



2nd floor, 54-56 Cambridge Terrace  
PO Box 9213, Wellington 6141, New Zealand

T (04) 382 9508 | e info@bsa.govt.nz  
F (04) 382 9543 | **Freephone** 0800 366 996

18 SEP 2009

17 September 2009

2009-058

Andrea Fasching  
Programme Standards Manager  
TVNZ  
P O Box 3819  
**AUCKLAND**

Dear Andrea

I have been asked to advise you that the Broadcasting Standards Authority has upheld the complaint from NZ Chiropractors' Association about an item on *Breakfast* broadcast on TV One on 9 March 2009.

In this case the Authority declined to impose an order.

A copy of the Decision No. 2009-058 is enclosed. It will be released to the media and subscribers on Wednesday 23 September 2009.

Your attention is drawn to section 18 of the Broadcasting Act 1989 which provides that a complainant or a broadcaster may appeal a decision of the Authority to the High Court. Any appeal must be lodged within one month of the date on which you were notified of the decision.

Please feel free to contact me if you have any questions in relation to this matter.

Yours sincerely

Christina Sophocleous  
**Legal Manager**

Encl:



Dated: 17 September 2009  
Decision No: 2009-058

Complainant  
**NEW ZEALAND  
CHIROPRACTORS'  
ASSOCIATION**

Broadcaster  
**TELEVISION NEW ZEALAND  
LTD**  
broadcasting as TV One

### Members

Joanne Morris, Chair  
Tapu Misa  
Paul France  
Mary Anne Shanahan

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

*Breakfast* – interview with medical researcher about the effectiveness of treatment by chiropractors – allegedly inaccurate

### Findings

Standard 5 (accuracy) – programme presented researcher as authoritative – he made a number of inaccurate statements – upheld

### No Order

This headnote does not form part of the decision.

### Broadcast

- [1] During *Breakfast*, broadcast on TV One between 6.30am and 9am on 9 March 2009, one of the presenters interviewed a medical researcher, Dr Shaun Holt, about the effectiveness of chiropractors. Dr Holt said that chiropractors were “as good as conventional medicine” for treating back pain, although conventional medicine was not particularly effective because back pain was very hard to treat. He said “by all means see a chiropractor, they may well help,” but that many claimed to treat other medical conditions and research showed that chiropractic was not beneficial for those conditions. Dr Holt said that he “did a survey last year asking chiropractors in this country whether they would treat children with asthma and ear infections and two-thirds said yes they would”. He explained this was based on the belief in chiropractic that “all energy runs through the spine, that you can manipulate the spine to cure just about everything”.
- [2] When asked about using chiropractic to treat neck pain, Dr Holt said he “would advise people to be very, very careful. There are hundreds of reports of severe damage from chiropractors manipulating necks”. He said this “could cause stroke. It can dissect the vertebral artery and there are at least 700 cases of severe problems”. The host asked if that was 700 cases worldwide, and Dr Holt said yes, that was 700 cases internationally.

- [3] Dr Holt went on to say that a survey showed that 82 percent of chiropractors in New Zealand called themselves “Doctor”. He commented that “they’re trained in chiropractic which is fine but I think in a medical setting to call yourself a doctor when you’re not a medically qualified person is misleading.”
- [4] When asked by the host what he would do if he was in pain, Dr Holt said that, personally, he would choose to see a physiotherapist over a chiropractor, and take painkillers. He explained that physiotherapists are “trained in the same sort of anatomy and physiology as doctors of traditional Western medicine”.
- [5] At the end of the interview, the host informed viewers that “we will be getting the other side of the story from a chiropractor later in the week”. Her co-host responded, “what, in case we doubt our doctor?” She replied, “well last time we had Dr Shaun on and he talked about something a little bit controversial, this man knows a lot about the research. ...and also there will be a lot of chiropractors out there who don’t call themselves doctors and don’t claim to fix anything but to help with back pain as well”.
- [6] The following day on *Breakfast*, the host interviewed chiropractor Dr Doug Blackburn, who explained the merits of chiropractic and rebutted several of the points made by Dr Holt.

## Complaint

- [7] The New Zealand Chiropractors’ Association (NZCA) made a formal complaint to Television New Zealand Ltd, the broadcaster, alleging that the programme was not accurate, impartial or objective.
- [8] NZCA noted that Dr Holt had been “highly critical of the safety and efficacy of chiropractic” in the interview. It asserted that TVNZ had failed to disclose that Dr Holt had a “serious conflict of interest” arising from his ownership of Clinicanz Limited, which tested prescription medicines and natural health remedies. This provided him with a “direct financial motive for attacking chiropractors, because chiropractors provide health care without recourse to prescription medicines”, NZCA said. Dr Holt should have been disqualified from appearing as an expert purporting to provide impartial advice, NZCA said, or at the very least his conflict should have been disclosed so that viewers could draw their own conclusions.
- [9] The complainant argued that Dr Holt had been presented as an independent expert qualified to comment on medical issues and that viewers would have inferred that his expertise extended to the field of chiropractic. NZCA considered that a number of his comments during the interview breached the accuracy standard.
- [10] First, NZCA maintained that Dr Holt had stated in the interview that “chiropractors had caused patients to suffer stroke by performing high velocity low amplitude manipulations of the vertebrae in the neck”. It attached the Bone and Joint Decade 2000-2010 *Task Force on Neck Pain and its Associated Disorder*, comprising leading international experts and sponsored by the United Nations, which had reported in 2008 that “very rarely there is an association in time between chiropractic treatment and stroke, but no evidence of causation”. The Task Force found that “a similar association was also observed among patients receiving general practitioner services”, NZCA said. Further, NZCA attached a report published in a Canadian medical journal<sup>1</sup> which stated the likelihood of having a stroke when seeing a chiropractor was 1 in 1.85 million.

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<sup>1</sup> Halderman, S., Carey, P., Townsend, M., and Papadopoulos, C. *Arterial dissections following cervical manipulation: the chiropractic experience*. Canadian Medical Association Journal, October 2001, 165(7), 905-906.

- [11] Second, NZCA noted that Dr Holt had asserted that chiropractic care had resulted in “at least 700 cases” of “severe” injury to patients internationally. It considered this was misleading without further information about the proportion of chiropractic patients who suffer adverse outcomes, and comparable statistics for conventional medical treatment, for example adverse reactions to medicines and surgery. Although the host noted that the number was small in comparison to the number of patient visits, no hard data was presented, NZCA said. It argued this failure to provide any statistical context rendered this aspect of the interview inaccurate.
- [12] Third, NZCA noted Dr Holt's comment that he had conducted a survey which showed that two-thirds of chiropractors would treat children for asthma or ear infections. It enclosed a copy of the study, which it said involved sending emails to chiropractors under the guise of a fictitious grandmother. NZCA asserted that only 13 chiropractors had responded; nine said they could treat asthma and eight suggested they could treat ear infections. Dr Holt should have explained that the statistics were drawn from a very small sample and might not be representative, especially considering there are 365 registered chiropractors practising in New Zealand. NZCA therefore considered this aspect of the interview was inaccurate.
- [13] Finally, NZCA argued that Dr Holt's claim that research shows chiropractic could not benefit children with asthma or ear infections demonstrated “a selective bias in the literature and further is not what clinical results in chiropractic practices throughout New Zealand and the world have demonstrated for more than a century”.
- [14] The complainant maintained that these inaccuracies were not corrected by TVNZ's decision to interview a chiropractor on *Breakfast* the following day. It said while that may have ensured compliance with the balance standard, it did not make the interview with Dr Holt accurate. NZCA noted that the balance standard allowed for a period of current interest, while Standard 5 required programmes to be accurate “at all times”. TVNZ could therefore not excuse the inaccuracies by referring to the subsequent interview, it said.
- [15] NZCA concluded by arguing that viewers were entitled to expect that *Breakfast* would provide information that was accurate, impartial and objective, particularly as chiropractic had long been recognised as part of New Zealand's public health system.

## Standards

- [16] TVNZ assessed the complaint under Standard 5 of the Free-to-Air Television Code of Broadcasting Practice, which provides:

### **Standard 5 Accuracy**

News, current affairs and other factual programmes must be truthful and accurate on points of fact, and be impartial and objective at all times.

## Broadcaster's Response to the Complainant

- [17] TVNZ noted that Dr Holt, a general practitioner, was a regular contributor to the *Breakfast* programme, held degrees in pharmacology and medicine, had undertaken over 100 clinical studies, had written over 50 publications in medical literature and was an honorary research fellow of the New Zealand Medical Research Institute. TVNZ was therefore satisfied with the veracity of Dr Holt as an information source. It disagreed that there was any conflict of interest in inviting Dr Holt to appear on the programme. He did not represent doctors, it said, and routinely appeared on *Breakfast* as a medical researcher.

- [18] The broadcaster considered that viewers would have understood that Dr Holt's comments were clearly his opinion based on his research. There was nothing in the interview that would have misled or alarmed viewers, especially as Dr Holt's perspective as a general practitioner was known to the audience, TVNZ said. It noted that at the outset of the interview, Dr Holt qualified his perspective, saying, "yes, I just look at the research".
- [19] TVNZ noted that Dr Holt had prefaced several of his comments with "I would advise" and "personally", having established at the beginning of the interview that his views were based on research. It considered that the basis of the NZCA's complaint was a long-running debate between the medical and chiropractic professions, which was "unlikely to be resolved on a magazine-style breakfast television programme".
- [20] The broadcaster emphasised that within the period of interest, on 10 March at 8.48am, acknowledging that there were different views on chiropractic, *Breakfast* offered a chiropractor an opportunity to respond to Dr Holt. Dr Doug Blackbourn explained the merits of chiropractic from the chiropractic perspective, and rebutted several points made by Dr Holt. TVNZ stood by the decision to present two guests with opposing views on matters of medical interest, and considered they were able to give their opinions on air in a fair, accurate and impartial exchange.
- [21] TVNZ concluded there were no errors of fact in the programme, and reiterated that viewers would have understood Dr Holt was coming from a particular perspective. It declined to uphold the complaint.

### **Referral to the Authority**

- [22] Dissatisfied with TVNZ's response, the NZCA referred its complaint to the Authority under section 8(1B)(b)(i) of the Broadcasting Act 1989. It reiterated the points made in its original complaint, and argued that TVNZ had failed to respond to the substance of that complaint.
- [23] The complainant considered that TVNZ had not addressed its argument that Dr Holt had a conflict of interest. Its complaint was that his material interest should have been disclosed to viewers, as he was presented as an independent expert.
- [24] NZCA also emphasised that it had raised four instances of inaccurate or misleading information in the original broadcast, which TVNZ had not addressed, instead stating that the matters were Dr Holt's opinions. The complainant considered TVNZ had not explained why they believed the programme was accurate.
- [25] Further, the complainant considered that TVNZ had responded to its complaint under Standard 5 by arguing that the item was balanced. The complaint was not that TVNZ had provided an unbalanced take on the topic, it said, but rather that Dr Holt made inaccurate and misleading statements. It was not Dr Blackbourn's responsibility to declare Dr Holt's conflict of interest, it said, but TVNZ's, in deciding to present him as an independent expert.
- [26] NZCA concluded that TVNZ had not properly considered or engaged with the substance of its complaint.

### **Broadcaster's Response to the Authority**

- [27] TVNZ maintained that Dr Holt's comments on chiropractic were his opinions and were framed as such in the interview, which was allowed under guideline 5d to Standard 5 (accuracy). It also emphasised that its decision on the formal complaint discussed the interview with Dr Blackbourn "not for consideration of 'balance' but to show that Dr Blackbourn the chiropractor corrects Dr Holt's opinions and statements in regard to the chiropractor's perspective".

## Further Information Requested from the Broadcaster

- [28] Having completed a preliminary assessment of the complaint, the Authority requested the following information from TVNZ.

*The source for Dr Holt's statement that chiropractic treatment for neck pain "can cause stroke"*

- [29] Dr Holt said there were "many sources" for his statement but provided two. The first was Deanna M Rothwell, "Chiropractic Manipulation and Stroke: A Population-Based Case-Control Study". He quoted the following passages from the study:

A review of case reports to the end of 1993 found 165 vertebrobasilar complications from spinal manipulation, of which 27% made a full recovery, 52% suffered residual effects, and 18% died as a result. Other case reports and surveys have estimated the risk of VBA after cervical manipulation to be between 1 in 1.3million to 1 in 400,000 manipulations.

Results for those aged <45 years showed VBA cases to be five times more likely than controls to have visited a chiropractor within 1 week of the VBA (VBA is vertebrobasilar accidents, a type of stroke).

- [30] Dr Holt also referenced a report by Alexander Hammers Hufnagel,<sup>2</sup> and the website for the Chiropractic Class Action.<sup>3</sup>

*The source for Dr Holt's statement that chiropractic treatment for neck pain has resulted in "700 cases of severe problems"*

- [31] Dr Holt provided an article from *The Guardian* titled "Edzard Ernst again challenges chiropractors in UK". The article included the following:

One of the most common "alternative" treatments for backache is dangerous and can kill, says Britain's leading expert on complementary medicine, Professor Edzard Ernst...

Spinal manipulation involves sharp thrusts against a patient's spine to push individual vertebrae beyond normal levels of stress. But Ernst says that such violent therapy can seriously damage the arteries running near the spine, triggering thrombosis or stroke...

One case involves [name], who was in her 20s when she pulled a nerve in her neck while exercising. She visited a registered chiropractor and recalled feeling a "crack" when he began his treatment. ...[name] suffered a brain-stem stroke and now has poor balance and cannot write with her right hand. A court cleared her chiropractor of negligence.

Such stories are just the tip of the iceberg, says Ernst... He has collected details of about 700 cases.

- [32] Dr Holt also cited "Adverse effects of spinal manipulation: a systematic review", and "Cerebrovascular Complications Associated with Spinal Manipulation", both written by Edzard Ernst.

*Whether it was true that only 13 chiropractors responded to Dr Holt's survey about treating asthma and ear infections (relating to his statement in the programme that two-thirds of chiropractors said they would treat those conditions)*

<sup>2</sup> Hufnagel, A. H. et al. Stroke following chiropractic manipulation of the cervical spine. *Journal of Neurology*, August 1999, 246(8)

<sup>3</sup> <http://albertachiroclassaction.ca/>

- [33] Dr Holt stated that this was true, and provided the relevant information from his report which showed that 13 chiropractors were surveyed, 69% of whom suggested they could treat asthma, and 62% of whom suggested they could treat ear infections. Dr Holt said:

This is of course a small sample but it is consistent with my understanding that most chiropractors will treat children with these conditions. If there is evidence that most chiropractors would not do this then I would be interested to see this.

- [34] Dr Holt noted that a survey found that 90% of American chiropractors, and 78% of Canadian chiropractors, thought that the therapy should not be limited to musculoskeletal conditions. The British General Chiropractic Council had also published a leaflet stating that chiropractic therapy can lead to an improvement in "some types of asthma, headaches, including migraine and infant colic".

- [35] Dr Holt pointed out that the NZ Chiropractors Association's website currently stated that:

Chiropractic is not a "treatment" as such for any particular symptom or disease, but rather a method of helping to ensure optimal joint function and nerve communication and is thus able to effectively assist the body in healing *a wide array of symptoms and conditions* (his emphasis).

- [36] Dr Holt also noted that Dr Blackbourn's website stated that he could help with "ADHD, allergies, *asthma*, auto accidents, back pain – lower back, pain – upper/neck, bedwetting, carpal tunnel, *colic*, *ear infections*, fibromyalgia, headaches, pinched nerve, PMS, pregnancy, sciatica, scoliosis, slipped disc, stress, whiplash, wellness" (his emphasis).

*The research behind Dr Holt's statement that "the research shows very, very clearly that [chiropractors] cannot benefit" asthma and ear infections.*

- [37] Dr Holt quoted an extract from "A systematic review of systematic reviews of spinal manipulation" (E Ernst and P H Canter):

Conclusions: Collectively these data do not demonstrate that spinal manipulation is an effective intervention for any condition. Given the possibility of adverse effects, this review does not suggest that spinal manipulation is a recommendable treatment.

- [38] Dr Holt said that with respect to asthma, the paper stated that there had been two reviews, which said that there was no good evidence that chiropractic or other forms of spinal manipulation helped asthma. With regard to ear infections, Dr Holt said that "after searching and reviewing the medical literature I cannot see one good study showing that chiropractic is a good treatment for ear infections. It is of course biologically implausible that spinal manipulation would help to treat or prevent ear infections".

### **Further Information Requested from the Complainant**

- [39] The Authority asked NZCA to provide any research or literature to support its position that chiropractors can benefit people with asthma and ear infections.

- [40] NZCA stated that "there is a significant body of scientific research available that demonstrates either that chiropractic is effective in the treatment of these conditions, or at least that it may be, i.e. that the research is not conclusive one way or the other. In either case, it clearly contradicts Dr Holt's claim".

- [41] NZCA said that a recent Cochrane review, considered the “gold standard” of medical literature reviews, of trials using manual therapy techniques including chiropractic found that there was “insufficient evidence to support or refute the use of manual therapy for patients with asthma”. NZCA attached a copy of the report.
- [42] Further, a peer-reviewed 2007 review of research<sup>4</sup> found that evidence supported chiropractic care as providing benefit to patients with asthma. The conclusion stated:
- Evidence from controlled studies and usual practice supports chiropractic care... as providing benefit to patients with asthma, cervicogenic vertigo and infantile colic. Evidence was promising for potential benefits of manual procedures for children with otitis media and elderly patients with pneumonia.
- [43] NZCA also noted that 12 case studies, although “low on the hierarchy of evidence”, had shown positive improvements in asthma and ear infections in children receiving chiropractic care. A number of randomised controlled trials had also been conducted which investigated chiropractic care and other forms of manipulative therapy commonly used by chiropractors for asthma and ear infections. They found that, after 3 months of combining spinal manipulative therapy with optimal medical management for paediatric asthma, the children rated their quality of life substantially higher and their asthma severity substantially lower.
- [44] The complainant accepted that the evidence it provided “falls short of proving conclusively that chiropractic is effective in the treatment of asthma and ear infections, and for that reason we advise our members against making such claims”. However, NZCA said, there was enough evidence to suggest that chiropractic may be effective in treating these conditions, and therefore Dr Holt’s statement that research shows “very, very clearly” that it cannot was “at best misleading and at worst factually wrong”.

## Authority's Determination

- [45] 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.
- [46] Standard 5 requires that news, current affairs and other factual programmes be truthful and accurate on points of fact. The Authority must first determine whether Dr Holt’s comments were presented as statements of fact to which the accuracy standard applied, or whether they were clearly distinguishable as his opinion. In the Authority’s view, the answer in this case is largely determined by the manner in which Dr Holt was introduced, and the manner in which Dr Holt delivered his responses.
- [47] In the first instance, the *Breakfast* presenter introduced Dr Holt as a “medical researcher” before saying, “Let’s talk about what the research tells us, because that’s your area of expertise”. Within that framework, Dr Holt went on to make a number of strong, unqualified statements about what scientific research says about chiropractic therapy.
- [48] The Authority notes that, at the end of the interview, *Breakfast* acknowledged that Dr Holt’s views had created some controversy in the past, and acknowledged the need for the opposing view on his statements – from chiropractors – to be presented. It considers that, if this had been broadcast before the interview, audience members

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<sup>4</sup> Hondras, M.A., Linde, K., and Jones, A.P. *Manual therapy for asthma (Review)*. The Cochrane Library, 2009, Issue 2.

would more likely have viewed Dr Holt as simply offering one, potentially controversial, perspective on the practice of chiropractic.

[49] However, because of the way Dr Holt was introduced, and because he purported to make unqualified statements of fact, the Authority considers he was presented as an expert, and therefore that viewers would have expected he was giving an objective, accurate account of medical research. On that basis, it concludes that Dr Holt's statements were not distinguishable as his opinion but were presented as statements of fact to which the accuracy standard applied.

[50] The Authority now turns to consider each of the statements raised by NZCA in its complaint.

*Statement that chiropractic treatment "can cause stroke" and has resulted in "at least 700 cases" of severe injury*

[51] This part of the complaint relates to the following exchange from the item:

- Host: What about necks? Because a lot of people would go and see a chiropractor if they had neck pain.
- Dr Holt: They would, and I would advise people to be very, very careful. There are hundreds of reports of severe damage from chiropractors manipulating necks.
- Host: And normally when you say that I think of the kind of clicking of all the joints and things like that.
- Dr Holt: It's that cracking. It's a high velocity but low amplitude manipulation is what they call it so it's [cracking sound] in layman's terms and that can cause stroke. It can dissect the vertebral artery and there are at least 700 cases of severe problems.
- Host: Internationally?
- Dr Holt: Yes, internationally.

[52] In the Authority's view, the information supplied to it by Dr Holt (see paragraphs [29] and [30]) does not provide sufficient basis for his statement that chiropractic treatment "can cause stroke". While the studies may have shown an association or correlation, they do not conclude unequivocally that there is a causal connection. The Authority also notes that both the complainant and Dr Doug Blackburn maintained that the research shows that the correlation between chiropractic and stroke was no stronger than that between stroke and visiting a GP.

[53] In these circumstances, the Authority finds that this statement was inaccurate.

*Statement that there were "at least 700 cases of severe problems" resulting from chiropractic treatment for neck pain*

[54] The source provided by Dr Holt was an article about Professor Edzard Ernst who "has collected details of about 700 cases", and two other papers written by Professor Ernst.

[55] On the basis of the information provided, which all relates to the work of one man well-known for challenging chiropractors, the Authority is of the view that Dr Holt had insufficient basis for categorically stating, immediately after saying chiropractic therapy "can cause stroke", that "there are at least 700 cases of severe problems". Dr Holt also stated that "There are hundreds of reports of severe damage from

chiropractors manipulating necks”, and that “It’s a small proportion... but... if that was a drug it’d be taken off the market”.

- [56] Regardless of whether the host qualified Dr Holt’s statement by interjecting that the figure of 700 people was an international number, the Authority considers that viewers would have been left with the impression that chiropractic treatment had directly resulted in more than 700 cases of stroke and/or severe injury. As discussed above in paragraph [52], the Authority is of the view that it was inaccurate to state that chiropractic can “cause” stroke or injury, because the research provided by the parties shows only a potential association, not a definitive causal link. It therefore finds that it was also inaccurate to state that there are over 700 cases of such injuries, and that viewers would have been misled by the statement.

*Statement that Dr Holt had surveyed “chiropractors in this country” and two-thirds said they would treat asthma and ear infections*

- [57] In the interview, Dr Holt stated:

I did a survey last year asking chiropractors in this country whether they would treat children with asthma and ear infections and two-thirds said yes they would.

- [58] NZCA argued that this was inaccurate because Dr Holt had only surveyed 13 people. The information provided by Dr Holt (see paragraph [33]) confirms this.

- [59] In the Authority’s view, given the programme’s emphasis on Dr Holt’s expertise as a medical researcher, most viewers would have interpreted the statement to mean that Dr Holt had surveyed a representative sample of “chiropractors in this country”, and that two-thirds had said they would treat asthma and ear infections – not that he had surveyed a total of 13 people, nine of whom said they could treat asthma and eight of whom suggested they could treat ear infections. The Authority therefore considers that this was highly misleading.

*Statement that “research shows very, very clearly” that chiropractic cannot benefit other conditions such as asthma and ear infections*

- [60] Dr Holt quoted a study which concluded that, “Collectively these data do not demonstrate that spinal manipulation is an effective intervention for any condition.” The study looked at two reviews of treatment of asthma. One concluded that there was “insufficient evidence to support the use of manual therapies [including chiropractic]”, and the other concluded that there was “no evidence to support the use of chiropractic [spinal manipulation]”. With respect to ear infections, Dr Holt stated that he could not “see one good study showing that chiropractic is a good treatment for ear infections”.

- [61] NZCA provided a Cochrane review evaluating whether manual therapies were effective in the treatment of asthma (see paragraph [41]) which found that there was “insufficient evidence to support or refute the use of manual therapy for patients with asthma”, that is, that the research is inconclusive. Another review from the *Journal of Alternative and Complementary Medicine* (see paragraph [42]) found that “evidence from controlled studies and usual practice supports chiropractic care... as providing benefit to patients with asthma”. The same review found a number of case studies that reported decreased recurrence of ear infections.

- [62] On the basis of the information provided by the parties, the Authority is satisfied that there is a range of research and studies on this subject, some of which support the use of chiropractic therapy for asthma and ear infections, some which do not recommend chiropractic treatment, and some which are inconclusive as to its effectiveness. In these circumstances, the Authority considers that it was inaccurate

for Dr Holt to categorically state that the "research shows very, very clearly that [chiropractors] cannot benefit those conditions".

#### *Bill of Rights*

- [63] Having reached the conclusion that these four aspects of the programme were inaccurate or misleading, the Authority must consider whether to uphold the complaint as a breach of Standard 5 (accuracy).
- [64] The Authority acknowledges that upholding the Standard 5 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. In *Pryde and RNZ*,<sup>5</sup> the Authority determined that upholding a complaint under Standard 5 would be prescribed by law and a justified limitation on the broadcaster's right to freedom of expression as required by section 5 of the Bill of Rights Act.
- [65] The Authority considers that it would be a reasonable and proportionate limit on TVNZ's freedom of expression to uphold a breach of the accuracy standard on this occasion. Upholding NZCA's complaint clearly promotes the objective of Standard 5, which is to protect audiences from receiving misinformation and thereby being misled. In these circumstances, the Authority upholds the accuracy complaint.

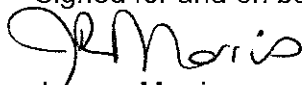
#### *Conflict of Interest*

- [66] NZCA argued that Dr Holt had a material interest in criticising chiropractic, it said, because he owned Clinicanz Ltd which tested prescription medicines. It considered that this was a conflict of interest that should have been disclosed to viewers.
- [67] In the Authority's view, while it might have been preferable for viewers to be informed of this fact, the omission of that information did not of itself result in the segment being inaccurate or misleading. The Authority declines to uphold this aspect of the complaint.

**For the above reasons the Authority upholds the complaint that the broadcast by Television New Zealand Ltd of *Breakfast* on 9 March 2009 breached Standard 5 of the Free-to-Air Television Code of Broadcasting Practice.**

- [68] Having upheld the complaint, the Authority may make orders under sections 13 and 16 of the Broadcasting Act 1989. It does not intend to do so on this occasion. The Authority acknowledges that the broadcaster attempted to frame Dr Holt's comments as opinion, and that it subsequently presented the alternative view from chiropractors. While it considers that this was insufficient to avoid a breach of the accuracy standard, the Authority considers that the publication of this decision is sufficient in all the circumstances. It reminds broadcasters to exercise care when broadcasting the views of people presented as experts, particularly when they are aware that some controversy might surround those views, and to ensure that its regular contributors understand their obligations to comply with broadcasting standards.

Signed for and on behalf of the Authority



Joanne Morris  
Chair

17 September 2009

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<sup>5</sup> Decision No. 2008-040

## Appendix

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

- 1 New Zealand Chiropractors' Association's formal complaint – 26 March 2009
- 2 TVNZ's response to the complaint – 29 April 2009
- 3 NZ Chiropractors' Association's referral to the Authority – 26 May 2009
- 4 TVNZ's response to the Authority – 2 July 2009
- 5 Further information from TVNZ – 28 July 2009
- 6 Further information from NZ Chiropractors – 19 August 2009