

2000-036

Dated: 09 March 2000

Number: 2000-036

Complainant:

- The Tobacco Institute Of New Zealand Limited of Auckland

Channel: Television New Zealand Ltd

Broadcaster:

Members

- L.M. Loates
- R McLeod
- J Withers

Summary

A documentary about cigarette smoking in New Zealand called "Up in Smoke" was broadcast on *Assignment* on TV One, between 8.30pm and 9.30pm on 23 September 1999.

The Tobacco Institute of New Zealand Limited ("Tobacco Institute") complained to Television New Zealand Ltd, the broadcaster, that the programme was inaccurate, unfair and unbalanced in numerous ways. The Tobacco Institute also complained that the programme portrayed tobacco company executives and Maori women in a way which was likely to encourage discrimination against them.

TVNZ responded that the programme was not unbalanced or unfair to the tobacco industry. In its view, the programme surveyed a broad range of relevant views about smoking, and included a tobacco industry perspective. TVNZ also disagreed that it had breached broadcasting standards relating to discrimination.

TVNZ declined to uphold any aspect of the complaint.

Dissatisfied with TVNZ's decision, the Tobacco Institute referred the complaint to the Broadcasting Standards Authority under s.8(1)(a) of the Broadcasting Act 1989.

For the reasons given below, the Authority declines to uphold the complaint.

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Decision

The members of the Authority have viewed a tape of the item complained about and read a transcript of the broadcast. They have also read the correspondence which is listed in the Appendix. On this occasion, the Authority determines the complaint without a formal hearing.

A 43 minute long documentary about cigarette smoking in New Zealand called "Up in Smoke" was broadcast on *Assignment* on TV One, at 8.30pm on 23 September 1999. The programme, an update of an earlier documentary, was about the health risks and consequences of smoking. It focused particularly on the effects on Maori and young smokers.

The Tobacco Institute complained about the broadcast on the grounds that it was unfair to the tobacco industry, unbalanced, inaccurate and was likely to cause discrimination against tobacco company executives and Maori women.

The Standards

The Tobacco Institute complained that the programme breached section 4(1)(d) of the Broadcasting Act and standards G1, G4, G5, G6, G13, G14 and G20 of the Television Code of Broadcasting Practice. The statute provides:

4 (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.

Standards G1, G4, G5, G6 and G13 require broadcasters:

G1 To be truthful and accurate on points of fact.

G4 To deal justly and fairly with any person taking part or referred to in any programme.

G5 To respect the principles of law which sustain our society.

G6 To show balance, impartiality and fairness in dealing with political matters, current affairs and all questions of a controversial nature.

G13 To avoid portraying people in a way which represents as inherently inferior, or is likely to encourage discrimination against, any section of the community on account of race, age, disability, occupational status, sexual orientation or the holding of any religious, cultural or political belief. This requirement is not intended to prevent the broadcast of material which is:

- i) factual, or
- ii) the expression of genuinely-held opinion in a news or current affairs programme, or
- iii) in the legitimate context of a humorous, satirical or dramatic work.

The other standards cited by the Tobacco Institute provide:

G14 News must be presented accurately, objectively and impartially.

G20 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.

The Formal Complaint

The Tobacco Institute's complaint about the programme began by setting out several general concerns. First, it submitted that the programme:

taken as a whole, sought to demonise a lawful industry and to suggest that people engaged in that industry are reprehensible, unscrupulous and evil.

Secondly, it wrote that:

The programme failed to acknowledge, even once, that the tobacco industry is lawful.

Thirdly, the Tobacco Institute contended that the programme:

departed from all acceptable standards of journalism. It was hopelessly one-sided. It offered only a perfunctory snapshot of the view of the tobacco industry. Consequently, it was fallacious and it was flawed.

Fourthly, the Tobacco Institute complained that the programme focused "overwhelmingly" at times on smoking in Australia. It said that this implied that the Australian situation applied also in New Zealand.

Finally, according to the Tobacco Institute's submission, no attempt was made to report in the programme that the New Zealand tobacco industry had consistently been opposed to smoking by children.

Section 4(1)(d)

The first of the Tobacco Institute's specific grounds of complaint was that TVNZ had breached section 4(1)(d) of the Broadcasting Act. The Tobacco Institute considered that the programme was unbalanced because the tobacco industry perspective on smoking was not adequately sought, or reported in the programme.

The Tobacco Institute noted that only one industry representative (Tony Maguire) was featured in the programme, and that he was allocated just 71 seconds of time on screen. It was also noted that the complete interview from which the 71 seconds was taken was, according to the Tobacco Institute's submission, approximately 30 minutes long. The Tobacco Industry alleged that the 71 seconds that appeared on screen "was merely a pretence at presenting the view of the tobacco industry as a part of the programme".

Moreover, the Tobacco Institute alleged that, if Mr Maguire had not been proactive in approaching TVNZ, the tobacco industry perspective would not have been included in the programme at all.

The Tobacco Institute also complained that a telephone interview with the Executive Director of the Tobacco Institute (Michael Thompson) had not been included in the programme. According to the Tobacco Institute, this interview had taken place at the suggestion of Mr Maguire.

The Tobacco Institute then described information which it said had been provided to the programme's reporter by Mr Thompson, but which had not been used in the programme. According to the Tobacco Institute's submission, this information concerned a meeting between tobacco industry representatives and then Associate Health Minister (the Hon Tuariki Delamere) to discuss teenage smoking. The Tobacco

Institute wrote that Mr Delamere had said that he could not accept any help with an anti-teenage smoking campaign from tobacco companies, as he wanted the companies out of business.

Standards G1 and G5

The Tobacco Institute complained that the programme's failure to point out that the tobacco industry was lawful in New Zealand breached standards G1 and G5. This was, it wrote, a fundamental point.

Standards G6 and G14

The Tobacco Institute submitted that standards G6 and G14 were breached because the programme lacked balance, was partial and was unfair in its portrayal of the tobacco industry. It included three examples of alleged breaches of these standards, noting that these did not reflect the "full extent of the bias displayed" in the programme. The examples cited were:

"What's really starting to hurt in the meantime is the depressing reality that tobacco companies in New Zealand do look like getting off the hook for the damage they've inflicted on kiwis." (Presenter)

"They [people] need to attack the industry. Its legitimacy as an industry, that it is simply not satisfactory to sell a product that will kill 50 percent of its users and that... I believe is a criminal act and they should take action against the people doing it." (Dr Arthur Chesterfield-Evans)

"I do think that they've let us down and I think they should have to pay something." (Alan Dawson)

"But if I... if it hadn't have been pushed in my face so much with the peer pressure and just how cool it was and I don't know if they had any idea or not that it was dangerous, I don't know if they hid that fact." (Miriam Cauvin)

The examples were taken by the Tobacco Institute from commentary by the programme's presenter and from people interviewed for the programme who had expressed anti-smoking views. In the Tobacco Institute's view, these opinions ought to have been balanced with views from within the tobacco industry and from those who enjoy smoking.

Standards G13 and G4

Next, the Tobacco Institute contended that comments made in the programme were likely to encourage discrimination against the executives of tobacco companies. As examples of the comments which the Tobacco Institute suggested were "littered" throughout the programme, it cited the following:

"Is it time for shock treatment for tobacco company executives?" (Reporter)

"The figure of \$12 million is tinged with irony. It's about as much tobacco tax as the government collects from the proceeds in illegal tobacco sales to minors. The tobacco companies are still getting away with murder." (Reporter)

"I believe it should be accompanied by heavy jail sentences for those executives that have pushed this for years because otherwise they get off scot-free, they just raise the price and increase their salaries and go on their merry way." (Mr Delamere)

"He [Mr Delamere] goes on, the jurisdiction of the International Criminal Court means that the directors and executives of major tobacco companies could be at risk of being charged with a crime against humanity." (Reporter)

"Well I'm not sure that they're legitimate in the public face. I think people regard them as crooks and harm-doers, but no-one will belt the cat, no one will do anything about it." (Dr Chesterfield-Evans)

The Tobacco Institute argued that:

... with minimal attempt to balance these opinions with comment from the tobacco industry, the comments above were clearly directed and likely to encourage discrimination against the executives of tobacco companies on the basis of their occupational status. The purpose was to heap obloquy and contempt on people employed as executives in a lawful industry.

The Tobacco Institute then alleged that the programme contained comments which were likely to encourage discrimination against Maori women. The complainant contended that this was illustrated by the programme's reference to talk in employment circles about implementing selective hiring policies based on whether a candidate was a smoker. As a group, Maori women were reported in the programme to be heavy smokers and, in the Tobacco Institute's view, the programme should have included comment on whether this kind of policy would have a discriminatory effect on them.

As to standard G4, the Tobacco Institute repeated its complaint that the 71 seconds of on screen coverage of the tobacco industry's perspective could "hardly be said to be dealing justly and fairly with any person taking part in [the Assignment] programme".

Standard G20

The Tobacco Institute illustrated its contention that standard G20 was breached by referring to a list of speakers featured in the programme. Next to the name of each speaker, the Tobacco Institute described what it saw as its position on the smoking issue. It submitted that the list showed that the programme had not presented the tobacco industry's position fairly. Furthermore, it referred again to the "outrageous" allocation of 71 seconds of a 43-minute programme to the industry's perspective.

TVNZ's Response

TVNZ disagreed with the Tobacco Institute's contention that the programme stated or implied that the tobacco industry was "reprehensible, unscrupulous and evil". Nor did it accept that the tobacco industry was a target of the programme.

As to the complaint that the programme did not acknowledge the legality of the tobacco industry, TVNZ said that it did not consider that the lawfulness of the industry was at issue and submitted that this fact was "given". Neither did the programme suggest that the tobacco industry should be outlawed, it wrote. Furthermore, it considered that the references made in the programme to the sale and taxing of tobacco ought to have made it explicit to viewers that the industry was lawful.

Turning to the Tobacco Institute's general complaint that the programme was "hopelessly one-sided", TVNZ responded that the programme interviewed a range of smokers and non-smokers and:

The tobacco industry was but one ingredient in a wide-ranging journalistic enquiry.

TVNZ also disagreed with the Tobacco Institute's contention that the smoking situation in Australia was focussed upon inappropriately in the programme. It noted that only one quarter of the content was sourced from Australia, and also maintained that it was directly relevant to include information from overseas in the programme.

Addressing the Tobacco Institute's contention that the efforts of tobacco companies to assist with campaigns to stop children smoking were not included in the programme, TVNZ defended the omission on the basis that it was not directly relevant to the programme's content.

Response to section 4(1)(d) aspect of complaint

TVNZ then responded to the contention that the programme was unbalanced. In reply to the Tobacco Institute's complaint that only one interview with a tobacco industry representative was included in the programme, and that he was allocated just 71 seconds of time, TVNZ set out its view that:

In the context of this particular documentary, its shape and direction, programme standards would have been infringed only if a representative had not been included.

TVNZ explained that it had not included an interview with Mr Thompson in the programme as the programme's reporter had determined that Mr Thompson would not have provided a significantly different viewpoint from Mr Maguire, whose perspective had already been represented in the programme.

As to the 71-second duration of the screen time the industry received, TVNZ commented that the original interview with Mr Maguire lasted 17 minutes and 55 seconds. It maintained that this was an average duration for an interview for this type of story, as was the ratio used in the programme. Furthermore, it wrote that Mr Maguire was not treated any differently than other participants in the programme.

TVNZ denied the Tobacco Institute's contention that the tobacco industry received coverage only because of its representative's proactive behaviour. It said it was always its intention to include a representative from the tobacco industry and that it in fact had had difficulty communicating with Mr Maguire to obtain comment for the programme.

In relation to the possible inclusion in the programme of the interview with Mr Thompson, and the information provided to the programme's reporter by him, TVNZ said that it had discarded the interview during a process of editorial selection. It added that at least three filmed interviews with people from the anti-smoking lobby had also been discarded. Also, TVNZ considered it was unreasonable to expect that any specific information provided by Mr Thompson would be included in the programme. It added that in any programme compilation hundreds of pieces of information were discarded from the final product after a process of editorial selection had taken place to determine the most relevant material.

Response to standard G1 and G5 aspects of complaint

TVNZ disagreed that it had breached standards G1 and G5. In its view, the programme highlighted the quantifiable risks to health and society posed by smoking. It said that there was no hint in the programme that the tobacco industry was operating other than lawfully, the emphasis throughout the programme being on the harmful effects of the products produced. Furthermore, TVNZ said it:

did not accept that because an industry is lawful the effect its products have on a population should not become the subject of journalistic scrutiny.

TVNZ found that standard G1 had not been breached because it considered that it was not inaccurate to omit to state explicitly that the tobacco industry was lawful. Standard G5 had not been breached because TVNZ considered that "the legal status of the tobacco industry was not relevant to the programme".

Response to standard G6 and G14 aspects of complaint

TVNZ began its response to this part of the complaint by remarking on specific comments from the programme used by the Tobacco Institute to illustrate alleged imbalance in the programme.

TVNZ considered the presenter's comment referred to in the Tobacco Institute's complaint was "fair comment", based as it was on the medical evidence about smoking and related harm and death.

As to the comments of interviewees with anti-smoking opinions, TVNZ responded that these were opinions of those speakers, which they were entitled to express, and that they were not presented as the views of TVNZ or the *Assignment* team.

Next, TVNZ responded to the complaint that there was a lack of balance in the programme because the anti-smoking opinions portrayed were not balanced by views from within the tobacco industry and from those who enjoyed smoking. To this it submitted that the views of those opposed to smoking were countered by the views of those who considered they still had the right to smoke:

This was seen in particular on the marae in Northland, in the two young women who were pregnant, and in the life of the young man who tried aversion therapy and who admitted he would probably continue smoking even after that experience.

...The tobacco industry was but one voice from the contrary position and it was heard along with a range of others who continue to smoke.

TVNZ concluded that standard G6 was not breached as viewers saw both sides of the smoking divide. As to standard G14, it concluded that there was no inaccuracy and that the programme was objective and impartial. In reaching its conclusion on standard G14, it stated that:

objectivity does not necessarily involve neutrality and ... *Assignment* acted accordingly in lamenting for the victims of smoke-related illnesses and the lack of significant progress in tackling the issue.

Response to standard G13 aspect of complaint

TVNZ began its response to this aspect of the complaint by remarking on specific comments from the programme used by the Tobacco Institute to illustrate alleged discrimination against tobacco company executives.

The first comment attributed to the programme's reporter ("Is it time for shock treatment for tobacco company executives?") was, it wrote, a recognisable rhetorical question. It described the second quoted phrase ("The tobacco companies are still getting away with murder") as a well-known figure of speech. The third comment attributed to the reporter was, according to TVNZ, quotation from Mr Delamere. As to the comments of interviewees, TVNZ described these as expressions of opinion.

TVNZ disagreed that the programme set out to "heap obloquy and contempt on people employed as executives in lawful industry". And, in its view, it was not inappropriate that the comments objected to by the Tobacco Institute were quoted in the programme.

TVNZ also disagreed that the programme encouraged discrimination against Maori women. In its opinion, the reporter appeared to describe accurately the "mood or situation" (concerning smokers as potential employees) as it existed.

TVNZ concluded that there was no breach of standard G13.

Response to standard G4 aspect of complaint

TVNZ repeated its earlier view that the tobacco industry representative included in the programme had not been treated unjustly. It found no breach of standard G4.

Response to standard G20 aspect of complaint

TVNZ responded to this aspect, submitting that the list provided by the Tobacco Institute gave ample evidence that a wide variety of opinions had been canvassed for the programme. In concluding that there was no breach of standard G20, TVNZ wrote:

the cumulative total given to smokers and others who thought smoking was acceptable provided acceptable balance – especially in a programme where the debate was not about whether smoking was a good or bad thing but where it was accepted that smoking poses a significant and provable danger to health and where the emphasis was on finding solutions to the risks posed.

TVNZ declined to uphold the complaint.

The Tobacco Institute's Referral

In its referral of the complaint to the Authority, the Tobacco Institute began by commenting on its understanding of the standards of balance and fairness to be applied by the Authority. It complained that TVNZ had not used objective standards of balance or fairness in its response to the complaint.

The Tobacco Institute then responded in detail to TVNZ's decision about its complaint.

General points of concern

The Tobacco Institute reiterated its contention that the programme set out to suggest that people engaged in the Tobacco Industry were "reprehensible, unscrupulous and evil". Furthermore, it stated that

Taken as a whole the Tobacco Institute does believe that the tobacco industry was in a very real sense the target of the Assignment Programme.

Legality of the tobacco industry

The Tobacco Institute disagreed that the tobacco industry's legal status was obvious in the programme and did not require specific mention. It described the programme as containing numerous comments which suggested that the industry was unlawful. It cited several examples in support of this submission, which it considered should have been countered by a clear statement that the tobacco industry was lawful. As set out in the Tobacco Institute's referral, these comments were:

Richard Long, in his opening statement to the Assignment programme, draws attention to legal action against tobacco companies in the United States, without detailing what the legal action is about.

The Assignment Programme contained comments from Dr Arthur Chesterfield-Evans such as:

They need to attack the industry. Its legitimacy as an industry, that it is simply not satisfactory to sell a product that will kill 50 percent of its users and that... I believe it is a criminal act and they should take action against the people doing it.

The reporter in the Assignment programme posed the following question to Tony Maguire:

When people say things like "you're just a bunch of drug pushers in disguise", how does that make you feel?

The Hon Tuariki Delamere stated in the Assignment Programme that the New Zealand government should take up the case against the tobacco companies which should be accompanied by heavy jail sentences for company executives, again implying that the industry is unlawful.

The reporter states that the tobacco companies are "getting away with murder" – a criminal offence.

The Assignment Programme was one-sided

The Tobacco Institute contended that there was no evidence given by TVNZ to support its view that the tobacco industry was "but one ingredient in a wide-ranging journalistic enquiry". It also disagreed that balance was illustrated in the list of speakers, submitting that, of the thirty speakers, eighteen were anti-smoking, five were used to back up the anti-smoking campaign, six were smokers and one a tobacco industry representative.

The Tobacco Institute then repeated its contention that the programme was one-sided and that the 71 seconds of screen time given to the tobacco industry representative was "outrageous".

Focus on overseas situation

Commenting on what it saw as the programme's focus on Australia and other countries, the Tobacco Institute made several comments. First, the Tobacco Institute disagreed that the amount of Australian material included in the programme was not "at times" overwhelming. It also took issue with TVNZ's statement that the debate could not be adequately reported without reference to developments overseas, especially in the United States. In its view, this did not explain why one quarter of the programme focussed on Australia, while much less time was devoted to legal action in the United States and smoking in Hollywood.

Furthermore, the Tobacco Institute rejected any claim that the United States situation was directly relevant. It considered this contention doubtful as the tobacco industry in the United States operated in a different legal environment to that applying in New Zealand.

Relevance to programme content

The Tobacco Institute disagreed with TVNZ's view that the tobacco industry's efforts to reduce smoking among young people were not directly relevant to the programme. It considered this opinion was inconsistent with TVNZ's description of the programme as giving particular attention to the effects of smoking on young people. Moreover, the Tobacco Institute considered that the information about its efforts was required to be presented to counter "the references to the alleged promotion of smoking among young people through Hollywood movies".

Lack of balance

The Tobacco Institute disagreed with TVNZ's view that the tobacco industry viewpoint was presented as significant in the programme, again citing the time it was allocated and the fact that only a single representative was interviewed.

The Tobacco Institute also questioned what it called TVNZ's "retrospective assurances" that it had always intended to include a tobacco industry perspective in the programme. It repeated its contention that the industry representative was interviewed only after he had contacted the programme makers. It also added that the representative was interviewed eight days before the programme went to air and questioned why it had been left to the "last minute" to conduct interviews.

The Tobacco Institute also reiterated its opinion that Mr Thompson's comments in response to Mr Delamere's should have been aired in order for balance to have been maintained.

Unfairness in portrayal of the tobacco industry

The Tobacco Institute commented that TVNZ's approach in reviewing the quotations it had cited as examples of bias was symptomatic of TVNZ's general failure to consider its complaint adequately. The issue, it wrote, was about balance and fairness in the editorial selection process, not in the content of the opinions themselves.

The Tobacco Institute then disagreed that it had assumed that the programme involved two viewpoints, and wrote that:

The Tobacco Institute has only questioned the balance of time given to each of the myriad viewpoints.

It continued:

Even taking into consideration that anti-smoking views could be countered by those who consider they still have a right to smoke, the split between anti-smoking and pro-smoking viewpoints in the Assignment Programme was unacceptably disparate.

The Tobacco Institute rejected TVNZ's assertion that the programme was objective and impartial.

Encouragement of discrimination against tobacco company executives

The Tobacco Institute disagreed with TVNZ's findings concerning discrimination. It described its underlying concern in the following terms:

The editorial selection of the opinions in the Assignment Programme clearly was not a genuine attempt to present all or even a reasonable range of the opinions that exist on tobacco smoking. The opinions included in the programme amount to a reflection of the programme maker's own opinion. A significant contrary opinion – that of the tobacco companies – was largely ignored by the Assignment Programme.

In these circumstances, the Tobacco Institute argued that the repetition of "one-sided" opinions became, to the viewer, almost a representation of fact.

The Tobacco Institute also rejected TVNZ's explanation that it was not inappropriate to use the quotations in contention because they reflected identifiable overseas trends, particularly in the United States. It said that the quotations were not related to United States' opinion, and were not balanced with comment from the United States tobacco companies. It added that the quotations were not related to what TVNZ had described the programme as being about – ie "looking at cigarette smoking in New Zealand with particular emphasis on Maori and the young".

Fair presentation of all significant sides

The Tobacco Institute repeated its concerns relating to the presentation of the views of its industry representative. It also submitted that there were numerous critical references to tobacco companies in the programme. It wrote:

The allocation of just 71 seconds to counter this attack on tobacco companies can hardly be said to be presentation of all significant sides in as fair a way as possible.

Furthermore, the Tobacco Institute strongly disagreed with TVNZ's contention that the list of speakers in the programme it had provided in its original complaint illustrated acceptable balance.

TVNZ's Report to the Authority

In its report to the Authority, TVNZ repeated the position it outlined in its response to the Tobacco Institute. It also made the following additional points. First, it wrote that as the programme was not about

the Tobacco Institute, there was no reason why it should have had any more representation on the programme than it did.

Secondly, TVNZ said that Mr Maguire had been given a right of reply to the specific accusations made by the reporter that the industry was selling a product that killed New Zealanders in large numbers, and by Mr Delamere that, in his view, tobacco executives should be given heavy jail sentences.

Thirdly, it said that it did not think any viewer would have been misled into thinking that the tobacco industry was anything but lawful.

Fourthly:

In implying an imbalance between smokers and non-smokers in the programme, the Tobacco Institute betrays a misunderstanding of the basis on which the programme was assembled. The programme accepted as fact that tobacco kills large numbers of New Zealanders each year. Any attempt to raise an argument against that proposition is, in our view, to revive a debate that has already been settled as a result of incontrovertible medical evidence.

It added that the overall question raised by the programme was "why is the message (that tobacco kills) not getting through?"

Next it maintained that the requirement for balance and fairness did not require that the programme reflect "positives" about smoking. Doing so, it wrote, would be both immoral and contrary to public interest.

It responded that the negative references to tobacco companies were either factual, the genuine opinion of interviewees or fair comment.

TVNZ went on to reject the Tobacco Institute's apparent view that developments overseas were not relevant in New Zealand.

It also disagreed that the tobacco industry's claimed efforts to reduce smoking among young people were relevant to the programme.

Finally, TVNZ said that there was no cause for the views of those who considered they had the right to smoke to be balanced against the views of others. It repeated that the theme of the programme was about the health risks associated with smoking. It said that the view that some choose to continue to smoke was reflected – but as an example of the message not getting through.

The Tobacco Institute's Final Comment

In its final comment, the Tobacco Institute repeated its strongly held view that TVNZ had misunderstood its complaint. The basis of its complaint was, it reiterated, the programme's "fundamental" lack of balance and fairness.

The Tobacco Institute then commented on the specific points contained in TVNZ's report to the Authority. First, it stated that it had not contended that the programme had been about the Tobacco Institute. The Tobacco Institute then submitted that TVNZ's own description of the programme's topic as smoking and its impact on New Zealanders in its view "necessarily" involved the tobacco industry. It said that TVNZ knew that the Tobacco Institute represented the tobacco industry in New Zealand. The Tobacco Institute said that it was a source from which the programme makers could have sought and used comment.

Secondly, the Tobacco Institute repeated its contention that the allocation of 71 seconds to present the tobacco industry case was insufficient to fairly present its position. It made this comment in response to TVNZ's contention that the industry spokesman had been given the right to reply to specific allegations.

Thirdly, in response to TVNZ's comment that it doubted viewers would have been misled about the legality of the tobacco industry, the Tobacco Institute disagreed, saying that TVNZ had stated no basis for its belief. In its opinion, the programme implied that tobacco companies were acting illegally. The Tobacco Institute also maintained that it was "entirely possible" that some viewers now believed that tobacco executives were guilty of criminal offences.

Fourthly, the Tobacco Institute disagreed that it sought to enter a debate about the health effects of smoking when it implied that there had been an imbalance between smokers and non-smokers featured in the programme.

Next, it noted that TVNZ had stated that the programme's overall question was "why is the message (that tobacco kills) not getting through?" The Tobacco Institute commented that this was an acknowledgment that the programme had a much broader approach than was stated elsewhere by TVNZ.

As its next point, the Tobacco Institute said that it had not contended that the programme should have reflected "the positives" of tobacco smoking.

Following that, the Tobacco Institute maintained that it had not questioned the legitimacy of individual opinions made in the programme. Its real concern, it said, was about balance and fairness in the editorial selection process. The Tobacco Institute said that this had been repeatedly misunderstood by TVNZ.

As to the next two points made by TVNZ in its report to the Authority, concerning developments relating to smoking overseas, the Tobacco Institute said that it considered TVNZ's position was inconsistent.

The Tobacco Institute's penultimate point concerned TVNZ's comment that it was irrelevant to include material about the tobacco industry's efforts to reduce smoking among young people. To this it said it believed that its industry's efforts deserved mention to balance the attack it had been subjected to in the programme.

Finally, the Tobacco Institute said that it had not suggested that those who thought they had a right to smoke should have been better represented in the programme. Rather it had said the views of those people "could" be counted as pro-smoking views and reiterated its contention that the split between anti-smoking and pro-smoking views presented on the programme was "unacceptably disparate".

The Authority's Findings

The Authority deals with the broadcasting standards raised in the order they were set out in the complaint. It begins by noting that it has considered the general issues of balance raised by the complainant under section 4(1)(d) of the Broadcasting Act, but prefers to deal with these matters in its findings on the specific standards relating to balance and fairness set out in the Code of Practice.

Standard G1

The Tobacco Institute argued that the programme gave viewers the impression that the tobacco industry was unlawful, and that the omission to state explicitly that the industry operated lawfully was untruthful and inaccurate.

The Authority observes that there was no explicit assertion made in the programme that the tobacco industry was unlawful. It considers that a conclusion that the industry was unlawful could not be inferred

from the programme content. Moreover, it finds that TVNZ was entitled to assume that viewers understood the legal status of the tobacco industry. The Authority concludes that no breach of standard G1 occurred.

As a related matter, the Authority observes that opinions were given in the programme suggesting that the tobacco industry, or aspects of it, should be outlawed. However, opinions and fact are entirely different. The opinions were given by anti-smoking commentators and attributed to them. The Authority considers that the most that can be drawn from the opinions is the conclusion that the New Zealand tobacco industry could come under legal attack, and it believes that the programme contained sufficient material to justify that conclusion.

Standard G5

As the Authority finds no breach of standard G1, it also finds that there was no breach of standard G5. The Tobacco Institute based this aspect of its complaint on the alleged failure by TVNZ to point out that the tobacco industry was lawful. The Authority does not consider that this was required. Accordingly, it declines to uphold the complaint that TVNZ had failed to respect the principles of law which sustain New Zealand society.

Standards G6 and G14

The Tobacco Institute dealt with standard G6 and standard G14 together in its complaint.

The Authority considers that standard G14 is inapplicable in the context of the programme complained about, as it was not a "news" programme, as contemplated by the standard.

As to standard G6, the Authority begins its findings on this standard by examining the basis for requiring balance in relation to this programme. The Tobacco Institute's complaint about lack of balance relates to what it considers was the programme's treatment of the New Zealand tobacco industry, which it considered was targeted by the programme.

The Authority observes that the Tobacco Institute did not challenge the programme's health message or its treatment of the health effects of smoking. Rather the Tobacco Institute's criticism related to what it considered was the programme's treatment of the tobacco industry, and its executives. In the Authority's view, to the extent that the programme dealt with the ethics of selling a product which causes significant health risks, the tobacco industry could be seen as a target of the programme. However, the Authority considers that the main theme of the programme was to question why the anti-smoking message was not getting through, and that its focus on the tobacco industry itself was peripheral. In its view, the requirement for balance must be assessed against this background.

The Authority's task is to consider whether the way the tobacco industry was represented in the programme was unbalanced, partial and/or unfair. Essentially, the Tobacco Institute questioned the extent to which critical opinions aired in the programme had been balanced against views from within the tobacco industry and among those who enjoyed smoking. The Tobacco Industry also contended that the legitimacy of the industry had been attacked, and that the programme was, at times, excessively focussed on the overseas smoking situation which it considered did not necessarily apply in New Zealand.

The Authority finds that, to the extent that the programme conveyed an anti-tobacco industry perspective on the smoking issue, balance was required. It now considers whether this was achieved.

The tobacco industry's position was advanced in the programme by its representative, Mr Maguire. The Authority considers that while the Tobacco Institute may be unhappy about the extent of that coverage, the key questions concerning the industry's legitimacy and Mr Delamere's comments were put to Mr Maguire and his answers to these were broadcast. The questions appeared to the Authority to have been put to Mr

Maguire in a straightforward way and the Authority considers that he had adequate opportunity to address the issues. Those were the relevant matters requiring balance.

In response to the complaint that the programme should have included balancing material from people who enjoyed smoking, the Authority notes that the Tobacco Institute has not made clear what further information was available from the industry or from smokers that would have illuminated better the points under discussion. Apart from information the Tobacco Institute said was given to *Assignment* programme makers about the tobacco industry's support of a campaign to reduce smoking among young people, no other content appears to have been presented by the Tobacco Institute to the programme makers for inclusion in the programme. The Authority concurs with TVNZ's observation that it is no longer debatable that smoking has harmful effects, and TVNZ was under no obligation to revisit that issue.

As to the anti-smoking campaign information relating to children, the Authority accepts that its inclusion in the programme might have shown both the Tobacco Institute and the tobacco companies in a better light and that, given the programme's overall emphasis, it was arguably relevant. However, the Authority accepts that its inclusion was a matter for the editorial judgment for *Assignment*'s programme makers and it considers the failure to refer to that information was not sufficient in the circumstances to justify a finding of imbalance or partiality.

The Authority records three further points. First, it notes that it has considered the Tobacco Institute's complaint that the *Assignment*'s programme makers failed to initiate contact with it. In the Authority's view, nothing turns on this. Ultimately, regardless of who initiated it and when, that contact was made and balance was achieved in the actual programme content.

Secondly, the Authority has no concern about the overseas content contained in the programme. Its inclusion was, it considers, a matter of editorial judgment for the programme makers.

Thirdly, given the Authority's finding that balance was achieved through Mr Maguire's interview, matters relating to Mr Thompson's interview do not affect the Authority's determination. In any event, the Authority records that the inclusion of the interview was, again, a matter of editorial judgment.

Accordingly, the Authority concludes that there was no breach of standard G6.

Standard G13

Next, the Authority deals with the application of standard G13. The Tobacco Institute submitted that the programme was likely to encourage discrimination against tobacco company executives on the basis of their occupational status. The Authority questions whether tobacco company executives are a group which can be discriminated against in terms of G13. But, leaving that to one side, it considers that the potentially discriminatory inferences and statements made in the programme were genuinely held opinions, and thus do not transgress standard G13.

The Tobacco Institute also complained that comment in the programme about selective hiring policies based on whether a person was a smoker would be likely to encourage discrimination against Maori women. The Authority sees no merit in this suggestion. In its view, there is, at best, a tenuous connection between the comment and the suggestion that Maori women might be subject to discrimination as a result of the comment's broadcast. Accordingly, the Authority declines to uphold this aspect of the complaint.

Standards G4 and G20

Finally, the Authority deals with standards G4 and G20. It begins its findings on this aspect by recording that its approach on this occasion is to subsume standard G20 under standard G4, as they appear to it to raise the same issues.

This part of the complaint focuses on the Tobacco Institute's concern about the time that was allocated in the programme to its position. To this the Authority comments that fairness is not decided on the basis of any time calculation. It is determined in relation to the content of what is broadcast. For this reason, and considering the reasons given above in relation to standard G6, the Authority does not consider that standard G4 was breached.

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

Signed for and on behalf of the Authority

Sam Maling
Chairperson
9 March 2000