

BEFORE THE BROADCASTING STANDARDS AUTHORITY

Decision No: 132/93

Dated the 16th day of October 1993

IN THE MATTER of the Broadcasting Act 1989

AND

IN THE MATTER of a complaint by

A.D. TIMMS

of Wellington

(on behalf of the New Zealand Labour Party)

Broadcaster

TELEVISION NEW ZEALAND
LIMITED

I.W. Gallaway Chairperson

J.R. Morris

R.A. Barraclough

L.M. Dawson

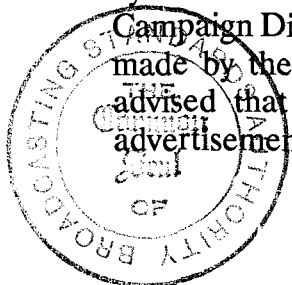
DECISION

Introduction

A National Party advertisement was broadcast on TV2 on 11 October 1993 about 9.00pm.

By letter faxed to TVNZ on the afternoon of 13 October 1993, the General Secretary of the Labour Party, Mr A.D. Timms complained to TVNZ that the advertisement was factually inaccurate and accordingly in breach of broadcasting standards. Mr Timms sought its immediate withdrawal and the broadcast of a statement on three occasions advising that it had been withdrawn because it was inaccurate and therefore in breach of the Code of Broadcasting Practice. He noted that under s.8(1)(b) of the Broadcasting Act 1989 broadcasters must respond within 48 hours to a formal complaint regarding an "election programme".

Responding to the formal complaint, TVNZ sought comment from the National Party by facsimile on 13 October. In its reply dated 14 October 1993, Mr Wayne Eagleson, Campaign Director for the National Party, provided documentation to support the claims made by the National Party. TVNZ, by facsimile to the parties dated 15 October, advised that it had declined to uphold the complaint that the claims made in the advertisement were inaccurate. Dissatisfied with that decision, Mr Timms on behalf of



the Labour Party referred the complaint to the Broadcasting Standards Authority under s.8(1)(a) of the Broadcasting Act 1989, the complaint being received by facsimile on the afternoon of 15 October.

Decision

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

An advertisement for the National Party broadcast on TV2 about 9.00pm on 11 October 1993 contained statements relating to the comparative economic growth rate of New Zealand in relation to other OECD countries in the past and a projection for the future and, in addition, a statement about the fall in the rate of unemployment.

Mr Timms, on behalf of the Labour Party, complained that the advertisement was factually inaccurate in a number of respects and accordingly in breach of the following standards and rules of the Codes of Broadcasting Practice.

TV Advertising Standards

The general principle underlying all television advertising is that it should be decent, legal and truthful.

Advertising Code of Ethics

No advertisement may be misleading or deceptive or likely to mislead or deceive the consumer.

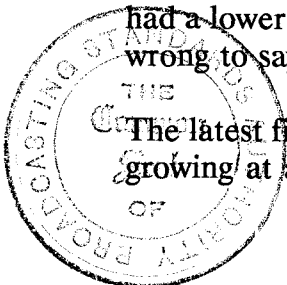
2. **Truthful presentation** - Advertisements must not contain any statement or visual presentation which directly or by implication, omission or ambiguity or exaggerated claim is misleading or deceptive, is likely to deceive or mislead the consumer, or makes false and misleading representation...

The statements identified by Mr Timms as being factually inaccurate were:

- 1 **"Economic growth, which three years ago was the worst in the OECD, is now the second best and set to climb further still."**

Mr Timms provided an extract from the *OECD Economic Outlook*, June 1993, which showed that New Zealand's growth rate in 1990 was 0.5 per cent, and that four countries had a lower rate and one was the same. Therefore, Mr Timms concluded, it was clearly wrong to say that New Zealand's growth rate was the lowest in the OECD.

The latest figures, Mr Timms continued, showed that at least two OECD countries were growing at a faster rate than New Zealand and one country was growing at the same



rate. Therefore, it was clearly wrong to state that New Zealand's growth rate was now the second best in the OECD.

In response, Mr Eagleson, on behalf of the National Party, provided an extract from two other OECD publications titled *OECD Historical Statistics 1960-1990* published in 1992 which supported its claim that New Zealand had the worst rate of growth in 1990 and the *OECD Economic Outlook* published in July 1993 which showed New Zealand's projected economic growth rate to be the second fastest in the OECD.

TVNZ described the issue as being one of the interpretation of currently available data, and took the view that vigorous discussion on current data was part of the healthy and robust political debate that occurs in the election period in all stable democracies. It acknowledged that the figures were open to the interpretations given by both National and Labour and also observed that the time span referred to was not specific, thus making it impossible to conclude that the claim in the advertisement was incorrect.

TVNZ referred to decisions of the Advertising Standards Complaints Board (92/186, 93/89 and 93/156) and endorsed the principle established in those decisions that:

robust debate in a democratic society is to be encouraged by the media and advertisers and that the Codes should be interpreted liberally to ensure fair play by the contestants.

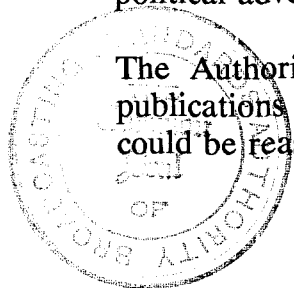
Accordingly, it declined to uphold this part of the complaint.

At the outset, the Authority recalled that in a letter dated 17 September 1993 to political parties, copied to broadcasters, it advised that the approved codes of practice which applied to election programmes included the Broadcasting Standards Authority programme standards and the Advertising Standards Authority advertising rules. Due to legislative changes on 1 July 1993, the Television Advertising Standards are no longer included in the Codes of Broadcasting Practice. However the standard cited above from the former TV Advertising Code is clearly subsumed by Rule 2 of the ASA Advertising Code of Ethics.

The Authority observed that the statistical information supplied by both National and Labour was sourced from reputable OECD publications, the ones supplied by National dated 1992 and July 1993 and the one from Labour dated June 1993. It acknowledged that measures for economic growth may be prepared from different bases and that the figures were open to interpretation.

The Authority also noted that the concept of context was an important consideration in respect of programme standards. In the context of an election campaign, the public knows that each party is casting a favourable light on any claims made about itself in political advertisements and consequently judges them accordingly.

The Authority also noted that the National Party acknowledged that the OECD publications contained different figures. It agreed that its interpretation was one that could be reasonably made.



Furthermore, it took into account the Advertising Standards Complaints Board's ruling on the decisions cited above, agreeing that lively and vigorous debate was the hallmark of the democratic process.

The Authority declined to uphold this aspect of the complaint.

2 "Unemployment has fallen in 7 of the last 8 months"

Referring to a publication titled *Statistics New Zealand*, Mr Timms disputed National's claim that unemployment had fallen. The official measure of unemployment in New Zealand, he maintained, was the Household Labour Force survey which is released on a quarterly basis. The most recent result showed that in the June 1993 quarter there was an increase in unemployment from 9.8 to 9.9 per cent.

Mr Timms pointed out that the figures upon which the National Party was relying were the Labour Department's Registered Unemployed statistics and that this measure was not the official measure of unemployment. He claimed that to use this as an indicator was misleading and further, that it was in breach of the Code of Ethics not to identify which measure was used to make the claim.

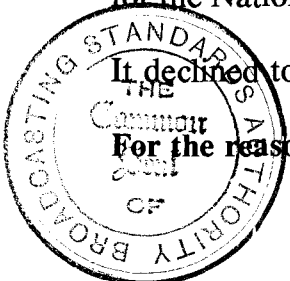
Mr Eagleson, for the National Party, responded that Labour was correct to deduce that its claim was based on the figures for registered unemployed, but rejected the allegation that using those statistics was misleading. He noted that the figures were prepared by the Labour Department and were widely quoted within the media as an accepted measure of unemployment. He denied that the omission of the word "registered" created an impression that was misleading, observing that the Labour party itself had used the same series of statistics for its own political purposes.

TVNZ accepted the complainant's view that the survey of the Household Labour Force was perhaps a more accurate measure of the level of unemployed but agreed that the advertiser was entitled to use figures from an official and widely reported source such as the Labour Department provided that the figures were accurately quoted. It noted that the Registered Unemployed figures were an "official and significant indicator" of trends in unemployment and that it was reasonable for the National Party to have made use of those figures in its advertising. As with the complaint about the OECD figures, TVNZ acknowledged that the figures were open to interpretation and that in the context of the political debate in the pre-election period, the codes of practice should be interpreted liberally. It declined to uphold the complaint.

After examining the tables provided, the Authority considered that the advertiser was entitled, in the context of a political campaign, to choose any commonly used source for its information. Although it would have been more accurate to state that the numbers related to registered unemployed, in the context, the Authority believed it was legitimate for the National Party to incorporate this often-used set of statistics in its advertisement.

It declined to uphold this aspect of the complaint.

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



Signed for and on behalf of the Authority

JRM

Joanne Morris
16 October 1993



Appendix

The Labour Party's complaint to Television New Zealand Limited

In a letter faxed to TVNZ on 13 October, Mr A. D. Timms of Wellington, General Secretary of the Labour Party, complained about an advertisement, i.e "election programme" under the terms of the Broadcasting Act 1989, which was produced by the National Party and screened on Channel Two at approximately 9:00pm on 11 October 1993.

The complaint was referred under s.8(1)(a) of the Broadcasting Act 1989 and it was noted that broadcasters must respond within 48 hours to a formal complaint regarding an "election programme" [s.8(1)(b)].

Mr Timms claimed two codes had been breached.

TV Advertising Standards

1. The general principle underlying all television advertising is that it should be decent, legal and truthful.

Advertising Code of Ethics

Basic Principles ... No advertisement may be misleading or deceptive or likely to mislead or deceive the consumer..."

2. **Truthful Presentation** - Advertisements must not contain any statement or visual presentation which directly or by implication, omission, ambiguity or exaggerated claim is misleading or deceptive, is likely to deceive or mislead the consumer, or makes false and misleading representation...

He continued:

....these codes make it very plain that even exaggeration that is likely to mislead will be in breach of the Advertising Code of Ethics.

He claimed that the voiceover stated two facts which were inaccurate.

First fact

"Economic growth, which three years ago was the worst in the OECD, is now the second best and set to climb further still".



(a) The OECD estimates New Zealand's real GDP growth in 1990 was 0.5 per cent. This is a higher growth rate than they estimated for Iceland (0.4); Greece (-0.1); Finland (0.3); Canada (-0.5); and is the same as that for the United Kingdom (0.5). (*OECD Economic Outlook*, June 1993).

[Tables from the publication, supporting these figures, were attached.]

He went on to say that therefore it was clearly wrong to claim that New Zealand's economic growth in 1990 "was the worst in the OECD" and the statement was in breach of the requirement for accuracy. He continued:

(b) The latest figures available show that at least two OECD countries were growing at a faster rate than New Zealand and one country is growing at the same rate. The countries growing at a faster rate are Turkey, with an annual growth rate of 5.9% and Australia with an annual growth rate of 3.3%. The United States is growing at 2.9 percent, the same as Statistics New Zealand's estimate for New Zealand. (Sources: *Eurostat*, August 1993; *The Economist*, October 9 -15, 1993; Statistics New Zealand). [Tables from those publications were attached to support these figures.]

Given those figures he said that it was clearly wrong to state that New Zealand's economic growth is now the second best in the OECD.

Second fact

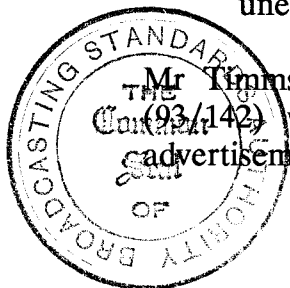
"Unemployment has fallen in 7 of the last 8 months".

Mr Timms said that the official measure of unemployment in New Zealand is Statistics New Zealand's Household Labour Force Survey, released quarterly. The most recent figures for the quarter ending June 1993 showed that there was an increase of 1,000 in the number of people unemployed and an increase in the rate from 9.8 per cent to 9.9 percent. He attached supporting evidence and went on to say that the figures used in the advertisement must refer to the Labour Department's Registered Unemployment statistics. He enclosed a statement from a Department of Labour publication which explained that its figures do not purport to be an official measure of unemployment.

Therefore, he said, the advertisement was either:

- (a) Clearly wrong to assert as a fact that unemployment has fallen in 7 of the last 8 months because that figure is not an official measure of unemployment: the official measure being a quarterly one rather than a monthly one, and showing an increase over the last quarter; and/or
- (b) Clearly misleading or deceptive in that the measure used was not identified in the advertisement; because registered unemployed is not the official measure, the advertisement should have stated that the figures used were registered unemployed, and that is not the official measure of unemployment.

Mr Timms then referred to an Advertising Standards Complaints Board Decision (93/142) which upheld a complaint brought by Ms Helen Clark regarding an advertisement about the health reforms. Mr Timms said that



the Board upheld the complaint, as the result of the use of the word "current" there was "an oversimplification which led to inaccuracy" ...On this occasion it is the absence of the word *registered* unemployed and the use of figures that are not official that lead to the inaccuracy.

Mr Timms asked that TVNZ withdraw the offending advertisement and make a statement three times during the following weeks explaining why the advertisement had been withdrawn, noting that this was the order made by the Broadcasting Standards Authority in similar circumstances in 1990.

TVNZ's response to the formal complaint

TVNZ, as agreed when the Broadcasting Standards Authority and broadcasters discussed the procedures for handling formal complaints invited the producer of the advertisement, in this case the National Party, to comment on the alleged breaches.

National Party submission

In a letter dated 14 October Mr Wayne Eagleson, Campaign Director of the National Party, argued that the statements made in the advertisement were factually accurate and provided documentation supporting them.

1. Economic growth

He said

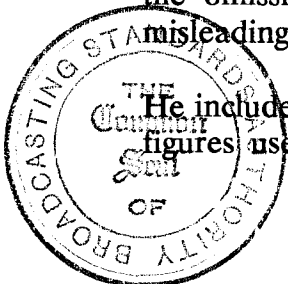
National's ranking of New Zealand's growth performance in 1990 was taken from the OECD publication, *Historical Statistics 1960-1990*. Labour's ranking of New Zealand's growth performance is derived from a different OECD publication. While it is not clear why the two series differ it is likely that they are drawn from differing series of economic growth...

The OECD's *Economic Outlook* released in June 1993 lists New Zealand as the second fastest growing economy in the OECD in 1993. [Several tables with supporting data were attached, including the OECD *Economic Outlook*, annotated July 1993 not June 1993 as referred to in their letter.]

2. Unemployment

Mr Eagleson confirmed that the statement in the advertisement that "unemployment has fallen in 7 of the last 8 months" was based on the Labour Department's Registered Unemployed statistics [tables were enclosed]. He noted that these figures are widely used by the media, are from official sources and are released monthly. He denied that the omission of the term *registered* when referring to the unemployed was either misleading or deceptive.

He included a Labour Party pamphlet with his letter and noted that the unemployment figures used by the Labour Party appeared to have been based on the Registered



Unemployed statistics but had not been identified as such.

TVNZ's Response to the Labour Party

After confirming the rules and standards under which the complaint was assessed and noting that its Complaints Committee had sought a submission from the National Party, TVNZ said in a letter faxed to the Labour Party on 15 October that it

found itself confronted with a mass of figures, many of them contradictory.

It said that it had compared the figures provided by the Labour Party with those provided by the National Party and it was clear that the figures were open to interpretation. It also noted that the advertisement was not absolutely precise about the time span to which it referred.

TVNZ went on to say that the Complaints Committee

was mindful of a principle set down in a number of decisions from the Advertising Standards Complaints Board (92/186, 93/89 and 93/156) which says that "robust debate in a democratic society is to be encouraged by the media and advertisers and that the Codes should be interpreted liberally to ensure fair play by the contestants.

TVNZ acknowledged that the survey of the Household Labour Force is probably a more accurate measurement of the level of unemployment but said that the Committee felt the advertiser was

entitled to use figures from an official and widely reported source such as the Labour Department. A television advertisement is not a vehicle in which the relative merits of pieces of data can be weighed against one another and an advertiser is entitled to use relevant figures, provided they are accurately quoted.

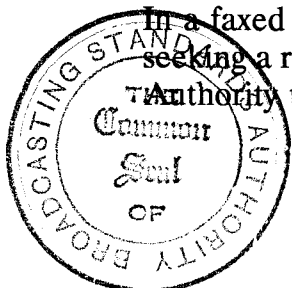
The register is one official and significant indicator of unemployment trends and the Committee did not believe that it could fairly find fault with the National Party for having made use of the figures.

...where rights and wrongs cannot be established with certainty, the codes should be interpreted liberally in the interests of maintaining productive political debate in the period leading up to the election.

Accordingly, TVNZ declined to uphold the complaint.

Labour Party's Complaint to the Broadcasting Standards Authority

In a faxed letter dated 15 October Mr Timms referred the complaint to the Authority seeking a review of TVNZ's decision under s8 of the Broadcasting Act. He referred the Authority to his letter of complaint to TVNZ and the supporting evidence.



TVNZ's Final Response to the Authority

TVNZ supplied the Authority with the submission made by the National Party but when asked if it wished to make further comment, it declined to do so.

