



Decision No. 2015-036

Under The Broadcasting Act 1989

Between **PETER ARANYI**

And

BRONWYN HAYWARD

And

CORDELIA LOCKETT

And

GIOVANNI TISO

Complainants

And

**TELEVISION NEW
ZEALAND LTD**

Broadcaster

Before

Peter Radich, Chair

Leigh Pearson

Te Raumawhitu Kupenga

Paula Rose

Decision of the Broadcasting Standards Authority

25 September 2015

Summary

[This summary does not form part of the decision.]

At the end of an episode of *Seven Sharp*, host Mike Hosking offered his views on the incident of Prime Minister John Key's repeated pulling of a café waitress' ponytail. He described the waitress' motivations for speaking out as 'selfish' and 'a puffed up self-involved pile of political bollocks'. The Authority upheld complaints that this was unfair to the waitress. While public figures can expect criticism and robust scrutiny, in the Authority's view the waitress was not a public figure. The format of the 'final word' segment did not allow for a response from the waitress so she was unable to defend herself in this context. The Authority did not uphold the remainder of the complaints.

Upheld: Fairness

Not Upheld: Controversial Issues, Accuracy, Discrimination and Denigration

No Order

Introduction

[1] In April 2015 there was public disclosure of some conduct of the Prime Minister. This involved the Prime Minister pulling the ponytail of a waitress in a café which he visited with his wife and others from time to time. The attention was unwelcome. These incidents became public through a succession of disclosures. First the waitress anonymously made her assertions public through a blog in which she did not reveal her identity. Then the *New Zealand Herald* picked up the blog story and apparently by some subterfuge spoke with the waitress and her employers and then published an interview identifying the waitress and showing photographs of her. On the evening of the morning when the newspaper was published, the broadcast which is the subject of the complaints before us took place.

[2] The broadcast which is the subject of these complaints was on *Seven Sharp*. The front person on *Seven Sharp* is Mike Hosking, a well-known New Zealand radio and television personality. The *Seven Sharp* programme usually finishes with a piece by Mr Hosking in which he strongly expresses his personal views on his chosen topic. On this occasion on 23 April 2015 in relation to the ponytail incident, he said:

You know who the big losers out of this ponytail shambles are? The café owners are. They are the victims in an agenda-driven circus which has unfolded as these things always do when you involve the angry under-grounders on social media.

To quote the waitress concerned today, 'I felt New Zealand should know'. What a puffed up, self-involved pile of political bollocks. She had a problem at work. The owners were the people to consult, not a blogger.

The owners, one of whom I have run into a couple of times given that we frequent a number of their cafés, are good hard-working people, who in their own way have revolutionised the food scene with an outstanding series of outlets throughout Auckland. They deserve none of this.

Yes, what Key did was bizarre, but it never warranted this. This is what it is because as always there is more at play than the singular incident. Even if the waitress concerned wandered into this naïvely, she wandered into a snakes-pit frequented by those driven by political

self-interest and nothing more. And if it wasn't naïve – which makes it worse – and she was looking to hang the Prime Minister out to dry, her selfishness caused needless upset and attention to a couple who have done nothing but go about their business.

- [3] Peter Aranyi, Cordelia Lockett, Giovanni Tiso and Bronwyn Hayward each lodged complaints with the broadcaster alleging that Mr Hosking's comments amounted to a bullying personal attack on the waitress and were unfair. Some of the complainants also raised other standards issues, for example arguing that the comments were biased and inaccurate.
- [4] The issue is whether Mr Hosking's comments breached the fairness, controversial issues, accuracy and discrimination and denigration standards of the Free-to-Air Television Code of Broadcasting Practice. In our view the complainants' concerns that the waitress was treated unfairly are the most relevant so we have focused our determination accordingly.
- [5] The members of the Authority have viewed a recording of the broadcast complained about and have read the correspondence listed in the Appendix.

Was the waitress treated unfairly?

- [6] The fairness standard (Standard 6) states that broadcasters should deal fairly with any person or organisation taking part or referred to in a programme. One of the purposes of the fairness standard is to protect individuals and organisations from broadcasts which provide an unfairly negative representation of their character or conduct. Programme participants and people referred to in broadcasts have the right to expect that broadcasters will deal with them justly and fairly, so that unwarranted harm is not caused to their reputation and dignity.¹
- [7] The programme *Seven Sharp* screens immediately after the principal daily news summary on TV ONE and begins at the peak viewing time of 7pm. While it is categorised as news and current affairs, it takes a sometimes non-traditional, light-hearted or comedic approach to topical issues. It aspires to be racy, pithy, at times pungent and challenging but at all times entertaining. The programme's hosts contribute to this by engaging in banter and asserting their own perspectives. The host Mr Hosking being also a radio talk host takes elements of that genre into television, frequently

¹ *Commerce Commission and TVWorks Ltd*, Decision No. 2008-014

offering strong, often challenging or provocative views on his chosen topic of the day. When he offers these views there is sometimes someone on the receiving end. In this case it was the waitress and the real question for us is whether she was treated unfairly.

[8] It is well understood that in democracies of our kind public figures have to expect and take criticism of a kind that can be nasty, stringent and hurtful. These sorts of pressures and the exposures that take place around them are well understood to be healthy in a democracy and are well understood to help keep public life clean. If the waitress were a public figure who had willingly initiated or entered into this affray then we would have little difficulty in concluding that it could not be said that she was treated unfairly by Mr Hosking. She would have got what she as a public figure ought to have expected in the public forum into which she had entered as a matter of choice.

[9] In our opinion, the waitress was not a public figure in the sense that she had to expect and take whatever was served up to her. While she had become a person who was under intense public scrutiny this did not make her a public figure in the sense in which we normally use that expression. A public figure is usually someone, whether it be a politician or otherwise, who has elected to enter the fray and engage in the give-and-take that occurs in that fray. Here, the waitress had made a disclosure of her assertions about the Prime Minister on a blog. She had not revealed her identity. A newspaper subterfuge resulted in her being outed and her identity becoming known.

[10] It may be said that anybody who makes assertions against the Prime Minister while remaining anonymous has to expect that their identity will become known and has to then expect and take the consequences of that identification. In our opinion, once the waitress went public but anonymously so with her assertions, it was inevitable that her identity was going to be disclosed because of the ease with which the links could have been made. If the disclosure by the *Herald* had not happened, then somebody else would have made the links and would have made disclosures of what had been found. After all, this was interesting information about the Prime Minister. However, it does not follow, in our opinion, that when the identity of the waitress became disclosed even if that was inevitable, she became a public figure able to be treated differently by a broadcaster than someone who is not a public figure. In reaching this conclusion we have been conscious that

the blog had a political flavour to it and we are conscious that there does come a point where a person who enters the political fray must accept the consequences of having done so. We do not think that point was reached here.

[11] The question then is, assuming that the waitress was not a public figure, was she treated fairly? It is usually the case that any person about whom something adverse or critical is to be said should be given some opportunity to comment in advance or at least an opportunity of contemporary reply. While the waitress may well have been asked for general comment in relation to other items on *Seven Sharp*, the format of Mr Hosking's 'final word' segment is such that it cannot accommodate the views of anyone other than Mr Hosking. It allowed him to voice his critical opinions of the waitress uninterrupted and without any balance or counter. There was no opportunity in this context for a defence to be put on behalf of the waitress. She was accused in a curious way of having victimised her employer. An over-the-top tone of condemnation was taken. All of this, taken together, does not seem fair to us.

[12] It has been said by the broadcaster that all of this is permissible as a manifestation of the right of freedom of expression. The objectives which underlie the principle of freedom of expression include the objective of taking away the intimidation to remain silent. As a general proposition, if people who are not public figures and who put up their hands and say rightly or wrongly and even with a political flavour, that they have been the subject of an abuse of power are then leapt upon or intimidated then this in our view will defeat the very objectives which underlie the principle. In these situations there is often an extreme imbalance of power and those who are in the weakest position need to be protected from unfair treatment if they make assertions against the strong.

[13] In reaching these findings we do not mean to say anything about the rights or wrongs of the ponytail incident. Our findings are in support of the proposition that a person who is not a public figure should be able to speak up and make assertions whether they are right or wrong without being treated unfairly and in an intimidatory way by a television presenter speaking from the platform of a powerful broadcaster.

[14] For these reasons, we uphold the complaints under the fairness standard.

Did the segment discuss a controversial issue of public importance which required the presentation of alternative viewpoints?

- [15] The balance standard (Standard 4) states that when controversial issues of public importance are discussed in news, current affairs and factual programmes, broadcasters should make reasonable efforts, or give reasonable opportunities, to present significant points of view either in the same programme or in other programmes within the period of current interest.
- [16] A number of criteria must be satisfied before the requirement to present significant alternative viewpoints is triggered. The standard applies only to news, current affairs and factual programmes which discuss a controversial issue of public importance. The subject matter must be an issue 'of public importance', it must be 'controversial', and it must be 'discussed'.²
- [17] Mr Aranyi argued that instead of the 'free infomercial' for his acquaintances the café owners, Mr Hosking should have devoted some time to fairly and accurately addressing the facts, including that the waitress had in fact complained to her manager. Mr Tiso argued that freedom of opinion did not absolve Mr Hosking from dealing with people in a balanced way.
- [18] In our view, this segment at the conclusion of the broadcast in which Mr Hosking was clearly offering his own opinion did not amount to a discussion of a controversial issue which triggered the application of Standard 4. Regular viewers understand the established format of this 'final word' segment and would not have expected within this segment to receive other views or views countering those of Mr Hosking. In any case, the ponytail incident received significant coverage across a range of media so it would have been easy for a viewer to find out more about what had happened if they wanted broader context or a different perspective.
- [19] For these reasons we decline to uphold the balance complaints.

Was the broadcast inaccurate or misleading?

- [20] The accuracy standard (Standard 5) states that broadcasters should make reasonable efforts to ensure that news, current affairs and factual

² For further discussion of these concepts see Practice Note: Controversial Issues – Viewpoints (Balance) as a Broadcasting Standard in Television (Broadcasting Standards Authority, June 2010) and Practice Note: Controversial Issues – Viewpoints (Balance) as a Broadcasting Standard in Radio (Broadcasting Standards Authority, June 2009)

programming is accurate in relation to all material points of fact, and does not mislead. The objective of this standard is to protect audiences from receiving misinformation and thereby being misled.³

[21] Mr Aranyi, Ms Lockett and Mr Tiso complained that Mr Hosking's statement that the waitress should have gone to her employer if she had an issue at work was incorrect, as in fact she had already raised the issue with her manager. TVNZ argued that Mr Hosking's comment that if the waitress had a problem at work, 'the owners were the people to consult, not a blogger' conveyed his opinion that her complaint should have been directed to her employer rather than a blog.

[22] As we have said already, *Seven Sharp* concludes each evening with a piece by Mr Hosking in which he strongly expresses his personal views on his chosen topic. Guideline 5a to Standard 5 states that the accuracy standard does not apply to statements which are clearly distinguishable as analysis, commentary or opinion. Focus group testing of an earlier decision by the Authority on Mr Hosking's 'final word' demonstrated that viewers are clear in their minds that this segment comprises Mr Hosking's own opinions.⁴ For example, participants said, 'he was just saying what he thought', 'it's a total opinion piece given by a known opinionator' and, 'At the end of the day it's just his opinion and he's advising people that it is his opinion.'⁵

[23] We are satisfied that Mr Hosking's comments were clearly his opinion and therefore not subject to standards of accuracy. We decline to uphold this part of the complaints.

Did the broadcast encourage the denigration of, or discrimination against, any section of the community?

[24] The discrimination and denigration standard (Standard 7) protects against broadcasts which encourage the denigration of, or discrimination against, any section of the community on account of sex, sexual orientation, race, age, disability, occupational status, or as a consequence of legitimate expression of religion, culture or political belief.

[25] Ms Lockett complained that Mr Hosking impugned the waitress' character without evidence.

³ *Bush and Television New Zealand Ltd*, Decision No. 2010-036

⁴ Litmus Testing 2015 (Accuracy), Broadcasting Standards Authority, June 2015

⁵ As above, at pages 22 to 24

[26] Standard 7 applies only to sections of the community, not individuals. The sections of the community specified in the standard are consistent with the grounds for discrimination listed in the Human Rights Act 1993.⁶ Ms Lockett's concerns are more appropriately dealt with as a matter of fairness to the waitress, which we have addressed above. We therefore decline to uphold the complaint under Standard 7.

For the above reasons the Authority upholds the complaint that the broadcast by Television New Zealand Ltd of *Seven Sharp* on 23 April 2015 breached Standard 6 of the Free-to-Air Television Code of Broadcasting Practice.

[27] Having upheld the complaint, the Authority may make orders under sections 13 and 16 of the Broadcasting Act 1989. We do not intend to do so on this occasion. We are satisfied that in all the circumstances publication of this decision is sufficient notification of the breach and that no order is warranted.

Signed for and on behalf of the Authority



Peter Radich

Chair

25 September 2015

⁶ <http://www.hrc.co.nz/enquiries-and-complaints-guide/what-can-i-complain-about/>

Appendix

The correspondence listed below was received and considered by the Authority when it determined this complaint:

Peter Aranyi's formal complaint

- 1 Peter Aranyi's formal complaint – 29 April 2015
- 2 TVNZ's response to the complaint – 27 May 2015
- 3 Mr Aranyi's referral to the Authority – 22 June 2015
- 4 TVNZ's confirmation of no further comment – 24 July 2015

Bronwyn Hayward's formal complaint

- 5 Bronwyn Hayward's formal complaint – 7 May 2015
- 6 TVNZ's response to the complaint – 4 June 2015
- 7 Ms Hayward's referral to the Authority – 10 June 2015
- 8 TVNZ's confirmation of no further comment – 24 July 2015

Cordelia Lockett's formal complaint

- 9 Cordelia Lockett's formal complaint – 4 May 2015
- 10 TVNZ's response to the complaint – 29 May 2015
- 11 Ms Lockett's referral to the Authority – 29 May 2015
- 12 TVNZ's confirmation of no further comment – 24 July 2015

Giovanni Tiso's formal complaint

- 13 Giovanni Tiso's formal complaint – 25 April 2015
- 14 TVNZ's response to the complaint – 25 May 2015
- 15 Mr Tiso's referral to the Authority – 19 June 2015
- 16 TVNZ's confirmation of no further comment – 24 July 2015