

**Mr Brian Robinson  
Hamilton**

**11 July 2005**

**Broadcasting Standards Authority  
PO Box 9213  
Wellington**

**Dear Sir/Madam**

**Broadcasting Standards Complaint  
TVNZ "Sunday" - 1 May 2005  
"The Monster of Berhampore"**

**The Complaint**

This is a formal complaint under the Free to Air Television Code of Broadcasting Practice. My complaint is that the TVNZ programme titled "The Monster of Berhampore" on 1st May 2005, breached the following standards of the code:

- **Standard 2 - Law and Order: Guideline 2a**  
Broadcasters must respect the principles of law which sustain our society.
- **Standard 4 - Balance: Guideline 4a**  
Programmes which deal with political matters, current affairs, and questions of a controversial nature, must show balance and impartiality.

This complaint has been rejected by TVNZ

## **Enclosures**

I am enclosing

- My complaint to TVNZ dated May 26 2005, which comprised of a four page letter outlining the breaches of the standards
- A nine page written transcript of the May 1 programme that I prepared. This transcript was included in my letter of complaint to TVNZ
- The response from TVNZ's Programme Standards Manager, David Edmunds, dated 13 June 2005, which comprised of a four page letter,
- A written transcript of an interview of Mavis van Dalen with Linda Clark, broadcast by Radio New Zealand on 3 May 2005

## **Request to Broadcasting Standards Authority**

I would like to ask the Broadcasting Standards Authority to, as soon as possible, request that TVNZ preserve all the unedited tapes of all the interviews associated with the programme "A Monster of Berhampore"..

I further ask that the BSA request that these tapes be made available to the BSA to assist the BSA in deliberating the merits of this complaint.

I further ask that TVNZ make available a copy of the programme in question and the two previous programmes that David Edmunds refers to in his letter to the BSA:

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- 15 July 2004 Holmes Programme, including allegations against Mr Lake
- 22 July 2004 Holmes Programme, including allegations against Mr Lake
- 1 May 2005, Sunday "The Monster of Berhampore"

The reasons for this request will be contained in the body of this complaint, and relate to the response by David Edmunds of TVNZ.

## **Seriousness of this Complaint**

The complaint is extremely serious and raises the general principles of fairness when a Broadcaster covers criminal allegations (or any other type of allegations) about a person once they are dead.

If this complaint is not upheld, broadcasters will be effectively given licence to say almost anything about a dead person.

While the laws of defamation obviously do not apply to a person who is dead, the standards of fairness and balance is still extremely relevant while the deceased has living friends and relatives. There is no actually no reason why the memory of anyone should be treated unfairly.

## **Disclosure of Interest in the Case.**

I wish to make it clear that I do not know Mr Lake, or any of the complainants involved. To my knowledge I have never met any of these people, or people that they knew or know.

I have not formed an opinion, belief or judgment about whether Mr Lake is guilty or innocent of the crimes he is alleged to have perpetrated.

I acknowledge the seriousness of the crimes that Mr Lake has been accused of. Sexual abuse of vulnerable children is one of the most serious crimes that may be committed. The effects on victims may be extremely damaging and long lasting.

I acknowledge the seriousness of the possibility that Mr Lake may be the victim of false allegations of sexual abuse. The effects on victims of false allegations of sexual abuse may also be extremely damaging and long lasting.

My concern is for the maintenance of broadcasting standards.

In particular I recognise the extremely important role, and the power that broadcasters have to assist or to exacerbate the problems of the twin scourges of child abuse and false allegations of child abuse in New Zealand.

## **Summary of the Formal Complaint**

The programme treated serious, unsubstantiated criminal allegations against Mr Lake as established facts.

The programme breached the fundamental tenet of justice that a man is innocent until proven guilty. If a person is dead, the broadcaster should have a responsibility to treat allegations in a balanced and fair manner.

The programme breached the requirements of balance and impartiality in covering the allegations.

## **The main evidence for the complaint**

The programme treated serious, unsubstantiated criminal allegations against Mr Lake as established facts.

The title of the programme, "*The Monster of Berhampore*", epitomised the stance of the broadcaster: that Mr Lake was guilty of what he had been accused of, without any room for doubt. That theme was continued throughout the programme.

The response of TVNZ in their letter of June 13 does not dispute that is what the programme did. Their summary of the aim of the programme on the first page of their letter (refer "*The item examined* .....") stated that Mr Lake had "*been identified as a sexual predator*", and questioned whether enough had been done for "*his victims*". On the third page of TVNZ's letter it said that the programme was raising questions about how complaints were handled of "*victims of child abuse*", which of course prejudged that the complainants were telling the truth and that Mr Lake was not.

The programme however did not justify that conclusion. The programme, at best, provided convincing evidence that should Mr Lake still be alive, he would have had a case to answer. The programme provided no indication that the aim was only to suggest Mr Lake had a case to answer.

The programme provided no warning to the audience that they should be careful forming opinions based on the programme, because the programme did not present the full story. This is the very least that could have been said to provide appropriate balance.

The programme did not provide any indication that TVNZ had done even a rudimentary investigation to examine any evidence that did not support their position that he was guilty.

Worse than that, there is now evidence that TVNZ were deliberately dishonest or deceitful in the information they presented. This will be covered in detail later in this letter. In summary, they chose to present a witness as providing "*startling new information*" when they must have known that to be untrue.

## **TVNZ explanations for their rejection of the complaint**

TVNZ responded to my complaint in a letter dated 13 June 2005. After deliberation of my complaint they formed the opinion that they had not breached the standards that I had complained of.

Their reasons for rejecting my complaint are detailed in their letter of 13 June. I understand the essence of their defence to be that

1. TVNZ had a duty to carry out a full and thorough investigation of the allegations of child abuse.
2. After carrying out a full and painstaking investigation the journalists had to decide who was telling the truth, and formed a belief that Mr Lake was guilty.
3. TVNZ were entitled to make a programme that reflected their opinion, noting that truth is a complete defence against defamation.
4. TVNZ believed the programme was fair and balanced and raised legitimate questions about how complaints by victims of sexual abuse are handled.

While I will respond to the detail provided in the TVNZ letter, I wish to make it clear that I consider

- a. TVNZ did not do a full and thorough investigation of the allegations. If it really was a full and thorough as claimed then significant information was withheld from the public - which raises questions of fairness and balance.
- b. TVNZ is wrong to consider that the investigation required the journalists to form a belief that either the complainants or Mr Lake was telling the truth. This error appears to have detrimentally affected the whole production of the programme
- c. TVNZ appear to confuse the **beliefs** that the journalists formed with the **truth** that they refer to as a complete defence against defamation and/or fairness.
- d. The programme was far from "fair and balanced", and discussions of the requirements of TVNZ to consider the needs of victims of child abuse prejudices the central issue of the programme in question - of whether there were actually any victims of abuse.

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### **Evidence that TVNZ were deliberately dishonest or deceitful in the information they presented.**

The programme of 1 May presented the evidence of Mavis Van Dalen as a major new development to the inquiry. She was presented as an impartial witness whose testimony was significant as it provided independent verification of the claims of the complainants.

Further evidence obtained subsequently to the programme (from a Radio New Zealand broadcast) has shown that Mavis Van Dalen has only ever been able to provide hearsay evidence and is valueless to the investigation.

This further evidence could have easily been discovered if the investigation team had bothered to carry out even the most rudimentary checks that could have been expected of a junior reporter.

But the programme instead:

- Presented Van Dalen as a witness who was able to provide a "major revelation".
- Devoted nearly 10% of the air time to teasers by the presenter about the evidence to come and to her evidence.
- Held her evidence to the programme finale

With Van Dalen's evidence being presented as a "major revelation" viewers would have expected that her evidence would have some probative value. And the programme made this appear so:

- **Philip Kitchin**; Time 3:56. "Tonight we will show you how, 14 years ago, the Presbyterian Church was warned - not once - but three times about Walter Lake by a member of its own clergy".
- **Announcer**, Time 15:15 "Finally, for the victims, a major revelation, and it comes from a member of the Presbyterian clergy.

A deaconess who damns the way the Presbyterians are handling the Berhampore scandal. Mavis Van Dalen worked at Berhampore Home before Mr Lake arrived.

In an exclusive interview with Sunday she says that 14 years ago she told the then head of the Presbyterian Church that Lake was a sexual predator.

- **Philip Kitchin**, Time 16:09 "So three times you told the head of the Presbyterian Church about these allegations?"
- **Mavis Van Dalen**, Time 16:13 (in reply to Kitchin) "That's correct"

The "revelation" was electric. Mavis Van Dalen was an adult. She commanded respect for her position as a Deaconess. She had worked at the home. There was a direct implication that she was providing an external corroboration to the allegations that the complainants were making. The information as presented **did** appear to be a major revelation.

The programme did say that Van Dalen worked at the home before Mr Lake arrived, but that information did not appear to be significant. The information appeared to be in the context of her having worked there from before Mr Lake arrived, and as a significant witness she presumably remained working there while Mr Lake was also there. No alternative explanation for how she came to be concerned about Mr Lake was given.

Further evidence that TVNZ were representing Mavis van Dalen's evidence as significant comes from the TVNZ web page report of the "Sunday" programme. The report, published on the 3 May 2005 is titled "*Abuse victims deprived of justice*". This report with web reference is enclosed as an attachment to this letter.

**Attachment:**

TVNZ 2 May 2005  
Abuse victims deprived of justice

The report first refers to allegations by Kathleen Batchelor. Then it states:

"Batchelor was not the only one to come out against Lake

Fourteen years ago the Presbyterian Church was warned not once, but three times about him by a member of its own clergy.

Mavis Van Dalen, a deaconess who damns the way the Presbyterian's are handling the Walter Lake scandal, told the Presbyterian Church he was a sexual predator"

TVNZ were clearly portraying Mavis Van Dalen as an **additional** witness to Kathleen Batchelor. .

Van Dalen's evidence is in fact simply hearsay evidence based on what she has been told by Kathleen Batchelor herself. She is **not** an additional witness as TVNZ claims, but simply someone who can say that she was told of Kathleen Batchelor's complaint

I have enclosed with this letter, a transcript of an interview of Mavis Van Dalen carried out by Linda Clark of Radio New Zealand, two days after the "Sunday" programme

**Attachment:**

Radio New Zealand, 3 May 2005  
Nine to Noon with Linda Clark  
Linda Clark interviewing Mavis van Dalen

In the first few minutes of the Radio New Zealand interview, Mavis Van Dalen revealed:

- That she worked in the Berhampore home for two years in the 1950s.
- She did not meet Mr Lake until a reunion in 1990, over 30 years later.
- At the reunion she heard a comment that made her query one of the main complainants, Kathleen Batchelor.
- Kathleen Batchelor told Mavis Van Dalen what had happened to her.
- Mavis Van Dalen claimed that when people tell her problems, she "knows that they are not making things up". She never doubted the story.

As a support person for the complainants, Mavis Van Dalen is obviously a valued friend.

But the only evidence that she has ever had is the information that has been told to her by the complainants. She was adding nothing more to the complaint that Kathleen Batchelor had already made (where in the transcript of the TVNZ Sunday programme we are informed Batchelor first made her complaint 20 years ago).

Given that TVNZ have said (letter of 13 June 2005) that their investigation was "long and painstaking" it is simply not credible to suggest that TVNZ were not fully aware that Mavis van Dalen was not an additional witness, and that she was only able to present hearsay evidence. The transcript of the actual programme makes clear that TVNZ knew that Mavis Van Dalen worked at the home before Mr Lake.

By presenting Van Dalen as an additional witness, TVNZ were being deliberately dishonest or deceitful, in leaving the TVNZ audience with the impression that Van Dalen remained at the home while Mr Lake was there - for how else could Van Dalen possibly be an "additional witness"?

Not only did TVNZ present Van Dalen as an additional witness, but they raised the stakes by presenting her evidence as "*Startling New Evidence*".



Because Mavis Van Dalen was not a complainant, and because of her position as a staff member and a deaconess, the TVNZ audience were entitled to draw the conclusion that Van Dalen's evidence was indeed "startling new evidence". Such a conclusion was false.

If TVNZ were to suggest that they really did not know that Mavis Van Dalen was simply reporting hearsay evidence of Kathleen Batchelor, and perhaps other complainants, it indicates that their investigation was definitely not the "long and painstaking" investigation that they claim. The Radio New Zealand interview of Mavis Van Dalen with Linda Clark shows that Van Dalen was very ready to acknowledge the true basis of her complaints to the Presbyterian Church.

A review by the Broadcasting Standards Association of the full and unedited transcripts of the interview or interviews that TVNZ had with Mavis Van Dalen should be able to confirm whether

- TVNZ were indeed being deceitful and dishonest in selective reporting of such interviews, or
- whether those same interviews confirm the serious inadequacies of the investigation that TVNZ claim to be "long and painstaking"

### **Evidence that the programme was not representing a "full and thorough" investigation**

Mr Edmunds in his letter of June 13 makes reference to me "surely" expecting "that a free press in a democratic society would fully and thoroughly investigate such circumstances" with reference to complaints of child abuse.

I agree with Mr Edmunds absolutely. That is the function that a democratic society expects of its press.

At issue in my complaint with regard to the Sunday programme is that TVNZ provided no evidence that they had indeed carried out a full and thorough investigation, sufficiently for them to present a fair and balanced report.

Worse than that, there is actual damning evidence, referred to later in this section, that the investigation was not "full and thorough", despite Mr Edmunds claims that the information in the programme "was the result of a long and painstaking investigation".

The investigation appears more to have been characteristic of journalists who have formed a belief about what they think had occurred, and have then only collected and/or presented information that fitted that predetermined belief, with a token concern for any other viewpoint.

***The programme clearly only covers one side of the story.*** There is no evidence that TVNZ collected other than token information that challenged this side of the story.

It takes both sides of the story to come to a conclusion, or to form a justifiable "belief" that TVNZ claims their reporters had to make about which side of the story was truthful, or to boldly claim that Mr Lake was the "Monster of Berhampore".

The evidence that I refer to include

**1. The name of Mr Lake**

If the investigation was indeed "full and thorough" why did the programme refer to Mr Lake's name as "Walter", when that was not his name?

**2. Allegations have not been challenged**

When allegations have been made, they have not been challenged. For example one of the Millan sisters (Time 5:37) made the claim that Mr Lake had "tortured and terrorised us". A Court of Law would carry out a cross examination. A fair and balanced TVNZ investigation should at least ask or consider the questions about what was meant by such "torture" and "terror"

**3. Followup on previously published information**

I have attached a news report that was published subsequently to a TVNZ programme in 2004

**Attachment:**

Manawatu Evening Standard, 16 June 2004  
Abuse claims target church  
by Jonathan McKenzie and NZPA

The report refers to a Palmerston North woman who sparked the investigation of having led a life of misery and prostitution, and of being in mental health care for years. This information was omitted from the programme

**4. Issues of credibility**

Trevor Roberts advises Philip Kitchin in the programme (refer Transcript Time 13:12) that:

*"Our own investigations into some of the matters where we have been able to investigate indicate that there are some quite*

*considerable issues of credibility in respect of some of those complaints"*

These issues of credibility that Trevor Roberts refers to have not been considered further

A review by the Broadcasting Standards Association of the full and unedited transcripts of the interview or interviews that TVNZ had with Trevor Roberts, or perhaps direct questioning of Trevor Roberts himself should be able to confirm whether

- TVNZ were provided additional information about such issues of credibility, and failed to present them on the programme, or
- whether TVNZ failed to follow up themselves on such a serious matter that might have affected the beliefs that TVNZ reporters came to that Mr Lake was the "Monster of Berhampore"

It is clear from an interview that Trevor Roberts had with Radio New Zealand a day after the TVNZ report that Mr Roberts had considerably more to say about the case than the edited amount that was included on the TVNZ programme. The Radio New Zealand transcript is included with this letter as an attachment:

**Attachment:**

Radio New Zealand, 2 May 2005  
Nine to Noon with Linda Clark  
Interview of Trevor Roberts and Gordon Paine

It would have been a serious omission on TVNZs part if they were to have left out of their programme information of the type Mr Roberts discussed with Radio New Zealand on the 2 May. Such a possible omission can only be determined from the unedited transcripts of the interview that TVNZ had with Mr Roberts.

One of the things that was disclosed that was remarkable in the interview of Trevor Roberts with Linda Clark was that the first allegation that was made and investigated, was not of sexual predation as far as children were concerned, but of misconduct between Mr Lake and a person who was at that stage an adult.

I would have expected a "long and painstaking investigation" that TVNZ claim to have uncovered ***would have rung extremely loud alarm bells about the significant change in allegations from the time of this first complaint, especially when other media reports (such as the attached Manawatu Standard report of 16 June 2004) have already reported the mental health problems of that first complainant.***

The testimony of Trevor Roberts appears to be extremely crucial to a fair and balanced programme, but his concerns appear to have been ignored.

#### **5. Consideration of motives for the complaints**

Of course the most obvious motive for the complaints is that the complainants are telling the truth. TVNZ have considered this possibility well, and have indeed presented evidence that Mr Lake had a case to answer to.

But a balanced consideration could have considered the motivation of money. Even very early reports (eg the Manawatu Standard news report referred to earlier and included as an attachment) referred to demands for compensation. This occurred while there were only a few complainants.

There has been in recent years considerable publicity given to church compensation settlements, involving considerable sums of money that has been paid out without significant checking of the validity of the claims. For example the St John of God case in Christchurch while there were only a few complainants prominently mentioned the paid out sums of money involving \$100,000 in at least one case.

While such a sum may be entirely warranted for cases which have validity, the St John of God experience also showed that the possibility of money could invite fraudulent claims (such as the successful prosecution of Justin Richardson)

The possibility that some stories of abuse may have been motivated by money has not been even discussed in the TVNZ programme

The programme could equally have considered other motivations for false allegations, that a competent investigative journalist would have established. The most obvious of these is attention seeking behaviour.

While such discussions of the possibility of false allegations may sound repugnant to a sympathetic consideration of a sexual abuse victim, the need to at least consider such motivations lies at the heart of the very heart of the investigation: Are the complainants telling the truth, or are they telling lies?

#### **6. Inconsistency of claims**

There was no discussion about the inconsistency in the type of claims. The programme referred to allegations involving attempted

intercourse with a young girl, sodomy with a boy, and physical abuse - including torture - of others.

The inconsistency of the claims, and the seriousness of the claims, do indeed warrant the label "the Monster of Berhampore" if those claims were to be true.

The inconsistency of the type of claims does not say that the claims are not true. But it does suggest that the claims need to be considered with additional caution, as only the most serious of sexual offending, and therefore a small minority, will involve the sexual abuse of both boys and girls, and also include torture.

### **7. Representation of all Berhampore children**

There was no indication that the "long and painstaking investigation" sought out the stories of children who lived at the home who could have given **positive** character references for Mr Lake.

Presumably over the time that Mr Lake was at the home there were many children who lived there as residents. No other children, other than those who are now making allegations as adults appear to have been considered.

### **TVNZ claim that the programme is similar to two others broadcast while Mr Lake was alive.**

TVNZ make the claim that the programme was the result of a long and painstaking investigation by TVNZ journalists, and that the allegations were first broadcast on the 15th and the 22nd July 2004, while Mr Lake was alive. Mr Edmunds makes the point that no defamation action was taken about the July programmes, leaving the implication that they were justified to say something similar in their 2005 programme.

I request that the BSA compare these two programmes broadcast in 2004, and compare them with the Sunday programme that is the subject of my complaint.

The essential difference between the 2004 programmes and the Sunday programme which is the subject of complaint is contained in Mr Edmunds own words when he describes the earlier programme were the first time that the **allegations** were broadcast.

The 2005 programme was significantly different. Mr Edmunds summarises that programme in the second paragraph of his letter of 13 June in saying that

- *Mr Lake **has been identified** as a **sexual predator** who **had molested** children, and that*
- *The item raised the question about whether enough had been done to help **Mr Lake's victims**.*

The earlier programmes were broadcast while Mr Lake was still alive, and far more care was taken to make clear to the viewing public that the accusations were only allegations.

There does not appear to be **any** justification for the way TVNZ decided to label Mr Lake as the "Monster of Berhampore" in May 2005, and not in earlier programmes in 2004.

In 2004 there were serious allegations of sexual abuse. In 2005 there were still serious allegations of sexual abuse with some complainants now being prepared to speak on camera. Nothing significantly appears to have changed, to warrant the new label "Monster of Berhampore".

The "startling new evidence" that seems to be the key to the new May 2005 story, has been discussed earlier, and appears to be hardly justified in screening at all, let alone using that "evidence" as a reason to now label Mr Lake as the "Monster of Berhampore"

What was new in May 2005 that was not known previously in 2004, was that the police had come to the conclusion that Mr Lake had a case to answer, and were about to lay charges when Mr Lake died. This hardly warrants a change of stance from allegation to being able to "identify Mr Lake as a sexual predator". Trevor Roberts makes that point clear in the programme: "The fact that the police have decided to charge doesn't mean that he's guilty"

In summary, the fact that TVNZ had previously broadcast programmes presenting allegations against a person, provides no justification for a later programme to ignore required broadcasting standards.

This complaint should be considered alongside the evidence of the content of the Holmes programmes that Mr Edmunds refers to, and the content of the programme broadcast on 1 May 2005.

## **Concerns about possibility of TVNZ using defamation as a benchmark of acceptability.**

Mr Edmunds makes the point that neither Mr Lake or his lawyers issued defamation proceeding against TVNZ.

I am concerned about a possible implication of these comments that TVNZ may interpret the lack of defamation action by Mr Lake as evidence of acceptability of what was broadcast.

TVNZ was well aware that Mr Lake was an elderly man in his 80s, with health problems, at the time the programme was broadcast. They would be well aware that the chances of defamation action being taken by Mr Lake, even if the programme was grossly defamatory would have been small, with the typical stresses that would be associated with taking such action.

In the more general sense, I am concerned that TVNZ may be judging acceptability of programmes such as "The Monster of Berhampore" based on the likelihood of defamation action.

That appears to be the case for the 1 May broadcast. Because Mr Lake is dead, there are no concerns of defamation action.

I applaud the willingness of broadcasters to walk on the edge of acceptability with regard to defamation if that is an essential ingredient of any story that must be told, to meet the public's "right to know".

But if walking on that edge is being carried out for purely commercial reasons, or is being set as an unspoken standard of excellence in any way, then the broadcaster is in danger of being accused of unfairness. And when the threat of defamation is significantly reduced - as in the example of Mr Lake, because of his death, the risk of unfairness is substantially increased.

## **TVNZ Mr Lake's refusal to be interviewed in 2004**

Mr Edmunds makes the point that Mr Lake refused to be interviewed by TVNZ. I am not sure what inference Mr Edmunds is making by this remark, but there is no particular reason why an innocent person (if Mr Lake was innocent) should subject themselves to trial by media.

I do not think that Mr Lake's decision at that time to refuse to be interviewed by TVNZ, should indicate in any way either guilt or innocence about the matters that were alleged.

The issue of whether an accused person has obligations to appear in a television broadcast to provide balance is covered in a previous Broadcasting Standards Authority decision:

Broadcasting Standards Authority  
Decision No: 2004 - 115  
Dated 3 September 2004  
Complainant: Peter Ellis of Christchurch  
Broadcaster: Radio New Zealand Ltd

Relevant clauses of that determination to this complaint include:

[129] RNZ also rejected the fairness aspect of the complaint on the grounds that before the broadcast complained about Mr Ellis had been invited to appear on Nine to Noon, and that the invitation had been subsequently repeated. The Authority does not accept RNZ's argument. A refusal to appear on a programme does not of itself relieve a broadcaster of its obligations under the Radio Code. Rather, it presents a new challenge for the broadcaster to find another way to satisfy the requirements of the Code

[142] .....The Authority agrees with the complainant that a broadcaster cannot rely on unplanned broadcasts sometime in the future to present the "balance" that its own broadcast lacks. The legislation and common sense preclude such an interpretation

144] When a person declines to participate in a broadcast, the broadcaster must ensure that viewers and/or listeners are aware that the issue being discussed is controversial and that there are other significant points of view. Often this can be achieved by, for example, the interviewer explaining the other points of view and/or adopting a devil's advocate approach.....

### **Presentation or disclosure of all available evidence**

A programme that boldly makes the declaration that a person is guilty of a serious crime, should in the interests of fairness and balance at least disclose all the significant information that they have that has led them to make that declaration.

I acknowledge that what is presented in a programme can only be a subset of the considerable information that is collected by way of investigation.

However, TVNZ have disclosed that they collected sufficient information for the "team of investigative journalists" to have been able to form a belief that the "complainants were telling the truth" and that Mr Lake was not. The programme should therefore at the very least refer to any significant information that they have that both supports the allegations, and that does not.

If the TVNZ producers have insufficient time to present all this critical information, they should say so explicitly, and warn the audience that not all



the relevant information has been presented. This is relevant to both evidence that supports any belief that TVNZ comes to, and particularly any evidence that does not.

### **1. Evidence available that did not support the position of TVNZ**

The programme failed to provide any reference, let alone prominence given to the fact that Mr Lake strongly denied all allegations.

***This shortcoming epitomises the programme - that was more characteristic of a witch hunt than of a "full and thorough investigation".***

All that was reported included the brief statement by the announcer (Time 9:07) that the police believed Mr Lake, and not Kathleen Batchelor when Kathleen Batchelor first made a complaint to the police.

TVNZ's letter of 13 June 2005, points out that there was a followup programme three weeks later in which Mr Lake was quoted as denying the allegations. This in no way rectifies the appalling shortcoming of the original programme.

A significant proportion of viewers of the original programme will not have seen the follow up programme, and anyway by that stage the damage had been done.

The evidence that the TVNZ programme was unwilling to even state that Mr Lake completely denied the allegations, suggests a lack of scepticism that would be appropriate to allegations which are disputed.

### **2. All evidence available that supports the position of TVNZ**

I have no means of knowing all the evidence that TVNZ had that they felt was sufficient for them to form a belief that Mr Lake was guilty of the alleged crimes. The Broadcasting Standards Authority may be able to better deduce this from the unedited tapes of the interviews that they conducted, and from any other evidence that TVNZ have in their possession that they made no reference to in the programme.

As expected the programme did detail specific allegations that were serious and should rightly have been cause for concern:

- Time 2:38...Unsubstantiated claims that Mr Lake sexually abused children in his car, his home and in Presbyterian

offices

- Time 5:37...A Millan sister who claimed that Mr Lake "tortured and terrorised us"
- Time 6:23...A Millan sister who made specific claims of witnessing Mr Lake sodomising her brother
- Time 7:26...Kathleen Batchelor who claimed that Mr Lake "took her knickers down and tried to enter" her
- Time 9:25...The police who said they had sufficient evidence to put him before the court
- Time 13:44...The police who again said they had sufficient evidence to put Mr Lake before the Court

This appears to be the sum total of evidence that the public is aware of that forms the case for TVNZ's justification for referring to Mr Lake as the "Monster of Berhampore". I have deliberately left out the evidence that TVNZ have referred to as "startling new evidence" associated with Mavis Van Dalen, that I have discredited earlier in this letter.

The allegations are serious, and I do not want to minimise them. The allegations have obviously been sufficient for the police to state that they had sufficient evidence to put Mr Lake before the court.

But these unchallenged assertions seem totally insufficient for a belief of guilt to have been formed.

It may be that the investigative journalist team found further evidence that they had collected but did not broadcast for justifiable reasons, such as at the request of particular complainants.

If so, I am concerned that the programme did not explicitly make clear or disclose that there was additional secret information helped form the beliefs of the investigation team.

### **Claim by TVNZ that the investigative journalists "had to make a choice"**

TVNZ make the claim that "the team of investigative journalists had to make the choice of whether to believe Mr Lake ..... or the many who accused him of abuse"

This is an astounding claim for journalists to make, and if upheld sets extremely dangerous precedents for journalism.

I see no reason why journalists should have to make any such choice, and I see good reasons why journalists should not even attempt to make such a choice.

Journalism should, in my opinion be about presenting facts, and weaving a story out of those facts. Their role should be one of fairness - the equivalent of an investigator and presenter of the facts, and not one of jury member and judge.

It is for the viewing public to be left to form their own beliefs, if they should so desire, based on fair reporting. Beliefs should be formed, or able to be formed, as a consequence of the facts presented. If journalists feel compelled to have to form a "belief" as the basis of their stories, they are unwittingly attempting to take over the whole court process which has better built in safeguards to ensure that beliefs are formed, by the jury, on all the facts.

Because Mr Lake was dead, there would never be such a court process, and there is even more of a necessity to be fair.

All that I have just said on belief above, is not in itself a complaint. Investigative journalists have every right to form whatever beliefs they wish to. But the preceding discussion, including TVNZ's assertion that the journalists "had to make a choice" helps to explain better why the programme breached the code in standards of fairness.

Mr Edmunds discloses that after gathering their evidence the journalists had to make a choice about who was telling the truth, and they came to the conclusion that Mr Lake was not.

The resulting programme, not surprisingly was a programme that weaved a story from beginning to end that presented the beliefs of the journalists that Mr Lake was a guilty man, and based on that belief, the portrayal of Presbyterian Support as not doing enough to help Mr Lake's "victims". The belief of his guilt was absolute - from the title obviously, but also including the choice of material, the tone of the presenters, through to the choice of background music, and when such music was used.

The key point here is that journalists should clearly understand that they have no responsibility to have to make a choice of "who to believe" when they prepare a story, as TVNZ asserts they had to do in the case of "The Monster of Berhampore".

If journalists wish to form beliefs, that is their choice, but they should be aware of the dangers of the formation of "belief" affecting their ability to present a fair and balanced report.

This complaint makes the case that the programme was not fair and balanced

## **The public's "right to know"**

Mr Edmunds on page 2 of his letter for TVNZ, emphasises that

*"it is important to remember that central to all the business of journalism is the public's "right to know".*

Mr Edmunds goes onto say that that right is encapsulated in Section 14 of the New Zealand Bill of Rights Act which states "

*"Freedom of expression: Everyone has the right to freedom of expression, including the freedom to seek, receive and impart information and opinions of any kind in any form"*

What TVNZ has failed to appreciate is that it is their responsibility to be clear what they were presenting when they broadcast "The Monster of Berhampore".

The public did indeed have a right to know about the story of Mr Lake, and the story of the complainants, and the story of everybody else involved. It is obviously not TVNZ's duty to tell all these stories, but I consider it their duty to be clear what story they are actually telling

The public have a right to know **from TVNZ** whether:

- The programme is attempting to present the results of an impartial and thorough investigation; or
- The programme is an opinion piece, or
- The programme is an attempt to persuade the viewers of the journalist's beliefs.

## **"Spooky" music**

My complaint to TVNZ, outlined my concerns that the background music appeared to have been deliberately chosen to heighten the effect of presenting the fact that Mr Lake was guilty of the alleged events.

TVNZ's response does not dispute the description of the music as "spooky" but claims that the music was appropriate to re-enacting spooky events.

TVNZ's response is simply more evidence of the whole programmes stance that Mr Lake was guilty, and not simply that there was evidence that he may have been guilty, and that he had a case to answer..

Because the programme does not justify the conclusion that spooky events did indeed take place, bias continues to show. The events were only "spooky" events if one accepts TVNZs belief that Lake is guilty. Alternatively the only thing spooky about the case are the false allegations that are being made, which have only justified the positioning of such emotive music positioned the spooky music around the allegations of the complainants, in quite different segments of the broadcast.

### **TVNZ claim that balance was achieved by the contribution of Trevor Roberts**

TVNZs response to my complaint asserts that the programme made it clear that some disputed the guilt of Mr Lake. They used as an example the contribution of Trevor Roberts (Time 13:12 of the transcript):

"It's not about money and lawyers. It's about the management of risk and finding the truth of the matter. The fact that the police have decided to charge doesn't mean that he's guilty, and I have to tell you that our own investigations into some of the matters where we have been able to investigate indicate that there are some quite considerable issues of credibility in respect of some of those complaints"

Trevor Roberts did not "dispute the guilt of Mr Lake" All that Trevor Roberts did, was perhaps take the position that TVNZ should have and stress the importance of "finding the truth of the matter".

The Broadcasting Standards Authority should review the unedited tapes of TVNZ's interview or interviews with Trevor Roberts, to determine if TVNZ are justified in claiming that Mr Roberts "disputed the guilt of Mr Lake"

It seems hardly credible that he would have, for in his interview with Linda Clark on Radio New Zealand the next day (May 2 2005, attachment enclosed), Mr Roberts is very clear that he does not know whether abuse occurred or not.

## **Earlier precedents that should have alerted TVNZ to be extra vigilant in being fair and balanced in a case such as the allegations against Mr Lake.**

I have already referred to an earlier Broadcasting Standards Authority decision relating to a complaint about a Radio New Zealand programme. The Broadcasting Standards Authority decision was made in September 2004, in respect of a complaint by Peter Ellis. The decision was significant enough that TVNZ should have been well aware of the issues concerned, and the decisions made. I have previously referred to particular decisions that are relevant to this complaint.

This complaint was obviously made about allegations of a person who was still alive, so not all of the conclusions are necessarily relevant.

There is another significant parallel, following the murders of John Scott and his partner Greg Scrivener in Fiji in July 2001. In that case the Scott and Scrivener families had to deal not only with the violent deaths of their loved ones but also with the sully of the murdered men's reputations. Rumour and hearsay shrouded the case, and media in Fiji and New Zealand ran stories about the couple's alleged involvement with paedophilia and drugs.

***It turned out they were involved in neither.***

(Ref NZ Herald, March 25 2005 - "Owen Scott: Deep beyond the reef")

The significance of these events, is that what may appear initially as a clear case for the prosecution, and also perhaps of the formation of a "belief" that allegations may be true, may in fact have no substance at all, regardless of the fact that there may be multiple seemingly credible people making allegations.

## **Motivation for the programme**

What is concerning about this unjustified presentation of Mr Lake as an "identified sexual predator" and the "Monster of Berhampore" in 2005 when they did not feel justified in 2004, appears to have less to do with the truth, fairness and balance than it does to the pressure that the TVNZ investigative team were under to justify their role and fulfil their role of "uncovering secrets and taking a watchdog role on behalf of the public"

This pressure to perform is described in a news report of January 2005, included with this letter as an attachment:

**Attachment:**

Dominion Post, 5 January 2005  
TVNZ unit screens five minutes in five months  
by Kelly Andrew

At the time the investigative unit was coming under scrutiny by Parliament's finance and expenditure select committee, with one MP suggesting that "On the face of it, it looks like (the TVNZ investigative unit is) a highly questionable investment of taxpayers money.

It is sad to think that "pressure to perform" may have been the motivation for the investigative unit to have prematurely produced a "scoop" based on an incomplete or sloppy investigation, and falsely representing a major investigative news story.

**Concluding remarks**

What was lost in the broadcast, regardless of the reasons, was fairness and balance, and a lack of respect for the principles of law. If TVNZ had even been remotely honest they would have been very clear to warn the audience that the information in the programme may shock people, but that they (the broadcasters) do not have the full story, so that viewers should not rush to judgment.

I have hope, that after a considered review of this complaint that the Broadcasting Standards Authority may consider carefully the possibility of clear guidelines for future cases involving allegations against people who are recently deceased.

I hope that the Authority may appreciate that standards of fairness and balance should not be lowered because the broadcaster is no longer subject to defamation action.

The broadcaster has an obligation in particular to the friends and family of a deceased person, but also to the wider viewing audience that "belief" and "truth" do not change with a person's death.

## **Attachments**

1. Brian Robinson, 26 May 2005  
Formal Complaint to TVNZ
2. TVNZ Sunday 1 May 2005  
Transcript "The Monster of Berhampore"
3. David Edmunds, 13 June 2005  
TVNZ Response to Brian Robinson
4. TVNZ, Webpage, (Source Sunday) 2 May 2005  
Abuse victims deprived of justice
5. Radio New Zealand Monday 2 May 2005  
Transcript: Nine to Noon with Linda Clark  
Interview with Trevor Roberts and Gordon Paine
6. Radio New Zealand Monday 3 May 2005  
Transcript: Nine to Noon with Linda Clark  
Interview with Mavis van Dalen
7. Dominion Post, 5 January 2005  
"TVNZ unit screens five minutes in five months"  
Report by Kelly Andrew
8. Manawatu Standard, 16 June 2004  
"Abuse claims target church"  
Report by Jonathan McKenzie and NZPA

## **References**

1. Broadcasting Standards Authority  
Decision No: 2004 - 115  
Dated 3 September 2004  
Complainant: Peter Ellis of Christchurch  
Broadcaster: Radio New Zealand Ltd

Yours sincerely

Brian Robinson