



Dated: 27 August 2008
Decision No: 2008-040

Complainant
CHRISTOPHER T. PRYDE,
SOLICITOR-GENERAL OF
THE REPUBLIC OF THE FIJI
ISLANDS
of Fiji

Broadcaster
RADIO NEW ZEALAND LTD
broadcasting as Radio New
Zealand National

Members

Joanne Morris, Chair
Tapu Misa
Diane Musgrave
Paul France

Complaint under section 8(1B)(b)(i) of the Broadcasting Act 1989

Nine to Noon

– Pacific correspondent updated situation in Fiji – allegedly unbalanced and inaccurate

Findings

Principle 4 (balance) – programme was not a discussion of a controversial issue – standard did not apply – not upheld

Principle 6 (accuracy) – four inaccurate statements – upheld

No Order

(This headnote does not form part of the decision.)

Broadcast

[1] On 7 March 2008 on Radio New Zealand National, the host of the *Nine to Noon* programme interviewed Pacific correspondent Michael Field, who was asked to give an update on what had been happening in Fiji. Mr Field stated that the situation in Fiji was "progressively getting worse" and that Commodore Voreqe Bainimarama was showing "all the signs of true military dictatorship".

[2] Mr Field said that he had looked at a couple of websites before coming on to the programme, and noted that Commodore Bainimarama had fired his two military spokesmen, saying that all future comments must come from him. He relayed several stories about the treatment of the media in Fiji and how journalists had been interrogated by the Fijian military. He said:

And I'm just astonished this morning – the head of Fiji Broadcasting, who is the brother of the military-appointed Attorney-General, and the head of broadcasting's a chap called Riyaz Saiyad-Khaiyum, has come out and said well the military were doing right because his staff were reporting rumours. I think it says something when the military-appointed management of a media outlet can now justify the military interrogation of their own journalists. It's a dangerous world in Fiji to be a journalist there.

[3] Mr Field commented that the publisher of the Fiji Sun, Russell Hunter, had recently been deported for publishing revelations around Finance Minister Mahendra Chaudhry's tax returns, and the man's family had been given eight days to leave the country.

[4] Mr Field commented that there was no true media freedom in Fiji, and that journalists and any

judges who showed independence had to worry about their future. He told the story of an Australian High Court judge, Justice Scutt, who he said was:

...robbed in the street after she actually attacked, well, said she didn't agree with Shaista Shameem's [the head of the Fiji Human Rights Commission] assessment that the Fiji coup had been a legitimate coup. So the day after she did this she was robbed in the street and her house was burnt down.

Complaint

[5] Christopher Pryde, the Solicitor-General of the Republic of the Fiji Islands, made a formal complaint about the programme to Radio New Zealand Ltd (RNZ), the broadcaster. He asserted that Mr Field's "update" was "no more than an uneducated, ill-informed, deeply biased, unbalanced, and false account of recent events in Fiji".

[6] Mr Pryde stated that Mr Field's distaste for the Government of Fiji was obvious, and that his opinions had been accepted uncritically by the Nine to Noon host. He noted that Mr Field was not resident in Fiji, and that his information appeared to come from websites and blogs. He wrote:

Throughout this "update" [Mr Field] constantly used emotive terms to describe events of which he clearly has no firsthand knowledge.

For example, he referred to the summoning (dragooning – Field's word) of two people before the Court of Appeal ("kangaroo court" and "Star Chamber" – Field's words) who had been concerned with a contempt of court. The judges of the Court of Appeal expressed their concern ("preached" – Field's word) that articles in the print media recently were going beyond the normal reporting of opinion and news and were on the verge of being a contempt of court. Some of the articles were clearly dealing in matters that were before the courts and this was a legitimate concern of the court.

[7] Mr Pryde argued that Mr Field had defamed the head of Fiji Broadcasting, Riyaz Saiyad-Khaiyum, by stating that he was a military appointee. In fact, he wrote, Mr Saiyad-Khaiyum had been appointed after an "exhaustive process of recruitment conducted by the Board of Fiji Broadcasting". The military played no role in his appointment.

[8] The complainant stated that Mr Field had misreported on the deportation of Russell Hunter by saying that his family was given eight days to leave Fiji, when in fact they were given 21 days. Mr Pryde noted that Mr Field had assumed the reason for the journalist's removal was because his newspaper had reported on the Finance Minister's tax affairs. "This is also false," he wrote, "but it makes a good story." He said that the Fiji Inland Revenue and Customs Authority (FIRCA) had cleared Mr Chaudhry of any wrongdoing, and an independent inquiry had also cleared him of any breach of tax laws.

[9] In Mr Pryde's view, one of the more "blatant examples" of inaccuracy in Mr Field's update was his reference to the mugging of an Australian High Court judge and the attempt to link this attack with the judge's opposition to the Fiji Human Rights Commission report which supported the 2006 takeover of Fiji. The complainant said that, in fact, the judge had neither opposed nor supported the report; people had criticised the judge because they thought she was supporting the report because she had said "I commend people to read the report". Mr Pryde stated that there was no link between the mugging and the judge's comments. Furthermore, contrary to Mr Field's statement, the judge's house had not been burnt down.

[10] The complainant contended that the public had been left with a false impression of Fiji because RNZ had not elicited the opinion of a neutral person. He said that interviewing someone with an agenda, such as Mr Field, "would not be so bad if it was treated more critically" by the host. He wrote:

The problem with Mr Field and the blind acceptance of his opinion is that, not only is he biased and unbalanced, not only does he not reside in Fiji and therefore relies on second or third-hand news sources, but more often than not, he is just plain wrong.

As a New Zealander residing in Fiji who does know the facts, unlike Mr Field, I am deeply concerned at the continual slanted and untruthful reporting of events in Fiji by sections of the New Zealand media, particularly Radio New Zealand.

Principles

[11] RNZ assessed the complaint under Principles 4 and 6 of the Radio Code of Broadcasting Practice, which provide:

Principle 4

In programmes and their presentation, broadcasters are required to maintain standards consistent with the principle that when controversial issues of public importance are discussed, reasonable efforts are made, or reasonable opportunities are given, to present significant points of view either in the same programme or in other programmes within the period of current interest.

Principle 6

In the preparation and presentation of news and current affairs programmes, broadcasters are required to be truthful and accurate on points of fact.

Broadcaster's Response to the Complainant

[12] RNZ said it was important to note that the broadcast complained about was not a news programme, but was an interview with a commentator on a current affairs programme. It noted that RNZ employed specialist commentators in a number of areas such as health or economics, and they were engaged to comment on topical matters by way of their own opinion and analysis. Mr Field had been introduced as a "commentator", it wrote, not as a "reporter" filing an item for a news bulletin.

[13] Referring to Mr Pryde's comment that Mr Field had relied on websites, RNZ said that this in itself was not a breach of the standards.

[14] With respect to the complaint about Mr Field's comment that the head of Fiji Broadcasting was "military-appointed", RNZ wrote:

The board of Fiji Broadcasting is appointed by and reports to the government and the chief executive of Fiji Broadcasting is appointed by the board. The present members of the board were appointed prior to the 2006 coup but the chief executive was appointed well after the military coup.

[15] The broadcaster argued that Mr Field's use of the term "military-appointed management" was simply a shorthand description of the circumstances and relationships. Whilst that description was not strictly accurate, it said, it was of no material consequence to the point Mr Field was making (that the head of Fiji Broadcasting had endorsed the "dressing down" of Fiji Broadcasting staff by the military).

[16] Turning to the complaint that the deported journalist's family was given 21 days to leave Fiji, RNZ stated that there were conflicting accounts of the actual notice given to the family. However, it said, the family had left Fiji within eight days. The broadcaster maintained that, whatever the true facts were, they were not material to the thrust of Mr Field's comments that the journalist and his family had been ordered to leave Fiji.

[17] RNZ noted that Mr Pryde had not identified the reasons why the journalist was removed from Fiji. Accordingly, it said, there was no reason to find that it was not open to Mr Field to suggest that the journalist was removed for reporting on Mr Chaudhry's tax affairs.

[18] In the broadcaster's view, using "emotive terms" such as those complained about by Mr Pryde was not uncommon in the presentation of a commentator's opinion. Using emotive language did not constitute a breach of formal broadcasting standards, it wrote.

[19] Looking at Mr Field's allegations that a High Court judge had been robbed and had her house burnt down, RNZ said that Mr Field accepted that it was a different judge whose house had been burned down. He had "erroneously conflated the two incidents when making his comments". In the broadcaster's opinion, this error was not material to Mr Field's comment that a judge had suffered from criminal action, or to his views about the possible motivation for those actions.

[20] RNZ said that it had been "unable to ascertain with any degree of confidence" what the judge's views were on the Fiji Human Rights Commission report. There seemed to be varying accounts, it wrote, and therefore it could not say there was no basis for Mr Field's remarks.

[21] The broadcaster found that no breaches of Principles 4 or 6 had occurred. It invited Mr Pryde to participate in a future Nine to Noon programme to discuss, comment on, or debate the issue of media freedom in Fiji.

Referral to the Authority

[22] Dissatisfied with RNZ's decision, Mr Pryde referred his complaint to the Authority under section 8(1B)(b)(i) of the Broadcasting Act 1989.

Broadcaster's Response to the Authority

[23] The broadcaster added nothing further to its original reply to the complainant, except to point out that it had not received a reply to its invitation for Mr Pryde to participate in a Nine to Noon programme.

Further Information Requested by the Authority

Information requested from the Complainant

[24] The Authority asked Mr Pryde to provide the following information:

- the basis, and any supporting evidence, for his statement that Russell Hunter's family was given 21 days to leave Fiji
- the basis, and any supporting evidence, for his statement that Mr Hunter was not deported for publishing articles on Mr Chaudhry's tax affairs
- the information source, and any further details, for his assertion that Justice Scutt did not oppose the "Shameem Report".

[25] In response, Mr Pryde stated that he had been "reliably informed by the Immigration Department" that 21 days notice had been given to the Hunter family. This was the standard period when a permit was cancelled, he wrote, and he had been told that the Hunter family had left Fiji before the expiry of this period.

[26] With respect to the second point, Mr Pryde said that Mr Hunter had been deported under the Immigration Act 2003 "after having been declared a prohibited immigrant by the Permanent Secretary for Defence, Immigration and National Security". The decision had been made after the Minister for Defence, Immigration and National Security had received reliable information that Mr Hunter was conducting himself "in a manner prejudicial to the peace, defence, public safety, public order, security and good governance of the Fiji Islands".

[27] Mr Pryde noted that the exact nature of the information upon which the Minister had based his opinion was privileged. However, he said, he could confirm that Mr Hunter's deportation had nothing to do with the reporting of the Chaudhry tax matter. The complainant maintained that as Mr Field had made this assertion, it was up to him to provide evidence to support his statement.

[28] The complainant said he had watched the Fiji TV broadcast where Justice Scutt said that she commended people to read the Shameem report. He added that, to his knowledge, neither Justice Scutt nor any other judge in Fiji had made public any opinion on the legality or otherwise of the 2006 intervention as it would be inappropriate to do so.

Information requested from the Broadcaster

[29] The Authority asked RNZ to respond on two points:

- a response from Mr Field as to why he said that the Hunter family was given eight days to leave Fiji
- a statement from RNZ and Mr Field as to the basis for the statement that Justice Scutt had publicly stated that she did not agree with the Shameem report.

[30] Looking first at the Hunter family, RNZ said that on the night Mr Hunter had been seized, Mr Field had been told by Mr Hunter's newspaper that the family had been given eight days notice. The interim government would not comment on that night. The following day, it wrote, the Fiji Times paper had reported that the family's deadline was 14 days, and two days later the Immigration Minister finally said

that the deadline for the family's expulsion was 21 days. RNZ said that none of this confusion would have occurred if the interim government had made a statement on the day.

[31] The broadcaster argued that it was not material how many days the family was given to leave; the point was that Mr Hunter and his family were expelled for unidentified reasons. It contended that the Authority could not make a finding of fact on this matter given the conflicting evidence.

[32] With respect to Justice Scutt's comments, RNZ said that Mr Field had a number of sources at a very high level in the Fijian judiciary, and the view of Justice Scutt had been given to him in relation to the summoning of the *Fiji Times* publisher earlier in the year. RNZ said that Mr Field would not reveal his sources.

[33] The broadcaster said that whether Justice Scutt made the comments publicly or not was irrelevant; the fact was that she had made the comments, and very shortly afterwards she had been assaulted and robbed in the street. RNZ submitted that Mr Field's comment about Justice Scutt's views was immaterial to the complaint.

Complainant's Final Comment

[34] Mr Pryde asserted that by the time of the *Nine to Noon* interview, Mr Field would have known that the Hunter family had been given 21 days to leave Fiji "but he chose deliberately not to mention this fact and maintained that the family were given eight days".

[35] The complainant said that he agreed that the exact number of days was not material to the complaint, but contended that it was one example of "the continual failure throughout the interview to accurately report".

[36] Mr Pryde expressed doubt that Mr Field's sources included members of the Fijian judiciary. He noted that Justice Scutt's view on the Shameem report was available publicly on Fiji TV and later on their website. Noting Mr Field's view that "judges who show any independence in Fiji have to worry about their future", Mr Pryde wrote:

Justice Scutt had her handbag grabbed from her late one Saturday night while she was walking home. This was a criminal and not a political act. Her house was never burnt down.

...Judges do not have to worry about their futures in Fiji and there is not a single piece of evidence then or since for Mr Field to draw that conclusion.

Broadcaster's Final Comment

[37] RNZ observed that Mr Pryde had agreed that the number of days given to the Hunter family to leave the country was not material. It noted that the concept of materiality was included in the Radio Code which came into force on 1 July 2008, although it was not included in the previous Code. RNZ submitted that the Authority could choose to decline to determine aspects of the accuracy complaint under section 11(b) of the Broadcasting Act on the grounds that the facts were not material to the programme.

[38] The broadcaster also submitted that the "minor inaccuracy" relating to Mr Field's statement that Justice Scutt's house was burnt down was immaterial to the comments being made, as was the amount of notice given to the Hunter family to leave Fiji.

Authority's Determination

[39] The members of the Authority have listened to a recording of the broadcast complained about and have read the correspondence listed in the Appendix. The Authority determines the complaint without a formal hearing.

Principle 6 (accuracy)

[40] Principle 6 of the Radio Code of Broadcasting Practice states that broadcasters are required to be truthful and accurate on points of fact. Mr Pryde identified a number of statements in the broadcast which he contended were inaccurate. The Authority addresses each point below.

Statement that the head of Fiji Broadcasting was "military-appointed"

[41] Mr Field made the following statement in the item:

And I'm just astonished this morning – the head of Fiji Broadcasting, who is the brother of the military-appointed Attorney-General, and the head of broadcasting's a chap called Riyaz Saiyad-Khaiyum, has come out and said well the military were doing right because his staff were reporting rumours. I think it says something when the military-appointed management of a media outlet can now justify the military interrogation of their own journalists. It's a dangerous world in Fiji to be a journalist there.

[42] In the Authority's view, Mr Field stated as a fact that the management of Fiji Broadcasting was "military-appointed". RNZ has acknowledged that this description was "not strictly accurate". Having reviewed the submissions from both parties, the Authority accepts that Mr Saiyad-Khaiyum was appointed by the Board of Fiji Broadcasting, not the military.

[43] Accordingly, the Authority finds that the statement was inaccurate.

Deportation of journalist Russell Hunter

[44] This part of the complaint relates to the following statement in the item:

...What actually happened to [Russell Hunter] is worse than it sounded, and rather frightening to his family who are now on the verge of leaving – they were given eight days.

[45] Mr Pryde has submitted that Mr Hunter's family was given 21 days to leave Fiji, not eight days as stated by Mr Field. In its initial response to the complaint, RNZ said that there were conflicting accounts of the actual notice given to the family, but that the family had left Fiji within eight days. In a later response to the Authority, RNZ gave the following account:

On the night Mr Hunter was seized, our correspondent sought background from Mr Hunter's newspaper and was told the family had been given eight days notice.

...The following day, the Times newspaper said the deadline for the family's expulsion was 14 days and it is noted that two days later the Immigration Minister finally said the relevant number of days was 21.

[46] The Authority notes that Mr Hunter was deported on 26 February 2008. The broadcast complained about took place on 7 March 2008, and media reports state that Mr Hunter's family left Fiji on 14 March 2008. At the time of the broadcast, it was clear that the Hunter family had not been given eight days to leave Fiji.

[47] The Authority acknowledges that the journalist was speaking in an off-the-cuff manner. However, his statements were still required to be clear and accurate. In the Authority's view, the reasonable listener would have taken from Mr Field's statement that Mr Hunter's family had officially been given only eight days to leave the country. This was not the case.

[48] The Authority finds that the statement was inaccurate

Justice Scutt's criticism of the "Shameem report"

[49] The complainant argued that Justice Scutt had neither supported nor opposed the "Shameem report" but had only said "I commend people to read the report". Mr Pryde explained that people had interpreted her comment as supporting the report, and she had been criticised for this. RNZ stated that there was no clear account of her stance, but that confidential sources had reported that Justice Scutt had opposed the report.

[50] In the Authority's view, the following comment by Mr Field would have left listeners with the clear impression that Justice Scutt had made a public comment that she did not agree with the Shameem report:

...[Justice Scutt was] robbed in the street after she actually attacked, well, said she didn't agree with Shaista Shameem's assessment that the Fiji coup had been a legitimate coup. So the day after she did this she was robbed in the street and her house was burnt down.

[50] RNZ has not provided any information to counter the complainant's evidence that Justice Scutt's only public comment on the matter was "I commend people to read the report". As it has not been

provided with any evidence to suggest that Justice Scutt publicly opposed the Shameem report, and was then attacked because of this comment, the Authority finds that Mr Field's statement was inaccurate.

Criminal attack on High Court Judge

[52] RNZ has accepted that Justice Scutt did not have her house burned down, and that Mr Field was mistaken in this respect. However, it declined to uphold a breach of Principle 6 on the grounds that the statement was not material to the discussion.

[53] The Authority agrees that the statement was inaccurate. It addresses RNZ's materiality argument below in its consideration of whether to uphold this part of the complaint when weighed against the broadcaster's right to freedom of expression (see paragraph [60] below).

Bill of Rights

[54] Having found that the above statements were inaccurate, the Authority must consider whether to uphold these parts of the complaint as breaches of Principle 6 (accuracy).

[55] The Authority acknowledges that upholding these parts of the complaint would place a limit on the broadcaster's right to freedom of expression, which is guaranteed by section 14 of the New Zealand Bill of Rights Act 1990. It recognises that the right to freedom of expression is fundamental in a free and democratic society. Justice Keith said in *Hosking v Runting*¹ :

The right to freedom of expression is recognised in our law (notably by Parliament in s14 of the Bill of Rights), as in the law of many other parts of the world, as being of the highest importance in a modern democracy. The purposes and values underlying it are also widely accepted. They include individual liberty and self-fulfilment, the value of the marketplace of ideas and the protection and advancement of democratic self-government...

[56] However, "the right of freedom of expression is not an unlimited and unqualified right".² According to section 5 of the Bill of Rights Act, any limit on the broadcaster's right to freedom of expression must be prescribed by law, be reasonable, and be demonstrably justifiable in a free and democratic society. Justice Tipping described the process for deciding whether a limit is justified in the following terms³ :

Whether a limit on a right or freedom is justified under s5 is essentially an enquiry into whether a justified end is achieved by proportionate means. The end must be justified and the means adopted to achieve this end must be proportionate to it.

[57] First, the Authority must assess whether, by upholding the complaint, the limit placed on the broadcaster's section 14 right would be "prescribed by law". Parliament has recognised the importance of the accuracy standard by requiring the Authority to develop codes of broadcasting practice in relation to "...accurate programmes and procedures for correcting factual errors...".⁴ Further, the Codes of Broadcasting Practice have been developed in conjunction with broadcasters and approved by the Authority. The requirement that news, current affairs and other factual programmes be truthful and accurate on points of fact is, in the Authority's view, precisely what was intended by Parliament when it enacted the Broadcasting Act. For these reasons, the Authority considers that upholding a complaint under Principle 6 (accuracy) would be prescribed by law.

[58] Second, the Authority must consider whether upholding the complaint would be a justified limitation on the right to freedom of expression. In the Authority's view, the accuracy standard exists to protect audiences from receiving misinformation and thereby being misled. Particularly where a broadcast involves a matter of public interest, this objective is very important. Audiences of news, current affairs and factual programmes have the right to receive information that is truthful and accurate. Accordingly, the Authority considers that upholding a complaint under the accuracy standard would place a justified limitation on a broadcaster's right to freedom of expression.

[59] Third, the Authority must consider whether it would be a reasonable and proportionate limit on RNZ's freedom of expression to uphold a breach of the accuracy standard on this occasion.

[60] Relevant to this consideration is RNZ's argument that the statements complained about by Mr Pryde were not material to the discussion. The Authority disagrees. It considers all of these statements were material to the subject under discussion, as they contributed to the picture Mr Field was trying to build about a reign of terror in Fiji, in which officials and media should be afraid of speaking out.

[61] The public has a right to expect that news and current affairs programmes will present material

accurately, and upholding this complaint clearly promotes the objective of Principle 6 of the Radio Code (as outlined in paragraph [58] above). In these circumstances, the Authority finds that upholding these aspects of the complaint places a justified and reasonable limit on RNZ's freedom of expression. It therefore upholds these parts of the accuracy complaint.

Reason for Mr Hunter's deportation

[62] The complainant also argued that Mr Field's assumption that Mr Hunter was deported for publishing articles about the Finance Minister's tax affairs was inaccurate.

[63] In the Authority's view, Mr Field did not suggest that publishing articles about Mr Chaudhry was the sole reason for Mr Hunter's deportation. The journalist was providing commentary and analysis on the situation, and was trying to build a picture for listeners about Mr Hunter's deportation before the presenter changed the direction of the conversation. Mr Field was cut off at a point where his argument was not fully developed, but it was clear that he did not consider that publishing articles about Mr Chaudhry was the entire story

[64] In these circumstances, the Authority finds that listeners would not have been misled by Mr Field's statements. It declines to uphold this part of the complaint.

Use of emotive language

[65] Mr Pryde complained that Mr Field's comments were biased, as he used emotive language such as "dragooned", "kangaroo court" and "preached". In the Authority's view, Mr Field was entitled to use those terms as he was giving his own views on the situation. Listeners would have understood that Mr Field was speaking in his role as a commentator, and giving his personal opinion and insight.

[66] The Authority finds that Mr Field's choice of language did not amount to a breach of Principle 6 (accuracy).

Principle 4 (balance)

[67] Principle 4 applies to programmes which discuss controversial issues of importance. In the Authority's view, the balance standard did not apply to the programme complained about, as it did not constitute a "discussion" of a controversial issue of public importance.

[68] The Authority agrees that Mr Field touched on a number of issues surrounding the situation in Fiji, which were undoubtedly issues of public importance. However, it was clear that Mr Field was giving his own expert opinion and oversight in his role as a commentator and listeners would have had no expectation that they would be hearing a range of views. The Authority considers that this programme could properly be categorised as an opinion piece. It was not a discussion of a controversial issue to which the balance standard applies.

[69] In these circumstances, the Authority declines to uphold the balance complaint.

For the above reasons the Authority upholds four aspects of the complaint that the programme breached Principle 6 (accuracy). It declines to uphold the Principle 4 (balance) complaint.

[70] Having upheld the complaint, the Authority may make orders under sections 13 and 16 of the Broadcasting Act. It does not intend to impose an order on this occasion. The Authority considers that the publication of this decision will serve as a reminder to commentators that they must ensure the accuracy of factual statements.

Signed for and on behalf of the Authority

Joanne Morris
Chair
27 August 2008

¹[2005] 1 NZLR 5, paragraph 178

² P v D [2000] 2 NZLR 591, per Nicholson J

³ *Hansen v The Queen* [2007] NZSC 7, paragraph 123

⁴ Section 21(1)(e) of the Broadcasting Act 1989

Appendix

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

1. Christopher Pryde's formal complaint – 19 March 2008
2. RNZ's decision on the formal complaint – 16 April 2008
3. Mr Pryde's referral to the Authority 28 April 2008
4. RNZ's response to the Authority – 13 May 2008
5. Mr Pryde's response to the Authority's request for information – 6 June 2008
6. RNZ's response to the Authority's request for information – 18 June 2008
7. Mr Pryde's final comment – 2 July 2008
8. RNZ's final comment– 8 July 2008