

Complainant
DONALD MCDONALD
of Wellington
Broadcaster
**TELEVISION NEW ZEALAND
LTD**
broadcasting as TV One

Members

Peter Radich, Chair
Mary Anne Shanahan
Leigh Pearson
Te Raumawhitu Kupenga

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

One News – reporter stated that supernova was “240 light years from Earth” – allegedly inaccurate

Findings

Standard 5 (accuracy) – complaint frivolous and trivial – decline to determine under section 11(a) of the Broadcasting Act 1989

Orders

Section 16(1) – \$50 costs to broadcaster

This headnote does not form part of the decision.

Broadcast

[1] An item on *One News*, broadcast on TV One at 6pm on 6 January 2011, reported on the discovery of a supernova by a 10-year-old Canadian girl. During the item the reporter stated:

The Canadian Astronomical Society says Kathryn’s supernova was in a galaxy 240 light years from Earth.

Complaint

[2] Donald McDonald complained to Television New Zealand Ltd, the broadcaster, alleging that the statement was inaccurate because “a supernova star at such close distance would barbeque the Earth”. He said that the distance from the Earth to its neighbouring galaxy Andromeda was at least 2 million light years.

Standards

[3] Standard 5 of the Free-to-Air Television Code of Broadcasting Practice is relevant to the determination of this complaint. It provides:

Standard 5 Accuracy

Broadcasters should make reasonable efforts to ensure that news, current affairs and factual programming:

- is accurate in relation to all material points of fact; and/or
- does not mislead.

Broadcaster's Response to the Complainant

[4] TVNZ acknowledged that the figure in the item was incorrect. It said that the correct distance was 240 million light years. However, it considered that this distance was not a material point of fact in the item, which focused on the discovery of the supernova by a 10-year-old girl. TVNZ therefore declined to uphold the complaint.

Referral to the Authority

[5] Dissatisfied with the broadcaster's response, Mr McDonald referred his complaint to the Authority under section 8(1B)(b)(i) of the Broadcasting Act 1989.

Broadcaster's Response to the Authority

[6] TVNZ referred the Authority to *McDonald and RNZ*,¹ in which the Authority declined to determine an accuracy complaint by Mr McDonald on the grounds that it was vexatious.

Authority's Determination

[7] The members of the Authority have viewed 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.

[8] The accuracy standard only applies to "material points of fact". In our view, Mr McDonald's complaint does not relate to any material points of fact contained in the brief report. The focus of the item was the fact that a 10-year-old girl had discovered a supernova; its distance from Earth was peripheral to the story.

[9] Furthermore, we consider that Mr McDonald's complaint was dealt with adequately and appropriately by the broadcaster, which accepted that the figure was incorrect, but explained that it was not material to the item.

[10] Section 11(a) of the Broadcasting Act 1989 allows the Authority to decline to determine a complaint which it considers to be frivolous, vexatious, or trivial. Pursuant to this section, we decline to determine this complaint on the grounds that the complaint by Mr McDonald was frivolous and trivial.

For the above reasons the Authority declines to determine the complaint.

[11] Under section 16(2)(a) of the Broadcasting Act 1989, an order of costs against a complainant may be made when a complaint is found to be frivolous or vexatious or one that should not have been made.

[12] We have noted in two previous decisions² regarding trivial complaints made by Mr McDonald that:

...over a number of years, Mr McDonald has repeatedly referred complaints about trivial accuracy points to the Authority, and he has recently been warned that an order for costs may be made against him if he continues to do so. We acknowledge that, at the time Mr McDonald lodged this complaint, he had not yet received our decisions on those previous complaints. However, we reiterate our warning that if we continue to receive complaints of a similar nature, we will consider an order for costs against Mr McDonald.

¹ Decision No. 2010-074

² *McDonald and TVNZ*, Decision No. 2010-055; *McDonald and TVNZ*, Decision No. 2010-033

[13] Following those two decisions, we again declined to determine an accuracy complaint from Mr McDonald, and we invited submissions from the parties on whether an order for costs against Mr McDonald was appropriate.³ The Authority concluded that:

Mr McDonald wishes to apply standards of scientific or mathematical accuracy where these are not required. We have allowed him some consideration in the past and with considerable reservations will do so again on this occasion. We will not impose a costs order against Mr McDonald in this instance, but we signal very clearly that this leniency is unlikely to be repeated.

[14] We note that this latest complaint by Mr McDonald was made after he had received that decision.

[15] Accordingly, we invite submissions from the parties on whether an order for costs against Mr McDonald is appropriate on this occasion.

Submissions on Orders

[16] Mr McDonald made submissions to the effect that he did not believe that the Authority's decision had addressed the points in his complaint, and that any order for costs would have a "very significant impact" on him as he was a beneficiary

[17] Media Matters in New Zealand (Media Matters) also made submissions supporting Mr McDonald. It argued that Mr McDonald's approach to complaints was "extremely valuable in that while some may judge his complaints to be trivial, they uphold an important standard. That is the standard of accuracy," it said. Media Matters considered that there was an increasing tendency for television news to report inaccurate facts.

[18] Media Matters was of the view that the Authority, in making this determination, was seeking to financially penalise complainants, rather than reprimand broadcasters who failed to adhere to broadcasting standards. It reiterated that any order for costs would have a significant impact on Mr McDonald, as he was on an Invalid's Benefit and received a small government pension, with no other income.

[19] TVNZ pointed out that Mr McDonald generated a significant amount of work for TVNZ, noting that in 2009 and 2010 he made up four to five percent of the complaints received about TV One. It maintained that most of these were under Standard 5, and that in cases where there had been an inaccuracy it was not material to the item. TVNZ also noted that it had corresponded with Mr McDonald about the incoherence of his complaints.

[20] The broadcaster acknowledged that the Authority may be at the point where it wished to award costs against Mr McDonald, but argued that it may not act as a deterrent. It noted a previous case where a complainant was ordered to pay \$150 in costs but had since complained about the same issue. TVNZ said that it would prefer to work out a system with Mr McDonald that acknowledged that he would still feel the need to make informal complaints, but agreed that he would manage these complaints so they do not burden TVNZ or the Authority to the current extent.

[21] TVNZ suggested that Mr McDonald could still make complaints about immaterial facts through its committee email, but he needed to understand that they would not be treated as formal complaints and TVNZ would not be required to respond to them. The broadcaster said that if he wished to make a formal complaint, Mr McDonald should fill out a formal complaint form appropriately, and that if he referred a complaint about an immaterial point of fact in future, TVNZ would request that costs be awarded against him.

[22] TVNZ concluded by saying that if Mr McDonald agreed to these terms it did not consider that costs were necessary in this case.

³ *McDonald and RNZ*, Decision No. 2010-074

Authority's Decision on Orders

- [23] Having considered the parties' submissions, we have reached the conclusion that an order of costs against Mr McDonald is warranted. He has now been warned numerous times about lodging complaints of this nature, and it is evident that his complaints expend a significant amount of both TVNZ's and the Authority's time and resources.
- [24] We appreciate that Mr McDonald has limited income. However, we have reached the view that some form of deterrent is necessary. In these circumstances we consider that ordering him to pay TVNZ costs in the amount of \$50 is appropriate.

Order

Pursuant to section 16(1) of the Act, the Authority orders Mr McDonald to pay to Television New Zealand Ltd costs in the amount of \$50 within one month of the date of this decision.

The order for costs shall be enforceable in the Wellington District Court.

Signed for and on behalf of the Authority

Peter Radich
Chair
9 August 2011

Appendix

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

- 1 Donald McDonald's formal complaint – 7 January 2011
- 2 TVNZ's response to the complaint – 4 February 2011
- 3 Mr McDonald's referral to the Authority – 2 March 2011
- 4 TVNZ's response to the Authority – 20 April 2011
- 5 Media Matters' submissions on orders in support of Mr McDonald – 20 June 2011
- 6 Mr McDonald's submissions on orders – 21 June 2011
- 7 TVNZ's submissions on orders – 4 July 2011