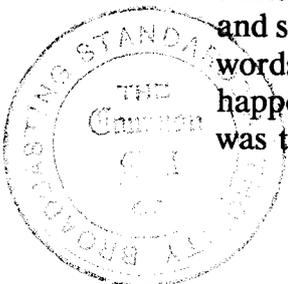
What hasn't been revealed is what lies beneath the surface - a web of undisclosed connections that have served the ends of a few.

Behind the facade of open government business donations to election campaigns have been made on the understanding particular policies would continue, sensitive government records have been destroyed, cabinet ministers have invested in the booming sharemarket and, in the pursuit of power, millions of dollars have flushed through the political system leaving no trace.

Tonight we examine whether the connections between those who seek power and those who pay for their quest are truly for the public good.

Bolstering the dark mood of statements such as those were some of the visual effects created for the programme. The Authority refers, for example, to the still photographs of tangled wires (the "undisclosed connections") upon which other visuals were superimposed on occasions during the programme, and to the supposed re-enactment of a silhouetted businessman having a telephone conversation in which he seemed to be agreeing upon a "deal" with a politician or other representative of a political party. The dramatic music accompanying some of the visuals heightened the atmosphere still further.

As a result of the use of such techniques, it is the Authority's opinion that viewers were invited to react unfavourably to those interviewees who were seen to be maintaining a position different to that stated or alluded to by the reporter. Thus, while the interviews supplied the only evidence for the programme's conclusions and suggestions, when the connection between the reporter's and an interviewee's words was tenuous (as it was on several occasions) or even contradictory (as also happened on occasion), the mood was set for viewers to deduce that the reporter was telling the truth and the interviewee was not.



The Authority notes that the language and other effects employed in "For the Public Good", which harmonised to create a sinister impression of the truth of the matters under examination, are characteristic of what is termed "advocacy" journalism. Advocacy journalism, however, has not been adopted as a programme policy or practice by TVNZ: its norm is "uncommitted" or traditional journalism. The Authority considers that the previous adherence of "Frontline" to that norm had earned the programme a worthy reputation. As a result, it is of the view that by using a mainstream vehicle such as "Frontline" to convey the messages contained in "For the Public Good", TVNZ made the abrupt transition from traditional to advocacy journalism in a totally unacceptable manner.

**DECISION NO: 16/91 - Complainant: Hon. Sir Roger Douglas**

**Summary of Sir Roger Douglas's Complaint and TVNZ's Response**

In the letter of formal complaint to TVNZ dated 15 May 1990, written on behalf of Sir Roger Douglas and others, the then Prime Minister (Sir Geoffrey Palmer) alleged that "For the Public Good" breached s.4(1)(c) and (e) of the Broadcasting Act 1989 and standards 1, 4, 6, 12, 13, 15 and 17 of the Codes of Broadcasting Practice for Television.

For present purposes, the following two paragraphs of Sir Geoffrey Palmer's letter are most relevant.

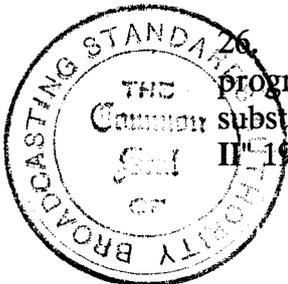
21. Similar inaccuracies occur over the private financial position of the Rt Hon David Lange and the Hon Roger Douglas. These allegations are the subject of further legal action because they are so inaccurate and misleading.

26. The deliberate non-disclosure of the special interest of the programme's witnesses to the alleged wrongdoing is further support for the argument that the programme makers were not prepared to have any inconvenient fact cast doubt on their theory. This is confirmed also by their failure to tell the public of the special interest of their "independent" economist, David Steele, who is not an impartial observer of the economy but a member of Left Currents (formerly the Workers Communist League) and an active political critic of the Government.

TVNZ's Complaints Committee's decisions upon Sir Geoffrey Palmer's complaints were explained to him in a letter dated 6 June 1990 which states, with respect to the paragraphs quoted above:

21. As your allegations were not delineated it was not possible for the Committee to examine this passage of your complaint.

26. A full explanation was obtained by the Committee for the inclusion in the programme of Mr David Steele. He is an economist who has published a substantial analysis of the Business Roundtable entitled "The Business Roundtable II" 1989. His work was published under the aegis of the Trade Union Education



Authority, a statutory body funded by the Government and reporting to Parliament. Mr Steele was at the time a full-time national coordinator for the Trade Union Education Authority. His contribution did not appear to be inspired by his earlier interests or current involvements. The Committee was unable to find that any standards provision had been breached in this regard.

Although the Authority was notified by letter dated 28 June that Sir Roger Douglas was referring his complaint to it, correspondence about procedural matters intervened before the reasons for the reference were elaborated. It was by letter dated 19 September that Sir Roger identified, as the cause of his dissatisfaction with the Complaints Committee's decisions, the above-quoted two paragraphs from TVNZ's letter of 6 June.

With regard to paragraph 21 of TVNZ's letter, Sir Roger stated to the Authority that the broadcaster had not directed itself to the substance of the complaint made by the former Prime Minister in the corresponding paragraph of his letter of formal complaint. In support of his contention that Sir Geoffrey Palmer had made a complaint there, Sir Roger referred to an earlier letter (dated 4 May) which Sir Geoffrey had written to TVNZ. With regard to paragraph 26 of TVNZ's letter, Sir Roger disputed the decision reached by the Complaints Committee.

The Authority asked TVNZ for any further comments about the matters referred to it, receiving in response a brief letter dated 18 October.

In summary, TVNZ repeated in that letter that because Sir Geoffrey did not identify, in paragraph 21 of his letter of 15 May, any inaccuracies or misleading material, the Complaints Committee could not know what he was referring to. The letter then makes a new point:

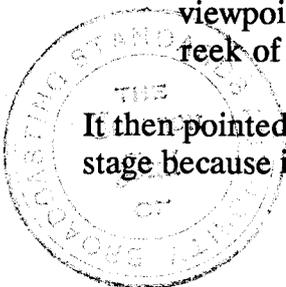
Besides with his statement concerning the matter being "the subject of further legal action" it seemed as if he was implying that there was no need to go into the matter in further detail at that stage as he would be addressing it elsewhere. As it happens this action has been initiated in the High Court.

TVNZ concluded its comments on this matter by submitting to the Authority that it had no case to answer and that no finding should or could be made with regard to this first segment of Sir Roger's complaint.

With regard to Sir Roger's referral of the Committee's decision that no broadcasting standards had been breached by the non-disclosure of Mr David Steele's political affiliations, TVNZ elaborated on paragraph 26 of its letter of 6 June in these terms:

Whether the said economist is biased or otherwise, what he had to say was a viewpoint expressed with some careful thought and fairly. It did not appear to reek of Workers Communist League rhetoric!

It then pointed out that Mr Steele must have had the support of the government at some stage because it funded a body which enabled him to publish a substantial analysis of the



Business Roundtable, concluding:

His qualifications for comment in this regard seemed impeccable.

Having seen TVNZ's 18 October letter, Sir Roger informed the Authority, by letter dated 26 October, that he did not wish to comment further.

### Decision

The first matter referred to the Authority centres on the meaning of paragraph 21 of the formal complaint made by Sir Geoffrey Palmer on behalf of Sir Roger Douglas and others.

In his letter of 19 September to the Authority, Sir Roger drew attention to the fact that eleven days before writing the letter of formal complaint to the Chief Executive of TVNZ, Sir Geoffrey had written to the Chief Executive serving notice of his intention to complain formally. In that 4 May letter, a copy of which the Authority has read, Sir Geoffrey identified the persons on whose behalf he would be complaining and outlined the essence of the complaints which would be made. The main purpose of the letter, however, was to seek the immediate correction by TVNZ of what Sir Geoffrey alleged to be the "most obvious" errors of fact in the programme, eleven of which he identified. His description of the eleventh "most obvious" error is in these terms:

There is an implication in the programme that the Rt Hon David Lange and Hon Roger Douglas were given money or shares by Sir Frank Renouf. (p 25-26 of the transcript)

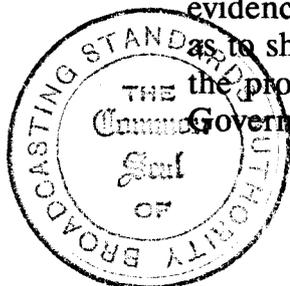
There is no truth to this allegation. Neither the Rt Hon David Lange or the Hon Roger Douglas received a gift of money or shares from Sir Frank Renouf during the campaign period or at any other time.

Sir Roger's letter of 19 September cites the above quoted passage from Sir Geoffrey's 4 May letter to TVNZ and states:

In that paragraph attention is drawn to that part of the programme which alleges that shares were given to R O Douglas by Sir Frank Renouf.

This complaint was further mentioned in the letter of 15 May from Rt Hon Geoffrey Palmer on page 7, paragraph 21.

The Broadcaster did not direct itself to this part of the complaint in its reply dated 6 June. ... In that absence a finding should be made that there was no evidence to substantiate the allegation in the programme and that the innuendo as to shares being given was for the purpose of furthering the general theme of the programme that R O Douglas was accepting bribes for supporting sales of Government assets to business persons making donations to him and the party.



TVNZ's Complaints Committee did not mention Sir Geoffrey's 4 May letter at any stage - even in response to Sir Roger's 19 September letter. Although the Authority would have expected the letter to have been in the Committee's possession when it reached its decisions on Sir Geoffrey's complaint, it is unaware of the facts of that matter. However, whether or not the Committee knew of the 4 May letter by the time it decided Sir Geoffrey's complaint, it is the Authority's view that the Committee's interpretation of and resulting inaction upon paragraph 21 of Sir Geoffrey's letter of formal complaint was not justified.

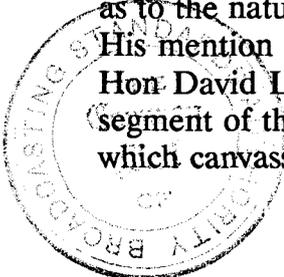
The Authority considers that if the Committee was aware of Sir Geoffrey's 4 May letter at the time it came to decide his complaints, then it should have realised, from the prominence given in that letter to the programme's allegedly inaccurate implication that Mr Lange and Sir Roger Douglas had received a gift of money or shares from Sir Frank Renouf, that paragraph 21 of the letter of formal complaint was intended to frame a complaint about the truth and accuracy of that same part of the programme. But even if the Committee was unaware of Sir Geoffrey's earlier letter, it is the Authority's view that its conclusion that paragraph 21 of the letter of formal complaint was worded too vaguely to constitute a complaint was reached too hastily, for the following reasons.

Sir Geoffrey stated in paragraph 21 that "similar inaccuracies" occurred in the programme with respect to the "private financial position of the Rt Hon David Lange and the Hon Roger Douglas". Insofar as the Committee may have been confused by Sir Geoffrey's reference to "similar" inaccuracies, the obvious place to seek clarification was the immediately preceding paragraphs of his letter of complaint. There, Sir Geoffrey had alleged instances of the programme's failure to check facts and had questioned the motives of the programme's makers in that regard, asking - as he did numerous times in the letter - what could have inspired the programme except a preconceived thesis that there existed a conspiratorial relationship between the Labour Government and named members of the business community.

Sir Geoffrey's allegation that the programme as a whole was inspired by a "conspiracy thesis" was spelt out by him very plainly in the early paragraphs of his letter of complaint. There, he stressed that TVNZ's consideration of the complaints must be undertaken by viewing the programme as a whole and that the complainants' principal concern - with the programme's "conspiracy thesis" - must not be lost sight of. The remainder of his letter is then clearly presented to be identifying specific examples of, what Sir Geoffrey termed, the "three central pillars" of the alleged conspiracy thesis.

In light of the contextual background which Sir Geoffrey so carefully supplied to paragraph 21 of his complaint, it seems plain that he was there alleging that the inaccuracies referred to had occurred as a result of the same alleged "conspiracy thesis".

Further, the Authority cannot understand why the Committee might have been confused as to the nature of the programme content referred to by Sir Geoffrey in paragraph 21. His mention of the programme's treatment of the "private financial position of the Rt Hon David Lange and the Hon Roger Douglas" leaves no room for doubt about the segment of the programme in question: there was only one segment of the programme which canvassed any aspect of the private financial positions of those two men.

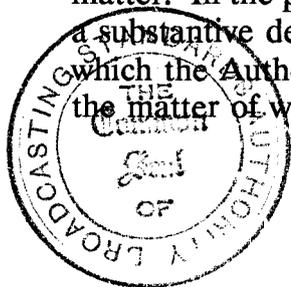


In support of its interpretation of paragraph 21 of Sir Geoffrey's letter of formal complaint, the Committee argued to the Authority that Sir Geoffrey's reference to "further legal action" being pursued with respect to the inaccuracies "seemed" to imply that he was not formally complaining about those inaccuracies but, instead, was informing TVNZ that the matter would be prosecuted elsewhere. The Authority agrees that Sir Geoffrey's reference to "further legal action" - the only such reference in his lengthy letter of complaint - does generate confusion as to his intentions. However, because TVNZ's Complaints Committee had doubts about Sir Geoffrey's intentions in this regard (it stated that Sir Geoffrey's choice of words "seemed" to imply that he was not making a formal complaint) and because it was also in doubt about the nature of the inaccuracies referred to by Sir Geoffrey in paragraph 21 of his letter of formal complaint, it is the Authority's view that, rather than unilaterally deciding that Sir Geoffrey was not making any complaint there, the Committee should have sought clarification directly from Sir Geoffrey.

Had the Committee sought that clarification, the Authority believes it would have been informed that paragraph 21 of Sir Geoffrey's 15 May letter was indeed intended to frame complaints about both the truth and accuracy and the motives behind the inclusion of the segment of "For the Public Good" which dealt with the shareholdings of Mr Lange and Sir Roger Douglas. That is the assertion made to the Authority by Sir Roger, on whose behalf the complaint was made and, in the Authority's view, it is consistent with the wording used by Sir Geoffrey in paragraph 21 and throughout his letter of formal complaint. Further, Sir Geoffrey's 4 May letter supports that interpretation.

Having determined that TVNZ's Complaints Committee should not have reached the conclusion that it did as to the meaning of paragraph 21 of Sir Geoffrey's letter of formal complaint, it follows that the Authority considers that the Complaints Committee should have determined the complaints which were made there. The first complaint alleges that standard 1 of the TV Programme Standards was breached by the programme's implications that Mr Lange and Sir Roger Douglas were given shares or money by Sir Frank Renouf. The second complaint, directed at the programme's motives, amounts to an assertion that standard 6, which requires balance, impartiality and fairness, was breached by the same segment of the programme, viewed in the context of the programme as a whole.

The question remains as to what the Authority can and should do about the Complaints Committee's failure to determine Sir Geoffrey's complaints. Sir Roger submitted, in essence, that the Authority should, on its review and investigation of the Complaints Committee's inaction in this regard, find a breach of both standards 1 and 6. The Authority, however, considers that such a course is not open to it. In its view, except in the case of privacy complaints made directly to the Authority, it is not empowered by the Broadcasting Act 1989 to decide whether a breach of broadcasting standards has occurred unless and until the broadcaster concerned has reached its own decision on the matter. In the present situation, TVNZ's Complaints Committees has not reached such a substantive decision. Rather, after interpreting Sir Geoffrey's complaint in a manner which the Authority considers was unjustified in the circumstances, it failed to address the matter of whether a breach of broadcasting standards had occurred.



Section 13(1)(c) of the Broadcasting Act 1989 makes provision for this kind of situation. By its terms the Authority is empowered, when it decides that a complaint is justified in whole or in part, to make:

An order referring the complaint back to the broadcaster for consideration and determination by the broadcaster in accordance with such directions or guidelines as the Authority thinks fit.

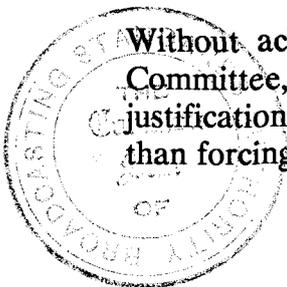
It has been mentioned earlier that the truth of the allegations made in "For the Public Good" about Mr Lange's and Sir Roger Douglas's shareholdings will be in issue in, at least, the defamation actions commenced by those men. Because it considers that s.19A of the Broadcasting Act 1989 removes any cause for TVNZ to be concerned by the Authority's exercise of its s.13(1)(c) power in the present circumstances, the Authority resolved, at its meeting on 11 and 12 February 1991, to deal with the first part of Sir Roger's complaint by exercising the power to refer back to TVNZ the complaints made by Sir Geoffrey Palmer in paragraph 21 of his 15 May letter of formal complaint.

A question of timing then arose. The Authority wished to publish its Decisions on the remaining complaints about "For the Public Good" in one document yet its proposed Order under s.13(1)(c) of the Broadcasting Act would require TVNZ to make a decision on an aspect of the original complaint. Moreover, it was conceivable that Sir Roger Douglas might not be satisfied with TVNZ's decision and would refer the matter to the Authority for investigation and review.

Therefore, in light of these circumstances, the Authority further resolved at its February meeting to give advance notice to TVNZ and Sir Roger of its intention to exercise its s.13(1)(c) power with respect to the complaint about the programme's treatment of the shareholdings of Sir Roger Douglas and Mr Lange. It was hoped that the advance notice would enable TVNZ's Complaints Committee to consider the complaint speedily, giving Sir Roger the opportunity, should he be dissatisfied with the Committee's decision, to refer the complaint to the Authority for investigation and review prior to the conclusion of its deliberations on the remaining complaints about "For the Public Good".

Accordingly, by letter dated 22 February 1991, the Authority informed TVNZ and Sir Roger Douglas of its decision to exercise its s.13(1)(c) power in the present matter. However, by letter dated 4 March, TVNZ responded that its Complaints Committee had determined not to consider the merits of the complaint which the Authority had resolved to refer back to it. The reasons for this stance were, first, the Committee's (incorrect) assumption that the Authority had reached its decision in reliance on Sir Geoffrey Palmer's letter of 4 May and, secondly, the alleged injustice which would occur if the Authority was later called upon to review the Committee's decision. It was alleged that, if that happened, the Authority would be conducting a "pre-trial" of a matter in issue in court proceedings.

Without acknowledging any merit in the arguments raised by TVNZ's Complaints Committee, the Authority recognises that the Committee's stance creates an impasse the justification for which, or the lack of it, can be decided only by the High Court. Rather than forcing that result and thereby further complicating an already complex situation,



the Authority has determined to defer the operation of its Order made pursuant to s.13(1)(c) of the Broadcasting Act.

**Accordingly, the Authority refers back to TVNZ's Complaints Committee, for its consideration and determination as soon as the defamation actions commenced by Sir Roger Douglas and Mr David Lange have been concluded, the complaints which it has determined were framed in paragraph 21 of Sir Geoffrey Palmer's letter of formal complaint.**

The second matter referred to the Authority by Sir Roger Douglas concerns the absence of any acknowledgment of the political affiliations of Mr David Steele, an economist interviewed on "For the Public Good" and captioned "David Steele, Economist". TVNZ's Complaints Committee found that the absence of any such acknowledgment was not in breach of the broadcasting standards which regulate television. Sir Roger asserted, in his letter to the Authority of 19 September, that -

the failure to place Steele's affiliated connections before the public was unbalanced reporting.

Having considered the arguments raised by Sir Geoffrey Palmer in the original complaint as well as those of TVNZ's Complaints Committee, the Authority has concluded that this aspect of the broadcast of "For the Public Good" did not breach the obligation, imposed by standard 6 of the Television Programme Standards:

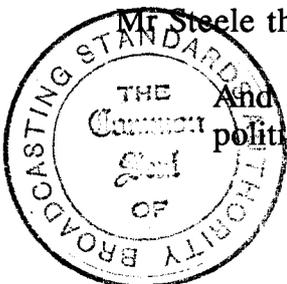
To show balance, impartiality and fairness in dealing with political matters, current affairs and all questions of a controversial nature.

The Authority agrees with TVNZ that David Steele's contribution to the programme did not appear to be inspired by any interests or involvements which may have been adverse to the policy of the Government of the day. Further, in its view, the remarks made by Mr Steele on the programme were, for the very large part, uncontroversial. In the first segment in which he appeared in the programme, Mr Steele explained the Business Roundtable's heightened activity in promoting a set of policies on economic and social matters ranging beyond the industrial arena. In the other segment, Mr Steele elaborated on the topic, introduced by the reporter and already commented on by a former Prime Ministerial advisor, of the Roundtable's ability to lobby the government effectively. He stated that very close personal links existed between a number of people in the Business Roundtable and -

people in government in the bureaucracy, say in Treasury, and with key people in both the major political parties and that's an influence which is going on all the time. It's a very close personal influence.

Mr Steele then stated:

And I think then further from that as well is what you call the power of the political cheque book whereby um...the Business Roundtable firms are making



substantial donations to both of the major parties and um...naturally enough the ah...he who pays the piper calls the tune and there is a tendency for them to want to get their ah...those donations um...reflected in the policy positions that government adopt.

Immediately after this segment from Mr Steele's interview, an extract from an interview with former Prime Minister Mr Lange was screened in which he stated that there was "a wonderful sort of almost ah...incestuous liaison" in the ideology of major business interests and the Treasury. Mr Lange's concluding words in that interview extract were:

What I'm saying is that there is a very, very vigorous ah...coalition proposing certain principles ah...with which I do not concur, ah...which I think a vast number of New Zealanders if they knew about them wouldn't concur but which have actually won favour and gained currency.

The Authority considers that much of what Mr Steele stated on "For the Public Good" was both related to and in line with the comments made by the former Prime Ministerial advisor (whose political affiliations were not identified) and by Mr Lange - whose affiliations are well known. Had Mr Steele not qualified his remark about "he who pays the piper calls the tune" in the way that he did (ie by saying that there was a "tendency" for donors to political parties to "want" to get their donations reflected in government policy), the Authority may have taken a different view of the matter before it. However, as things stand, Mr Steele's comments were either confirmed by Messrs Gaynor and Lange or were expressed in terms which made them innocuous.

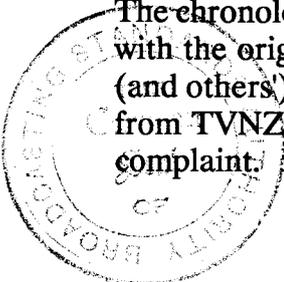
The Authority appreciates that there are situations in which commentators upon a proposal or ideology which is being discussed in the media should, for the sake of balance, have their political affiliations revealed. In its view, however, the present situation - in which the actual comments made could not reasonably be thought to be inspired by the commentator's political affiliations - did not call for the commentator to be labelled in accord with those affiliations.

For the foregoing reasons, the Authority declines to uphold Sir Roger Douglas' complaint that the broadcast of "For the Public Good" was unbalanced for failing to acknowledge the political affiliations of Mr David Steele, an economist interviewed on the programme.

**DECISION NO: 17/91 - Complainant: Hon. Richard Prebble**

### **Introduction**

The chronological sequence of correspondence relevant to Mr Prebble's complaint begins with the original letter of formal complaint, dated 15 May 1990, which was made on his (and others') behalf by the former Prime Minister (Sir Geoffrey Palmer). Next is a letter from TVNZ dated 6 June which explained its Complaint Committee's decisions on the complaint. Mr Prebble referred his complaint to the Authority by letter dated 27 June



but correspondence about procedural matters intervened before the reasons for his referral were elaborated in a letter dated 5 September. Finally, by letter dated 9 November, TVNZ made comments upon Mr Prebble's reasons for referring his complaint to the Authority.

The relevant correspondence will not be summarised here in chronological order because TVNZ, in its 9 November letter, challenged the right of Mr Prebble to refer to the Authority several of the matters upon which he seeks its ruling, on the basis that they were not raised in the original complaint. It is convenient, therefore, to turn directly to the matters raised by Mr Prebble in his 5 September letter and to examine, with respect to each one, TVNZ's 9 November comments, the original complaint's relevance to the matter and any relevant decision of TVNZ's Complaints Committee.

### **Summary of Mr Prebble's Complaint to the Authority and Correspondence Relevant to each Issue**

1. In his letter to the Authority of 5 September, Mr Prebble states:

Television New Zealand's Complaints Committee did not adequately consider the complaints as they apply to me. ...

It is central to the standards set out in the Broadcasting Act that broadcasters must allow those who are the subject of a broadcast to be able to comment either on the broadcast itself or very soon after.

He then quotes s.4(1)(d) and (e) of the Broadcasting Act 1989, which provide:

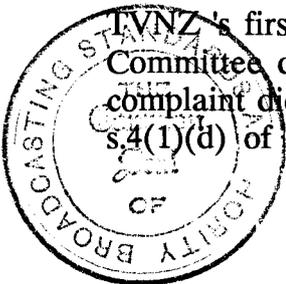
(1) Every broadcaster is responsible for maintaining in its programmes and their presentation, standards which are consistent with -

...  
(d) The principle that when controversial issues of public importance are discussed, reasonable efforts are made, or reasonable opportunities are given, to present significant points of view either in the same programme or in other programmes within the period of current interest; and

(e) Any approved code of broadcasting practice applying to the programme.

In summary, Mr Prebble's first complaint is that TVNZ's Complaints Committee responded inadequately to the original complaint by not finding broadcasting standards breached by the failure of the makers of "For the Public Good" to approach him for comment when he was implicated by the programme in its thesis that the Government sold assets in return for favours.

TVNZ's first comment in response, in its 9 November letter, is that if its Complaints Committee did not consider Mr Prebble's concerns fully, it was because the original complaint did not spell them out fully. It then asserts that Mr Prebble cannot rely on s.4(1)(d) of the Broadcasting Act 1989 in referring his complaint to the Authority



because that provision was not mentioned by Sir Geoffrey Palmer in his letter of formal complaint and was not considered by the Complaints Committee when reaching its decisions.

It is true that Sir Geoffrey's letter of formal complaint did not cite s.4(1)(d) of the Broadcasting Act amongst the various provisions of the Act and Code of Broadcasting Practice for Television which are there mentioned. Standards 4 and 6 of the Code were cited, however, requiring television broadcasters:

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

Further, apart from a general reference early in the letter to the programme's attribution of motives and attitudes to Members of Parliament without providing them with the opportunity to comment, Sir Geoffrey specifically highlighted the programme's makers' failure to seek comment from Mr Prebble on two matters.

First, in paragraph 15 of his 15 May letter, Sir Geoffrey referred to the segment of "For the Public Good" in which the reporter stated:

David Lange may have believed he could now rest easy but in the nights following Richard Prebble's sacking dirty work was afoot.

At the SOE office confidential government information was shredded. Frontline has spoken to one staff member who was asked for a password so files could be deleted.

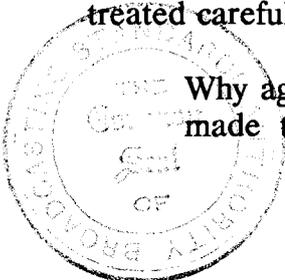
One can only speculate at the reason for the destruction of such files. It seems unlikely, however, to have been in the public good.

The letter of complaint stated:

With respect there was no need for a competent journalist of honest intent to speculate. She could have asked the Minister of SOE's. No interview was sought with the Minister.

Secondly, paragraph 19 of Sir Geoffrey's letter of complaint is devoted to that segment of "For the Public Good" in which the reporter said that Mr Prebble and Sir Roger Douglas supported the Brierley's led consortium which was ultimately successful in purchasing Air New Zealand. After stating that it was a matter of public record that both men preferred the British Airways bid and emphasising that all bidders had been treated carefully, Sir Geoffrey asked with regard to the programme's statement:

Why again was this not checked with the people concerned? No attempt was made to check this fact with the people concerned. They were given no



opportunity to respond on the programme to what must be considered a serious allegation.

TVNZ's Complaints Committee's decisions, insofar as they deal with the complaint that the programme's makers failed to seek comment from Mr Prebble on the two topics outlined above, are explained in its 6 June letter.

First, with regard to the reporter's statement about the shredding of information, it is stated:

There was no imputation that the departing Minister of State Owned Enterprises was responsible for this incident, hence there was no allegation against him. As a consequence no interview was sought with him.

Secondly, with regard to the reporter's statement about the bidder for Air New Zealand preferred by Sir Roger Douglas and Mr Prebble, it is stated:

As Mr Douglas had declined to be interviewed there was no possibility of such matters being canvassed with him.

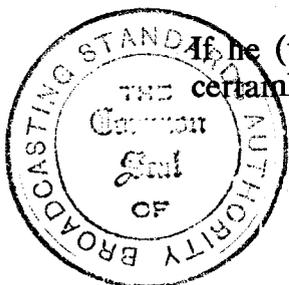
2. Mr Prebble's letter of 5 September asserts next that the Complaints Committee's response to Sir Geoffrey Palmer's complaint was inadequate for not finding broadcasting standards breached by TVNZ's failure, after the broadcast of "For the Public Good", to give Mr Prebble the opportunity to defend himself against the allegations made about him in the programme.

Having already quoted s.4(1)(d) and (e) of the Broadcasting Act 1989, Mr Prebble explains his reasons for complaining, as follows:

...Television New Zealand should have interviewed me after running the programme. They interviewed the Prime Minister and the former Prime Minister but declined for some reason to interview me. ... the Complaints Authority [ie TVNZ's Complaints Committee] should have instructed Television New Zealand to give me an opportunity to be heard. Offering rights to the PM was not adequate to meet the needs of my case.

TVNZ, in its letter of 9 November, responds by asserting again that Mr Prebble cannot invoke s.4(1)(d) of the Broadcasting Act when it was not raised in the original complaint. But, turning to the substance of the complaint, TVNZ observed that it felt it was sufficient that the Prime Minister and former Prime Minister were seen to comment after the programme, pointing out that since the Prime Minister had acted on behalf of Mr Prebble in making the complaint, it seemed that his comments after the broadcast were also made on Mr Prebble's behalf. In its words:

If he (the Prime Minister) was not speaking on behalf of the complainant he certainly did not make that clear. ...



If what the Prime Minister said following the programme did not represent what he (the complainant) would wish to have had him say, the company can hardly be culpable!

It should be noted that TVNZ's references to Sir Geoffrey Palmer commenting about "For the Public Good" after its broadcast, do not refer to comments made on the *Frontline* programme of 10 June 1990, in which a summary was presented of the Complaints Committee's decisions upholding complaints about the programme and statements by some of the complainants were read out: Sir Geoffrey declined TVNZ's offer to be interviewed on that programme and to have a statement read out.

3. Mr Prebble's 5 September letter goes on to identify five statements or allegations made in "For the Public Good" which he asserts breached the broadcaster's obligation, imposed by standard 1 of the Television Programme Standards, to be truthful and accurate on points of fact. The correspondence relevant to each is summarised below.

(a) Mr Prebble challenges the truth of the reporter's statement that he owed his reappointment to Cabinet to the influence of the collective will of a "coterie of the powerful" comprising:

politicians, business leaders, heads of SOEs and government departments and ex-Treasury officials

stating:

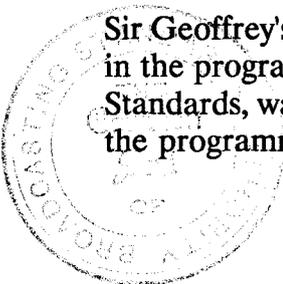
I am in Cabinet because the Parliamentary party as a whole elected me.

TVNZ responds, in its 9 November letter, by observing that nowhere in Sir Geoffrey Palmer's original complaint was the statement about Mr Prebble's reappointment to Cabinet specifically identified as a cause for concern. As a result it argues that Mr Prebble was seeking to raise a new matter with the Authority, which was beyond its power to address.

It is true that Sir Geoffrey's original complaint did not specifically identify the statement about Mr Prebble's reappointment to Cabinet as a cause for concern. In framing his complaint, Sir Geoffrey made plain that it was not his intention to analyse "For the Public Good" line by line. Instead he focused on the overall impression given by the programme which, he said, was one of "secretive wrongdoing by the government" and which, he asserted, was deliberately created by:

the accumulation of half truths, lies, and innuendoes presented to the accompaniment of cliched graphics and music.

Sir Geoffrey's complaint, therefore, while giving numerous examples of statements made in the programme which, he alleged, breached standard 1 of the Television Programme Standards, was plainly focused more on his broader allegations that, taken in its entirety, the programme's broadcast breached standards 4 and 6 (previously quoted).



As was explained in its letter of 6 June, TVNZ's Complaints Committee's found Sir Geoffrey's complaint justified in several matters of detail. However, the standards breaches which it recognised did not, in its view, add up to provide support for Sir Geoffrey's broader allegations that the programme's motives and overall style themselves breached broadcasting standards.

One final matter is relevant to Mr Prebble's present complaint. Another complainant to TVNZ had specifically challenged the truth and accuracy of the programme's statement about the cause of Mr Prebble's reappointment to Cabinet and the Complaints Committee upheld that complaint.

(b) Mr Prebble's next truth and accuracy complaint relates to :

The allegations in the programme that I have breached the trust placed in me by the electorate and permitted the process of democracy in New Zealand to be subverted by my involvement in selling the Government's economic policy and state assets to big business in return for financial donations to the Labour Party.

Mr Prebble states that those allegations were factually wrong: that state businesses under his control were sold by competitive tender, that he gave no favours to any bidder and was very careful with the taxpayers' assets.

In its 9 November letter, TVNZ again asserts that Mr Prebble is seeking to raise material not covered by the original complaint and which is, as a result, beyond the Authority's power to examine. In particular, it argues that Sir Geoffrey Palmer, in making allegations about the programme's "conspiracy thesis", did not specifically allege that Mr Prebble was implicated by that thesis.

Sir Geoffrey's complaint in this regard was framed generally, ie without reference to particular members of the Government. Relevant excerpts from his letter of 15 May include:

3. When considering the complaint then, the programme must be viewed as a whole. It is obvious when viewing the programme as a whole, and when the misrepresentations and lies used in the making of the programme are known, that there was a conscious use of words, music and graphics to support a pre-determined basic thesis. That thesis was that the people's trust in the Government had been misplaced because it had sold both its economic policy and state assets in return for financial donations to certain ministers acting in their capacity as party politicians.

6. The conspiracy theory developed by Frontline was that in return for financial donations to the 1987 election campaign the Government pursued an economic policy that has ruined the economy of New Zealand while enriching a few capitalists through giving to them state owned assets. ...

22. The third feature of the conspiracy theory was the allegation of misuse of



campaign funds. There is an implication throughout the programme that not only was money given in exchange for State Owned Enterprises but that whatever money was given was used improperly by Ministers and by implication Party officials and anyone who was associated with the campaign.

In its 6 June letter, TVNZ's Complaints Committee explained that it did not accept that the programme's thesis was that public trust in the Government had been misplaced because it had sold policy and state assets in return for campaign donations. Nor did it find any evidence supporting Sir Geoffrey's alleged "conspiracy theory". However, it did have "serious misgivings" about presentation and production techniques used in the programme, citing as "shortcomings in the programme" the inappropriate use of music for dramatic effect and the restaging of events "in a way that created a mood not in proper keeping with what appeared to have occurred". As a result, the Committee found that standard 12's requirements of objectivity and impartiality were breached.

Finally, with regard to paragraph 22 of Sir Geoffrey's complaint:

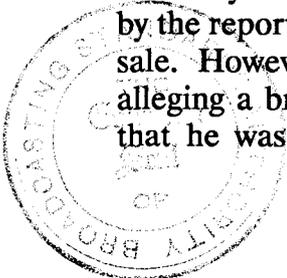
The Committee was unable to find any suggestion of impropriety by Ministers as seems to be implied by this passage of your letter. However, it did acknowledge, as in the case of other complaints from business leaders, that it was possible to draw an implication that big business stood to receive favours in the SOE sales process as a result of donations... .

As a result of those implications, the Committee considered that the programme should have included an explanation of the competitive tendering process by which state assets were sold and that the omission of any such explanation breached the fairness requirement of standard 4 of the Television Programme Standards.

(c) Mr Prebble's third challenge to the truth and accuracy of "For the Public Good" relates to the reporter's statement that he approved of the sale of Air New Zealand to the Brierley's led consortium, which statement, he alleges, implied that his approval was given to pay back big business for favours he had improperly obtained. Contrary to the reported statement, Mr Prebble states that he opposed the Brierley/Qantas bid and went so far as to file an objection to it with the Commerce Commission.

TVNZ, in its 9 November letter, observes that its Complaints Committee, in dealing with Sir Geoffrey Palmer's complaint, found that the programme's statement about Mr Prebble's support for the Brierley's consortium breached the truth and accuracy requirement of standard 1. As a result, it argues that the Authority has no task to perform: the Committee had upheld the substance of the complaint which Mr Prebble seeks to refer to the Authority.

Certainly TVNZ's Complaints Committee did find that a breach of standard 1 occurred by the reporter's statement about Mr Prebble's preferred bidder in the Air New Zealand sale. However, Sir Geoffrey's original complaint about this matter was not confined to alleging a breach of standard 1. It is plain from paragraph 19 of his letter of 15 May that he was using the reporter's statement as an example of an untruth which lent



credence to the "conspiracy theory of wrongdoing over the sale of SOEs" which, he alleged, ran through the programme. As has been noted above, the Complaints Committee rejected Sir Geoffrey's allegation that a "conspiracy theory" fashioned the programme.

(d) Mr Prebble's fourth challenge is to the reporter's statement in the programme that he attempted to get rid of the Chairman and a Board member of Air New Zealand and replace them with a merchant banker and a Brierley's representative. Mr Prebble alleges that the statement implied that he sought to give the Brierley's consortium an improper advantage in purchasing Air New Zealand. Contrary to the reported statement, Mr Prebble states that he recommended the reappointment of the Chairman and the Board member.

Again, this matter is one which TVNZ states, in its 9 November letter, was not raised in the original complaint and which, therefore, was not considered by its Complaints Committee and cannot be considered by the Authority.

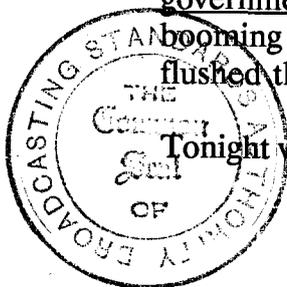
Sir Geoffrey Palmer's complaint did not specifically mention the reporter's statement about Mr Prebble's attempt to alter the composition of Air New Zealand's Board. Paragraph 19 of the complaint was devoted to the reporter's statement that Messrs Prebble and Douglas preferred the Brierley's bid for Air New Zealand (see (c) above) but no mention was made of the further, related statement about which Mr Prebble now complains to the Authority. This omission was curious because in the letter dated 4 May which Sir Geoffrey wrote to the Chief Executive of TVNZ, informing of his intention to complain formally and requesting the urgent correction of the "most obvious" errors of fact in "For the Public Good", Sir Geoffrey listed as the sixth of the eleven cited "most obvious" errors, the reporter's statement about Mr Prebble's attempt to change the composition of Air New Zealand's Board.

Because TVNZ's Complaints Committee focused on Sir Geoffrey's 15 May letter of formal complaint and responded only to points there made, it did not address the matter of the truth or otherwise of the reporter's statement about Mr Prebble's attempt to change the Air New Zealand Board membership.

(e) The final challenge made by Mr Prebble to the truth and accuracy of "For the Public Good" concerns the reporter's statements about Government information being destroyed in the SOE office. The first statement, which occurred in the introduction to the programme, was:

Behind the facade of open government business donations to election campaigns have been made on the understanding particular policies would continue, sensitive government records have been destroyed, cabinet ministers have invested in the booming sharemarket and, in the pursuit of power, millions of dollars have flushed through the political system leaving no trace.

Tonight we examine whether the connections between those who seek power and



those who pay for their quest are truly for the public good. [Emphasis added.]

The only other reference to the destruction of government records occurred towards the end of the programme when, as already quoted, the reporter stated:

... in the nights following Richard Prebble's sacking dirty work was afoot.

At the SOE office confidential government information was shredded. Frontline has spoken to one staff member who was asked for a password so files could be deleted.

One can only speculate at the reason for the destruction of such files. It seems unlikely, however, to have been in the public good.

Mr Prebble asserts that the clear implication from the reporter's statements was that documents were destroyed in order to conceal some corrupt activities. Contrary to this, he maintains that no confidential Government records were destroyed and that the actions of SOE office staff in clearing out their desks and computer programmes were perfectly normal and proper.

TVNZ's 9 November letter states that a press statement issued by Mr Prebble on 1 May 1990 verified that documents were disposed of and files purged at the SOE office at the relevant time. However, it continues:

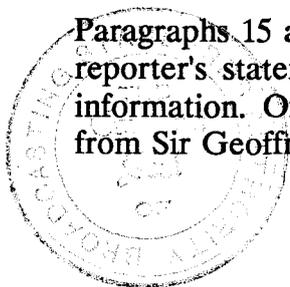
... as this matter is the subject of allegations to be determined in the High Court, and the company will be involved in vigorously defending the complainant's allegations there, the company does not have any further comment to offer on this aspect at this stage.

The relevant part of the press statement referred to by TVNZ is in these terms:

I am assured from my interviews with then-members of the SOE office that no Government documents were destroyed. The only documents disposed of were personal papers. The SOE staff also advise me that, in order to prevent themselves being drowned in paper, they regularly purged their files as most of these documents are duplicated in Treasury.

As a matter of practice, Government documents are not sent to the public tip. The shredder is infrequently used and documents are normally burnt under secure conditions. While I was Minister for State-Owned Enterprises, we did not maintain a registry function. This was done by Treasury.

Paragraphs 15 and 16 of Sir Geoffrey Palmer's original complaint were devoted to the reporter's statements in "For the Public Good" about the destruction of Government information. Of relevance to Mr Prebble's present complaint are the following passages from Sir Geoffrey's letter of 15 May:



The four staff members of the SOE Unit at the relevant time will sign affidavits to state no "sensitive government records" were destroyed.

The truth is that with the change of Minister staff left the office. In the course of leaving they had to hand over records and clear personal files inside the computing system. One staff member who left immediately was asked for his password to clear his files and retrieve relevant government files. This was done. There was no great mystery about the incident, except in the minds of those seeking to manufacture a conspiracy. The deletion of one's personal correspondence, (not to mention the records of the office's racing syndicate) hardly seem to rate the description of "sensitive government records."

TVNZ's Complaints Committee's did not uphold Sir Geoffrey's complaint in this regard. Its 6 June letter explained that the reporter accepted information in good faith but it agreed that she had insufficient details to make the speculative comment that the destruction of records at the SOE office was "unlikely ... to have been in the public good". It was critical of the reporter's "phrasing and descriptions" in the relevant part of the programme, particularly the speculative comment quoted above, but considered this merely:

... to have been imprudent and not in the best interests of objective journalism.  
... it was not considered to be in breach of a code requirement.

Further, it highlighted a conflict of evidence on the matter, noting that:

Mr Prebble had told reporters (Press 3 May), that his former staff denied the claim that they were asked for a password so files could be deleted. Yet your [ie Sir Geoffrey Palmer's] letter at paragraph 16 states that "One staff member who left immediately was asked for his password to clear his files and retrieve relevant government files." This is consistent with information received by the reporter who also was advised that the staff member was asked for the password late at night - it could not wait. This had raised the question as to why the hurry late at night. According to the reporter there was an inference to be drawn from the timing of the request.

4. After setting out the above five matters, Mr Prebble's 5 September letter states:

The statements made on the Frontline programme and the dramatic sinister way in which music and visual effects were used were contrary to TVNZ's own code of practice.

TVNZ, in its 9 November letter, treats Mr Prebble's reference to the programme's visual and audio effects as a separate complaint and reiterates that its Complaints Committee found that presentation and production techniques used in "For the Public Good" breached the objectivity and impartiality requirements of standard 12 of the Television Programme Standards.



## Decision

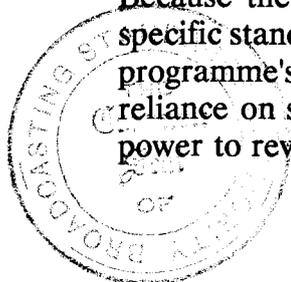
1. The first matter requiring decision concerns the failure of the makers of "For the Public Good" to seek comment from Mr Prebble on subjects discussed on the programme in a manner which, he alleges, reflected adversely upon him. The subjects specifically identified by Sir Geoffrey Palmer in the original complaint as those on which Mr Prebble's comments should have been sought are (i) the alleged destruction of sensitive Government records and (ii) Mr Prebble's alleged support for the Air New Zealand bid of the Brierley's led consortium.

TVNZ has asserted that Mr Prebble has no basis for referring this complaint to the Authority because s.4(1)(d) of the Act, which Mr Prebble cited in his letter of referral, was not cited in the original letter of complaint and so was not considered by the Complaints Committee. It argued that the Authority cannot invoke s.4(1)(d) in investigating and reviewing any decision of the Committee which may be relevant to Mr Prebble's complaint as any such decision was based on other broadcasting standards provisions.

The Authority agrees with TVNZ that because s.4(1)(d) was not cited by the original complainant it cannot provide the basis for an investigation and review of the Complaints Committee's decisions. However, TVNZ seems to have overlooked the fact that, in referring his complaint to the Authority, Mr Prebble not only cited s.4(1)(d) but also s.4(1)(e) of the Broadcasting Act 1989. The latter provision requires broadcasters to maintain standards consistent with any approved code of broadcasting practice. The Authority considers that if the original complaint invoked, in relation to the programme's failure to seek comment from Mr Prebble, any of the Television Programme Standards contained in the Broadcasting Codes of Practice, then Mr Prebble's referral of the complaint, in reliance on s.4(1)(e) of the Act, would be properly based.

The original complaint by Sir Geoffrey alleged breaches of s.4(1)(e) of the Act and, specifically, of standards 1, 4, 6, 12, 13 and 17 of the Television Programme Standards. In dealing with the matter of the reporter's statement that Mr Prebble supported the Brierley's bid for Air New Zealand, TVNZ's Complaints Committee found that a breach of standard 1's requirement of truth and accuracy had occurred. However, it rejected Sir Geoffrey's contentions, both with regard to that statement and with regard to the statements about government information being destroyed, that Mr Prebble's comments should have been sought by the programme's makers. Although the Committee did not specifically identify the standard or standards against which it assessed and rejected those further contentions of Sir Geoffrey's, the Authority considers that the standards invoked by Sir Geoffrey are standards 4 and/or 6. In brief, those standards require just and fair dealing with any person referred to in a programme and balance, impartiality and fairness in dealing with political matters and current affairs.

Because the Authority is of the view that the original complaint alleged breaches of specific standards of the Code of Broadcasting Practice for Television with regard to the programme's makers' failure to seek Mr Prebble's comments, it considers Mr Prebble's reliance on s.4(1)(e) of the Broadcasting Act to be sufficient to invoke the Authority's power to review the Complaints Committee's decisions on the matter. Those decisions



will be examined in turn.

(i) The first subject upon which Sir Geoffrey alleged that Mr Prebble should have been asked for comment was the alleged destruction of what the reporter described as "sensitive government records" and "confidential government information". TVNZ's Complaints Committee decided that there was no imputation in the programme that Mr Prebble, the departing Minister of State-Owned Enterprises, was responsible for the alleged destruction and, because of this, supported the programme's makers' decision not to interview him on the matter.

The Authority does not agree that the statements did not contain imputations against Mr Prebble. In its view, the only person other than Mr Prebble who could have been directly responsible for the "dirty work afoot" in the SOE Unit in the nights following his removal from Cabinet was the new Minister for State-Owned Enterprises. However, the programme gave no indication that the new Minister had been involved in the alleged destruction of "confidential government information". As a result, the Authority considers that the statement that confidential information was destroyed in the SOE Unit immediately after Mr Prebble lost the SOE portfolio implied that the departing Minister had something to hide and which he had ordered to be erased from the records.

Because it is the Authority's view that the programme implied that Mr Prebble was responsible for the "dirty work afoot" in the SOE Unit immediately after his removal from Cabinet, it considers that the broadcaster did not deal fairly with Mr Prebble in broadcasting the allegations about the destruction of government records without first seeking his comments on the matter. Both standards 4 and 6 of the Television Programme Standards require broadcasters, in the preparation and presentation of programmes, to act fairly.

In Decision No: 26/90, the Authority analysed the respective ambits of standards 4 and 6. It concluded that standard 6's more general requirements of "balance, impartiality and fairness" captured the essence of a complaint invoking both standards in respect of the same grievance when the programme complained about dealt with "political matters, current affairs and ... questions of a controversial nature." Sir Geoffrey's original complaint cited both standards 4 and 6 and either or both could have supported his complaints about the failure of the makers of "For the Public Good" to provide Mr Prebble with the opportunity to comment.

Had Sir Geoffrey not identified standard 6 as a basis for his original complaint, the Authority would have found a breach of standard 4 established in the present circumstances. However, because of the duplication of the content of those standards when the programme in question deals with current affairs, the Authority's decision has been reached in terms of standard 6.

(ii) The second subject upon which Sir Geoffrey alleged that Mr Prebble should have been asked for comment was that of Mr Prebble's preference for a bidder for Air New Zealand. TVNZ's Complaints Committee's response is notable for its failure to address this point. It merely comments that Sir Roger Douglas, who was also stated by the



reporter to prefer the Brierley's-led bid, declined to be interviewed so that there was no possibility of the matter being canvassed with him.

Since Mr Prebble was not asked for comment on any matter that was discussed in "For the Public Good", including the matter of his preferred purchaser of Air New Zealand, and since the reporter's statement about the matter was not true and accurate - as TVNZ's Complaints Committee found - the Authority has concluded, again, that TVNZ did not deal fairly with Mr Prebble in broadcasting the reporter's statements without first seeking his comments on the matter.

As is explained in (i) above, the Authority's decision has been reached in terms of standard 6 of the Television Programme Standards.

**For the above reasons, the Authority upholds the complaint that standard 6 of the Television Programme Standards was breached by the broadcast of the allegations made in "For the Public Good", about the destruction of government records and Mr Prebble's preferred bidder for Air New Zealand, without an opportunity first being given to Mr Prebble to comment.**

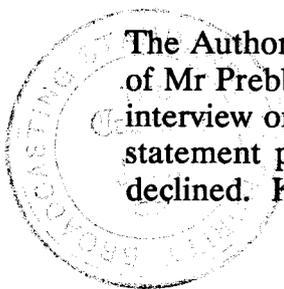
2. The next matter requiring decision concerns the failure of TVNZ, after the broadcast of "For the Public Good", to provide Mr Prebble with an opportunity to defend himself against the allegations made about him on the programme. TVNZ has challenged the right of Mr Prebble to rely on s.4(1)(d) of the Broadcasting Act in referring this matter to the Authority: that provision was not cited in the original complaint and so was not considered by its Complaints Committee.

Again, the Authority notes that Mr Prebble, in his 5 September letter, also cited s.4(1)(e) of the Act before elaborating the present complaint. By so doing, the Authority considers he invoked the Television Programme Standards relied on by Sir Geoffrey Palmer in the original complaint. Standard 6, which requires broadcasters to show balance, impartiality and fairness in dealing with political matters and current affairs, was amongst those cited by Sir Geoffrey. The Authority observes that standard 6 may well be sufficiently general in its terms to require broadcasters to do what s.4(1)(d) explicitly requires, ie to maintain standards consistent with:

The principle that when controversial issues of public importance are discussed, reasonable efforts are made, or reasonable opportunities are given, to present significant points of view either in the same programme or in other programmes within the period of current interest.

Apart from questioning whether Mr Prebble has any basis for referring his complaint to the Authority, TVNZ challenges the merit of the complaint, arguing that because Sir Geoffrey Palmer made the original complaint on behalf of Mr Prebble, it was sufficient that he was seen to comment after the programme's broadcast.

The Authority considers there are stronger grounds for TVNZ's challenge to the merit of Mr Prebble's complaint: the fact that TVNZ offered Sir Geoffrey a "Right of Reply" interview on the Frontline programme of 10 June as well as the opportunity to have a statement prepared by him read out on that programme - offers which Sir Geoffrey declined. Having read the correspondence outlining the terms of TVNZ's offers to Sir



Geoffrey (relevant extracts from which are set out below), the Authority is satisfied that the offer of the interview was made with the genuine intention of providing Sir Geoffrey with the opportunity to "set the record straight" not only with regard to his own concerns about "For the Public Good" but also those of the other complainants on whose behalf he had complained.

The final terms of the offer made by TVNZ were reached after considerable correspondence between Sir Geoffrey Palmer and TVNZ in early June 1990. It began with TVNZ's 1 June letter, in which an "interim response" was made to Sir Geoffrey's complaint, informing him briefly of the decisions reached by the Complaints Committee on his complaints and promising elaboration of the Committee's reasons - which followed in TVNZ's 6 June letter. At the conclusion of the 1 June letter, it was stated:

... the Committee has recommended that a statement be read on Frontline outlining the areas where it found reason to uphold your complaint. This would also include areas where the Committee felt the programme had either been imprudent or breached journalistic practice, but not at a sufficient level to uphold a complaint against broadcasting standards.

It has further recommended that following such written explanation you should be given the opportunity to be interviewed on behalf of yourself, the government and the other members of Parliament on whose behalf you made the complaint. This would relate to the process of the sale of State Owned Enterprises as well as the role of businesses making donations to political parties.

Contact will be made with your office within the next few days in this regard.

Contact was made with Sir Geoffrey's press secretary by Mr Norris of TVNZ but, critical of the terms proposed by TVNZ for his participation in the 10 June Frontline programme, as well as TVNZ's Complaints Committee's treatment of his complaint, Sir Geoffrey wrote to the Chief Executive of TVNZ on 7 June. Of relevance to the proposal made by Mr Norris are the following passages from Sir Geoffrey's letter:

On 18 May you stated publicly through a media release that there would be an apology given and a right of reply. ...

There is, [Mr Norris] says, to be an apology - but what is to be said is not disclosed. In addition, I am to be interviewed by Mr Ross Stevens for about 12 minutes, on subjects and within limits dictated by TVNZ.

This is not a "Right of Reply". It is a transparent attempt to re-start the "Frontline" allegations, under the editorial and production control of people already found wanting.

In particular, how anyone who has read Mr Stevens' statements about the programme in the "NZ Women's Weekly" could imagine he has the independence and impartiality to participate in a "Right of Reply" I do not know.



I will have none of this. If and when TVNZ shows it can conduct a proper inquiry, and offer a true "Right of Reply", I will consider the matter again.

The Chief Executive of TVNZ responded, by letter dated 8 June, stating first that he believed there had been a misunderstanding about the Complaints Committee's role and the proposed content of the 10 June *Frontline* programme. As to the latter, it was stated that the complaints about "For the Public Good" which had been upheld by the Committee would be the subject of an apology and that TVNZ had offered those who had a complaint upheld the chance to have a statement, written by them and covering the faults found by the Committee, read on air.

The Chief Executive continued:

In addition, we offered you the opportunity to be interviewed on the matters related to this programme.

... On this occasion, as my public statements have said, a programme was seriously flawed. We will apologise and I would like you to assist us in trying to establish in an interview the true relationship between big business and the Labour Party. I believe that is the responsible way to proceed.

If you do not wish to appear I invite you to prepare a statement to be read on the programme.

Finally, *Frontline* is no longer "under the editorial control of people already found wanting". It has a new Acting Executive Producer. A new Executive Producer will be appointed as soon as possible and there is to be a new Editor of Current Affairs. Mr Stevens' credentials for impartiality as Presenter are impeccable. There is absolutely no motive in inviting you to be interviewed other than a desire to set the record straight.

[Emphasis in original.]

Sir Geoffrey responded the same day, as follows:

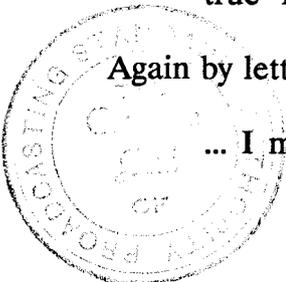
I note your comments as to the apology (text still not given) and the interview. Your description of the interview is not what Mr Norris offered my press secretary.

Mr Stevens, in the article I cited, described the programme in the following terms: "I'd say that programme was *Frontline* at its best." He has never to my knowledge withdrawn that claim.

I remain willing to agree to an apology, and a statement or interview which is a true "Right of Reply".

Again by letter dated 8 June, the Chief Executive of TVNZ replied:

... I must emphasise that I believe it would be to your advantage and to the



advantage of those whom you represent in the complaints, if you were to provide us with a written statement to be read on air. I can also assure you that an interview would indeed give you the opportunity of a "Right of Reply".

Mr Norris has confirmed that Mr Stevens will discuss with you the questions before the programme and Mr Norris, who is overseeing the structure of the programme, will ensure that it is fair and assist you to explain your point of view.

Finally, I have spoken to Mr Stevens in the last 24 hours and I know that he would now not claim that this programme "was Frontline at its best". I think the fact that he will be presenting the "Right of Reply" programme will emphasise that he now recognises its deficiencies.

I trust that this further reassurance will encourage you to take the opportunity.

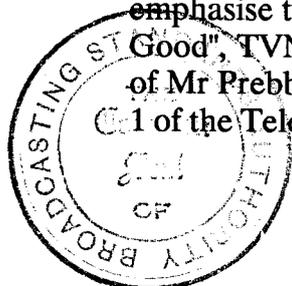
As was stated earlier, the Authority is satisfied that TVNZ's offer to Sir Geoffrey Palmer to participate in the 10 June *Frontline* programme was made on terms sufficiently favourable to Sir Geoffrey to enable him to "set the record straight" and, in the process, canvass the concerns of those on whose behalf he had complained, including Mr Prebble. It has concluded, therefore, that the responsibility for TVNZ's failure, after the broadcast of "For the Public Good", to publicise Mr Prebble's concerns about the programme does not lie primarily with TVNZ. In the Authority's view, the company made genuine and reasonable attempts to secure Sir Geoffrey's participation in the 10 June programme and Sir Geoffrey, being the original complainant, was the appropriate person for TVNZ to approach for comment both about his own reaction to the programme and that of those on whose behalf he had complained.

Accordingly, the Authority declines to uphold the complaint that a breach of broadcasting standards occurred by TVNZ's failure, after the broadcast of "For the Public Good", to give Mr Prebble the opportunity to defend himself against allegations made about him on the programme.

3. The five "truth and accuracy" complaints referred to the Authority by Mr Prebble will be dealt with in turn.

(a) The first centred on the reporter's statement attributing Mr Prebble's reappointment to Cabinet to the collective will of a "coterie of the powerful" which included business leaders, heads of SOEs and government departments and ex-Treasury officials. TVNZ has argued that this statement was not identified in Sir Geoffrey Palmer's complaint as a cause for concern and, as a result, was not considered by the Complaints Committee and cannot be the subject of the Authority's consideration.

The Authority agrees with the result of TVNZ's analysis. However, it wishes to emphasise two matters. First, in deciding another complaint made about "For the Public Good", TVNZ's Complaints Committee found the reporter's statement about the cause of Mr Prebble's return to Cabinet to be untruthful and, as a result, in breach of standard 1 of the Television Programme Standards. Thus the substance of Mr Prebble's complaint



has already been upheld by TVNZ.

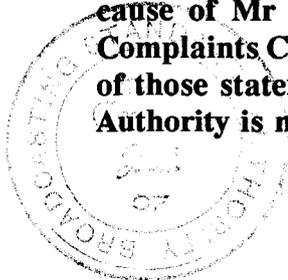
Secondly, the Authority finds it ironic that it is TVNZ's Complaints Committee's inadequate consideration of Sir Geoffrey's complaint which has prompted Mr Prebble to make the present complaint only to suffer the Authority's ruling that it has no power to deal with the matter. To explain, Sir Geoffrey's complaint was clearly expressed to be primarily concerned with the broad allegations that the programme, taken as a whole, was unbalanced and unfair. Sir Geoffrey emphasised that because the complainants did not want their main concern - with the overall effect of the programme - lost sight of, the complaint would not analyse the script line by line and make more numerous, specific, allegations of standards breaches. Thus, the examples supplied in the complaint (of allegedly untruthful statements and improper conduct by the programme's makers) were not represented to comprise an exhaustive list of flaws in the programme: they were supplied primarily to support the broad allegations of the programme's lack of balance and fairness.

However, TVNZ's Complaints Committee did not respond to Sir Geoffrey's generally focused complaints in the manner in which it should have done, ie by considering the effect of the programme as a whole. Instead, by focusing narrowly upon the examples from the programme cited in the complaint, the Committee rejected Sir Geoffrey's primary allegations that the broadcast of the programme breached TVNZ's obligations to show balance and fairness in dealing with political matters and current affairs. Thus the Committee's focus achieved what Sir Geoffrey emphasised - and the Authority endorses - should not have been done in the assessment of his complaints: it treated the examples which were supplied for the primary purpose of supporting the general allegations that the programme lacked balance and fairness as if they alone - in isolation from one another - were of primary concern to the complainants.

Therefore, the Authority considers that TVNZ's Complaints Committee's improper response to Sir Geoffrey's complaints has caused Mr Prebble to challenge now the truth of details in the programme which could well have been specifically challenged in the original complaint but which were omitted because of the complainants' overriding desire to make plain their principal grievance with the programme. Accordingly, while the Authority has no power to consider Mr Prebble's complaint, it sympathises with the reasons which inspired Mr Prebble to seek to refer the matter to it.

Further, the Authority observes that, had TVNZ acknowledged in its 9 November letter to the Authority that the substance of Mr Prebble's complaint had already been upheld by it, in the context of another complaint, Mr Prebble may have been persuaded to withdraw the complaint thereby precluding the need for the Authority to give attention to the matter and, because of the circumstances, to emphasise that Mr Prebble's complaint has merit while being beyond the Authority's power to consider.

**Because the original complaint did not allege to be untruthful the statements about the cause of Mr Prebble's reappointment to Cabinet and because, as a result, TVNZ's Complaints Committee was not required to, and did not, consider whether the broadcast of those statements breached standard 1 of the Television Programme Standards, the Authority is not empowered to investigate and review the matter.**



(b) Mr Prebble's second truth and accuracy complaint is the most general. He asserted that the programme made false allegations that he breached the trust of the electorate and permitted the process of democracy to be subverted by his involvement in selling economic policy and state assets to big business in return for financial donations to the Labour Party. TVNZ responded, again, that this went beyond the original complaint, was not considered by its Complaints Committee and cannot be considered by the Authority.

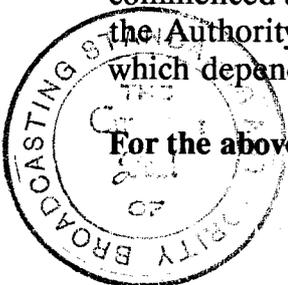
In Decision No: 26/90, the Authority determined that the broadcast of "For the Public Good" gave the untruthful impression that the New Zealand Business Roundtable had engaged in covert activity to subvert democratic government. Necessarily, that determination indicates the Authority's view of the impression given by the programme of the propriety of the post-1987 Labour Government's conduct but it does not assist Mr Prebble in the present allegation that he, personally, was implicated in breaching the trust of the electorate and subverting the process of democracy. The Authority considers that it should defer any consideration of this more specific matter because of its relevance to the defamation action commenced by Mr Prebble. Once that action is concluded, the Authority will consider whether Mr Prebble's present complaint is properly referred to the Authority and, if so, its merits.

**For the above reasons, the Authority defers its consideration of the complaint alleging the untruthfulness of allegations made in "For the Public Good" that Mr Prebble breached the trust of the electorate and subverted the democratic process.**

(c) The third complaint about the truth and accuracy of "For the Public Good" related to the reporter's statement that Mr Prebble (and Sir Roger Douglas) supported the Brierley's led bid for Air New Zealand, which statement, Mr Prebble alleged, implied that his approval was given to pay back big business for favours. TVNZ's response was that its Complaints Committee upheld Mr Palmer's original complaint about the untruth of the statement and that, therefore, the Authority has no task to perform with regard to this complaint.

As was noted in the course of summarising the correspondence on this complaint, Sir Geoffrey Palmer's original complaint was not confined to alleging the untruth of the reporter's statement about the Ministers' support for the Brierley's Air New Zealand bid. It also made plain that the statement supported the larger allegation that a "conspiracy theory of wrongdoing over the sale of SOEs" motivated the programme. TVNZ's Complaints Committee did not uphold that larger complaint. In the Authority's view, which is contrary to TVNZ's, Mr Prebble's reference to the Authority of the alleged implications of the statement raises that larger complaint about the motivation for the programme. Inevitably, however, that matter will be in issue in the defamation actions commenced as a result of the programme's broadcast and, as has been explained earlier, the Authority has resolved to defer its consideration of broadcasting standards matters which depend on disputed questions of fact likely to be in issue in those actions.

**For the above reasons, the Authority defers its consideration of the complaint about the**



**implications of the reporter's statement that Mr Prebble supported the Brierley's led bid for Air New Zealand.**

(d) The fourth complaint challenged the truth of the reporter's statement that Mr Prebble attempted to alter the composition of the Board of Air New Zealand, which statement, Mr Prebble alleged, implied that he sought to give the Brierley's consortium an improper advantage in purchasing Air New Zealand. Again, TVNZ responded that this matter was not raised in the original complaint so was not considered by the Complaints Committee and cannot be considered by the Authority.

As was stated earlier, the omission of this matter from Sir Geoffrey's complaint is curious. In the letter to the Chief Executive of TVNZ written eleven days before the letter of formal complaint, Sir Geoffrey listed eleven of, what he termed, the "most obvious" errors of fact in "For the Public Good" and requested their immediate correction. The sixth error there cited was the reporter's statement about Mr Prebble's attempt to change the Air New Zealand Board. Despite the prominence afforded the statement in his earlier letter, Sir Geoffrey did not cite it in his formal complaint as a example of an untruth supporting his larger allegation of the programme's "conspiracy thesis". The other alleged untruths listed in the earlier letter, however, were cited in the formal complaint.

For whatever reason the reporter's statement about Mr Prebble's attempt to alter the Air New Zealand Board was not mentioned in the formal complaint, its omission meant that TVNZ's Complaints Committee was not required to consider its truth or otherwise. Accordingly, the complaint now sought to be referred to the Authority was not part of the original complaint and cannot be investigated and reviewed by the Authority.

**For the above reasons, the Authority is not empowered to investigate and review the complaint about the untruth and the implications of the reporter's statement that Mr Prebble attempted to alter the composition of the Air New Zealand Board.**

(e) The final truth and accuracy allegation complaint centred on the reporter's statements about the destruction of Government information which, Mr Prebble alleged, implied that documents were destroyed to conceal corrupt activities. TVNZ's Complaints Committee did not uphold the original complaint about this matter but was critical of the reporter's "phrasing and descriptions", especially her speculative comment that the alleged destruction of records seemed unlikely to have been in the public good. Further, it highlighted a conflict of evidence on the matter of a staff member of the SOE Unit being asked for a password to clear his files, observing that Mr Palmer had confirmed that this had occurred whereas Mr Prebble had denied it.

The situation with regard to this allegation is similar to that with regard to (b) and (c) above.

**For the above reasons, the Authority defers its consideration of the complaint as to the untruthfulness of the reporter's statements about the destruction of confidential Government information.**



4. The final matter mentioned in Mr Prebble's referral of his complaint to the Authority was the "dramatic sinister way in which music and visual effects were used contrary to TVNZ's own code of practice." In its 9 November letter, TVNZ observed that, in deciding Sir Geoffrey Palmer's original complaint, its Complaints Committee found a breach of standard 12 of the Television Programme Standards had occurred by reason of the presentation and production techniques used in "For the Public Good". Accordingly, it argued, Mr Prebble was seeking to refer a complaint already upheld by the broadcaster.

The Authority does not believe that Mr Prebble intended to refer this matter separately to the Authority but, instead, intended to make the point - stressed so often in the original complaint - that in assessing his complaints, the Authority should consider the programme as a whole and be especially mindful of the production techniques employed therein. In reaching the limited number of decisions which it has already reached on the substance of Mr Prebble's complaints, the Authority has given that point due consideration. When it comes to consider the substance of those of Mr Prebble's complaints which have been deferred until the conclusion of the relevant defamation actions, the Authority will, likewise, give due weight to the effect of the programme as a whole insofar as it bears on the complaints.

It remains only to note - as has been noted in earlier Decisions - that standard 12 of the Television Programme Standards, which applies specifically to "news" programmes, is not relevant to a programme such as "For the Public Good". Therefore, TVNZ's Complaints Committee's decision that the special effects employed revealed a lack of objectivity and impartiality in the programme should have been made in terms of the broader standard 6, which applies to programmes dealing with political matters and current affairs and requires balance, impartiality and fairness to be shown therein.

Although the Authority has upheld Mr Prebble's complaint that he should have been given an opportunity to comment on some matters before the programme was broadcast, it has deferred its consideration of several of his complaints. Further, it is mindful of the penalties already imposed by the Authority on TVNZ as a result of the broadcast of "For the Public Good". For those reasons, the Authority declines, in this Decision, to make an Order pursuant to s.13 of the Broadcasting Act 1989.

**DECISION NO: 18/91 - Complainant: Rt. Hon. David Lange**

#### **Introduction**

Mr Lange's complaint, as with the complaints from Sir Roger Douglas and Mr Prebble, began with the former Prime Minister's (Sir Geoffrey Palmer's) letter of formal complaint to TVNZ dated 15 May 1990. TVNZ's response of 6 June recorded its Complaints Committee decisions. Mr Lange referred his complaint to the Authority for investigation and review in a letter dated 2 July 1990.



By letter dated 24 July 1990, Mr Lange advised the Authority that he was referring to it all the complaints made in Sir Geoffrey Palmer's letter of formal complaint which had not been upheld by TVNZ's Complaints Committee. He chose to elaborate on only three of those complaints, namely those which focused on allegations made in "For the Public Good" about:

- (i) Mr Lange's use of a jet funded by UEB;
- (ii) Mr Lange's support for a proposal whereby the Labour Party's debt to the advertising agency Colenso Communications Ltd would be written off; and
- (iii) State assets and Government policies being bought by donation to the Labour Party's election campaign.

With respect to each of these matters, Mr Lange challenged both the assertions made in the programme and the sufficiency of TVNZ's Complaints Committee's investigation of the complaints about them. His letter was referred to TVNZ.

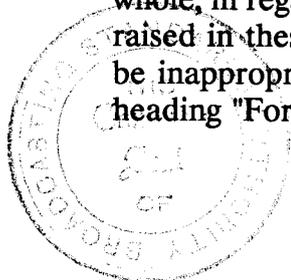
TVNZ, in its response dated 18 October, confined its comments about Mr Lange's referral to the three issues specifically raised in his letter. Neither that letter nor the other correspondence will be summarised as most of the matters aired are covered by the Authority's earlier stated conclusions that:

- The Authority will not decide disputed questions of fact which are likely to in an issue in the defamation actions for the reason that the High Court is in a superior position to determine those questions; and
- The Authority will defer considering those broadcasting standards matters which depend on such disputed questions of fact until the conclusion of the relevant defamation actions. At that stage, it will adopt the Court's findings of fact in making its broadcasting standards decisions. If, however, any disputed questions of fact are left unresolved at the conclusion of the Court actions, eg because of settlements reached between the parties, the Authority will consider afresh how best it should proceed.

### **Disputed Factual Matters**

As noted, a considerable number of the points covered in Sir Geoffrey Palmer's letter of 15 May 1990, all of which are included in Mr Lange's complaint, raise matters which are likely to be in issue in the defamation proceedings.

Paragraphs 2 - 9 and 29 of Sir Geoffrey's letter complained about the programme as a whole, in regard to both its style and themes. The Authority believes, because the issues raised in these paragraphs go to the crux of the defamation proceedings, that it would be inappropriate to comment on these points beyond what has been stated under the heading "For the Public Good" given by way of introduction to these Decisions.



In addition, as disputed matters of fact are involved, the Authority declines, at this stage, to comment further on the following matters raised in Sir Geoffrey's letter:

- Paragraph 10 concerning the manner in which the *Frontline* reporter obtained the interview with the Prime Minister.
- Paragraphs 11, 27 and 28 which discuss the Labour Party's funding for the 1987 election campaign.
- Paragraphs 12 and 13 which relate to the dinner hosted by the Prime Minister at Vogel House.
- Paragraphs 15 and 16 about the alleged destruction of records at the SOE office.
- Paragraph 17 which deals with a meeting attended by Mr Lange in Auckland.
- The issues raised in paragraph 18 about Mr Lange's travel in an aircraft funded by UEB.
- Paragraph 19 concerning the views of Sir Roger Douglas and Mr Prebble about the preferred purchaser for Air New Zealand. (These have been discussed in some measure in the Decisions on the complaints from these two former Cabinet Ministers.)
- Paragraph 20 and the comments about the Labour Party debt to Colenso Communications Ltd.
- Paragraph 21 and the allegations about Mr Lange's and Sir Roger Douglas' business dealings with Sir Frank Renouf. (In the decision in Sir Roger's complaint, the Authority has ordered that the original complaint about these allegations be referred back for TVNZ's Complaints Committee's consideration at the conclusion of Sir Roger's and Mr Lange's defamation actions.)
- Paragraph 22 about the misuse of campaign funds.
- Paragraphs 23 and 24 which discuss alternative methods of funding political parties and raise issues relating to the programme's balance.
- Paragraph 26 dealing with Mr David Steele's political affiliation. (This has been ruled upon in relation to Sir Roger Douglas' complaint.)

**For the above reasons, the Authority defers its consideration about the complaints from Mr Lange which depend on disputed questions of fact until the conclusion of the relevant defamation actions.**



## Privacy Issue

The one matter raised by Mr Lange, which is not deferred and is not discussed in the Decisions on Sir Roger Douglas' or Mr Prebble's complaints, is contained in Paragraph 14 of Sir Geoffrey Palmer's letter.

The complete paragraph reads:

14 The extent to which the people making the *Frontline* programme had become convinced of their conspiracy theory and the lengths to which they were prepared to go to try and give it some substance, was demonstrated by the deceitful way in which they filmed Vogel House. Mr Chris Wilkes the Director gained access to the Ministry of Transport building in Lower Hutt through lying to the Acting General Manager of the Civil Aviation Division of the Ministry. He stated he wanted to film the traffic flows from the roof of the building. Further, he wanted to film them after dark. The truth was that he and the makers of *Frontline* intended to invade the privacy of myself and members of the public who were my guests at dinner, by filming them without their permission. The way in which the sequence was filmed and presented was clearly designed to imply every person there was involved in some wrongdoing. It is now clear that the only wrongdoing was the lying by Mr Chris Wilkes and his abuse of the trust of a public employee who gave him access to the building under false pretences. Again no permission was sought to film Vogel House. It was obviously much more exciting to act like someone out of "Boy's Own". The question must be raised as to whether anyone could ever trust the integrity of Mr Chris Wilkes as a director ever again.

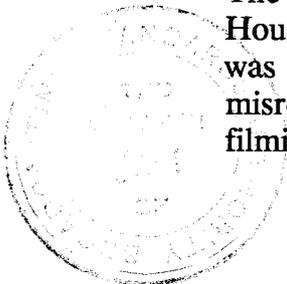
As most of the paragraph raises points which will be addressed in the defamation proceedings, the Authority refrains from making comment. However, insofar as the paragraph refers to an intended invasion of privacy, a broadcasting standards issue is raised which can be separated out from the issues relevant to the defamation actions.

The former Prime Minister's letter of formal complaint specifically alleged a breach of s.4(1)(c) of the Broadcasting Act 1989 which provides:

- (1) Every broadcaster is responsible for maintaining in its programmes and their presentation, standards which are consistent with -
  - (c) The privacy of the individual;

TVNZ replied to this allegation in its 6 June letter of response to the formal complaint. After discussing the filming from the Ministry of Transport buildings, it wrote:

The other shots in the sequence - general shots toward the windows of Vogel House - were taken from a different location and in this regard the Committee was able to confirm that, in obtaining this coverage, no trespass or misrepresentation was involved. It was considered there was nothing illegal in the filming of this sequence.



It was not believed to be in the category of filming private citizens in their private homes when engaged in strictly private activities, as Vogel House is not currently seen as being used as your private residence. In recent years it has been apparent that you and your predecessor used it only on public or semi-public occasions and then by you only in your capacity as Prime Minister. On the night in question Vogel House had become the venue for a dinner paid for by the Labour Party, hosted by yourself and, given the political nature of the dinner, it was considered to be a matter of public interest. The extent to which the privacy of you or your guests was invaded was insignificant - no sound was recorded - and any privacy factor needed to be balanced against the public interest. This part of your complaint was not upheld.

### Decision

In Decision No: 5/90, the Authority examined the concept of privacy and section 4(1)(c) of the Broadcasting Act 1989 in considerable detail. Summarised briefly, the Authority concluded that the following principles were relevant to s.4(1)(c):

- an individual's privacy cannot be protected by law to such an extent as to override the legitimate interests of other members of society;

- in striking a balance between the interests of individual privacy and the public's right to know, s.4(1)(c) protects against the public disclosure of private facts (and perhaps public facts) provided that the facts disclosed would be highly offensive or objectionable to a person of ordinary sensibilities; and

- in striking a balance between individual privacy and the public's right to know, s.4(1)(c) protects an individual against unreasonable intrusion, ie the intentional interference with another's interest in solitude or seclusion. This could include intrusion into a person's home either physically or by the use of microphones or other listening devices. The intrusion would have to be of a prying nature, be offensive and occur in a private place.

The facts the Authority considers are relevant to the present complaint are:

- \* the guests were invited to Vogel House which, at the time, was the Prime Minister's official residence;
- \* the guests were not identified nor were they identifiable as they arrived;
- \* some guests were identifiable when filmed through the windows;
- \* the filming of the guests through the window took place from a site on which, TVNZ wrote, they were legally entitled to be; and
- \* no sound was recorded while the guests were filmed through the window.

Taking into account these facts and applying to them the principles of privacy outlined



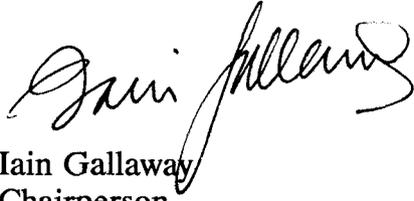
above, and putting aside the issues which may be relevant to the defamation proceedings, the Authority has concluded that the privacy complaint cannot be upheld.

**For the reasons set forth above, the Authority declines to uphold Mr Lange's complaint that the broadcast of the film of guests arriving at, and inside, Vogel House breached s.4(1)(c) of the Broadcasting Act 1989.**

To repeat the point made on several occasions above, it is stressed that this determination applies only to the complaint that this particular part of the programme breached the privacy standard. It does not refer to the pretence adopted by TVNZ to gain access to the Ministry of Transport building, nor any contribution which the filming of the guests arriving at Vogel House, or inside the building, may have had to the style or theme of the programme. However, they are issues which could be central to the defamation proceedings.

Sir David Beattie and Mr G.F. Whitehead were co-opted as persons whose qualifications and experience were likely to be of assistance to the Authority. They took part in the deliberations of the Authority but the Decisions are those of the permanent Members.

Signed for and on behalf of the Authority



Iain Gallaway  
Chairperson



29 April 1991