

No advertising tonight

Bruce Slane examines the background to the recent one night ban on advertising by the New Zealand Broadcasting Standards Authority imposed on Television One

On Sunday 3 February 1991 Television One broadcast no commercials between 6.00pm and its closedown by order of the Broadcasting Standards Authority. The ban on commercials was a punishment arising from the broadcast of a documentary program *For The Public Good*, one of the *Frontline Series* at 6.30pm on 29 April 1990.

The Authority described the 46 minute program as dealing with two distinct topics 'fit for journalistic investigation'. The first, which received the greater attention, concerned the funding of political parties' election campaigns. In dealing with this topic the program was said to have placed a heavy emphasis on the funding of the Labour Party's campaign prior to its re-election to government in 1987. The program revealed that a substantial amount that funding had come from major New Zealand business interests. Incidentally, it raised the manner in which the donations had been collected from business interests, expended and accounted for by the Labour Party, and the post-1987 Labour Government's sale of State owned enterprises to the private sector. The other topic was the lack of any formal requirements that Members of Parliament declare their private interests.

Innuendo

The Authority said that the program gave a clear impression that leading businessmen had bought favours from the post-1987 Labor Government. Moreover, the program achieved that effect despite the dearth of supporting facts. The Authority agreed with a newspaper editorial which said: "The program was a closely contrived package of suggestion and innuendo, embroidered with emotive language and suggestive camera shots."

The opening lines of the reporter's script were:

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

The Authority referred to the visual effects which included still photographs of

tangled wires (the undisclosed connections) upon which other visuals were superimposed on occasions during the program, and to the supposed re-enactment of a silhouetted businessman having a telephone conversation in which he seemed to be agreeing on a 'deal' with a politician or other representative of a political party. Dramatic music accompanying some of the visuals heightened the atmosphere further. The Authority said the program was characteristic of what is termed 'advocacy journalism'.

At the end of May 1990 Television One's operator, the State-owned Television New Zealand Limited's (TVNZ) complaints committee upheld aspects of five separate complaints finding a total of 10 breaches of the *Broadcasting Act* (1989) or the Television Program Standards. On 10 June 1990 Television One broadcast on *Frontline* an item lasting some seven and a half minutes which summarised the committee's decision on those complaints which had been upheld. It contained brief statements from three of the successful complainants and expressed TVNZ's regrets for the mistakes in *For the Public Good*.

New Zealand Business Roundtable (NZBR), an organisation of chief executives of major New Zealand companies, was dissatisfied with the treatment of its complaint by TVNZ.

The *Broadcasting Act* sets out the principle that most complaints that are capable of being resolved by an independent complaints procedure should be capable of being resolved by proper consideration and proper response on the part of the broadcaster. A broadcaster has a duty to receive and consider such complaints and to establish procedures for investigating them. Where the complainant is dissatisfied with the decision or with the action taken by the broadcaster the complainant may refer the complaint to the Authority. The Authority may, if it thinks fit, consider and determine the complaint without a formal hearing but it has to give the complainant and the broadcaster reasonable opportunity to make submissions in writing and has to have regard to all relevant submissions.

The Authority can make any one or more of a number of orders:

- An order directing the broadcaster to publish a statement which relates to the complaint and which is approved by the Authority for the purpose.

- An order to direct the broadcaster to refrain:
 - (i) from broadcasting; or
 - (ii) from broadcasting advertising of programs (including any credit in respect of a sponsorship or underwriting arrangement entered into in relation to a program), for such period, not exceeding 24 hours, for each program in respect of which the Authority has decided that the complaint is justified and at a time as specified in that order.
- An order referring the complaint back to the broadcaster for consideration and determination by the broadcaster in accordance with directions or guidelines.
- If the Authority finds the broadcaster has failed to maintain, in relation to any individual, standards that are consistent with the privacy of that individual, an order directing the broadcaster to pay to that individual, as compensation, a sum not exceeding \$5,000.

Failure to comply with an order constitutes an offence for which the broadcaster is liable on summary conviction to a fine of up to \$100,000.

The Authority's involvement

The Authority decided not to have a formal hearing for a number of reasons including the risk of it becoming a dress rehearsal of a trial of issues which would be before the High Court in defamation actions and that it would be time consuming and costly when the Authority found a flow of written submissions provided ample opportunity for conveying the information necessary for its determination.

Under the Television Program Standards, in the preparation and presentation of programs, broadcasters are required:

- "1. To be truthful and accurate on points of fact.
6. To show balance, impartiality and fairness in dealing with political matters, current affairs and all questions of a controversial nature."

In the preparation and presentation of programs, broadcasters are required:

- "4. To deal justly and fairly with any person taking part or referred to in a program."

A television news and current affairs service is required to take into account the following points:

12. News must be presented accurately, objectively and impartially ...
16. No set formula can be advanced for the allocation of time to interested parties on controversial public issues. Broadcasters should aim to present all significant sides in as fair a way as possible, and this can be done only by judging every case on its merits.
17. Significant errors of fact should be correct at the earliest opportunity."

The Authority declined to determine the complaints alleging breaches of Standards 4 and 16 because the issues were alleged to be covered by Standard 6. They also declined to uphold complaints against Standard 12 which was to apply only to news programs and they considered the program was a current affairs program. The summarised findings of the Authority on the NZBR complaint were that the program:

- gave the impression that members of the NZBR were buying specific policies from politicians;
- gave the impression that State assets were sold at less than their market value; and
- gave the impression that NZBR had engaged in covert action to subvert democratic government.

All breached the truth and accuracy requirement of Standard 1.

The Authority also found that the complaints that TVNZ did not provide the Chairman and Executive Director of NZBR respectively with an opportunity to comment on the statements and messages about the NZBR's ideological stance and the process by which members purchased State assets and the statements about the Executive Director; and the complaint that the program displayed a bias against sections of New Zealand business and the NZBR in particular; all breached Standard 6 by failing to show balance, impartiality and fairness. Other allegations were rejected.

Apology ineffective

In considering the action taken by TVNZ the Authority concluded that a complaints body seriously jeopardises any claim to be following proper procedures if it resolves to determine the complaint without giving the complainant an opportunity to comment on significant discrepancies between the information supplied in the complaint and that supplied within the broadcaster's organisation. The Authority found that the complaints procedures were deficient in some respects and as a result justice was not seen to be done. The opportunity provided to the NZBR for comment on the program was insufficient and the apology given was ineffective.

TVNZ was ordered to broadcast an apology statement. As the *Frontline* program

series had concluded for 1990 and a new series would not commence for several months it was decided that the statement should be broadcast at the end of Television One's main news programs on a weekday soon after the release of the decision.

The Authority said it would have preferred that TVNZ be required to refrain from broadcasting advertising programs during *Frontline* (at least) but if it were to order an early date for a period without advertising programs, advertising contracts would be seriously disrupted and undue harm caused to innocent third parties. The Authority fixed Sunday 3 February 1991 as the date TVNZ has to refrain broadcasting advertisements from 6.00pm to closedown. During that period it would have to broadcast a statement approved by the Authority which explained that TVNZ has been ordered to refrain from broadcasting in consequence of the serious breaches of broadcasting standards which the Authority found established in the NZBR complaint.

Making amends is or ought to be an important element'

Implications

The Authority said that the fact that TVNZ disciplined staff directly responsible for the production of the program did not reduce, let alone discharge its responsibility as broadcaster to comply with the broadcasting standards laid down in the *Broadcasting Act* and Codes of Broadcasting Practice:

"TVNZ's action against its employees may or may not prevent future breaches of broadcasting standards from occurring but it does not alter the fact that the breaches which did occur, by the broadcast For the Public Good, are its responsibility and its alone. Thus the Broadcasting Act provides penalties which may be imposed on broadcasters by the Authority."

This seems to be somewhat at variance with the intention of the Act.

While it is obvious that what one does after making a mistake does not alter the seriousness of the mistake, it ought to affect the penalty that might be imposed. That mistake constitutes a breach of the law. Making amends is or ought to be an important element because the Act contemplates that broadcasters should try to resolve complaints. Therefore the way in which they handle them and their apologies and their treatment of erring staff are evidence of taking the complaints seriously.

Also, it is only if complainants are dissatisfied that they are in most cases entitled to bring the complaint to the Authority.

In a later decision the Attorney declined to uphold the complaint where inadvertently the wrong version of a film had been broadcast with four-letter words intact and the Authority was satisfied that the steps subsequently taken by TVNZ were appropriate and satisfactory and therefore declined to uphold the complaint.

When the deregulation of broadcasting occurred the Minister of Broadcasting announced that penalties would have to be severe because, without a licensing system, standards would be more difficult to enforce. The Broadcasting Tribunal, in submissions made on the basis of its experience, said that a wide range of sanctions should be available from the mildest to the more severe including a formal censure, a requirement that directors and management could be directed to appear before the Authority to be censured and provision for ordering that advertising programs be not broadcast for a period. Unfortunately Parliament accepted only the latter proposal and provided no range of penalties.

Although, on even a casual observer's watching of the program it was lamentably below standard, one might have expected that the period for which advertisements could not be broadcast would have some relation to the period of broadcast of the original program in the absence of any serious record of breaches of this kind by TVNZ.

A one hour banning of advertisements might have made the point sufficiently well. What is the Authority going to do for a second serious offence? Once it becomes common for stations to be banned from carrying advertising the penalty itself will lose its effect.

Complainants will now clamour for this penalty to be imposed. The attitude of the NZBR is typical. That company was prepared to deprive viewers of the service of this television station by having it ordered off the air. That was not accepted by the Authority, nor should it have been. But it shows the degree of anger that can be felt by a complainant.

It may be that the penalty imposed in this case and the attitude towards upholding complaints and taking action against culpable staff may encourage broadcasters in future to do nothing and await the outcome of the Authority's deliberations.

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