

Decision No. 7/78

*Decision of the Broadcasting Tribunal*

IN the matter of the Broadcasting Act 1976, and in the matter of a complaint by Christopher Traugott Hermann Rudolph Ehrhardt under section 67 (1) (b)

**WARRANT HOLDER BROADCASTING CORPORATION OF NEW ZEALAND**

BEFORE THE BROADCASTING TRIBUNAL

B. H. Slane, Chairman, Lionel R. Sceats, member, Murray J. Henshall, deputy member, G. R. Black, co-opted member, G. C. Ell, co-opted member.

Hearing: 28 August 1978.

## DECISION

*The Complaint*

Dr C. T. H. R. Ehrhardt's complaint concerned 54 separate news items or current affairs programmes from 18 August to 26 December 1977. All the matters complained of, in one way or another, were connected with or involved reports which touched on the abortion controversy or arose out of legislation on the subject.

Dr Ehrhardt filed with the Tribunal 44 pages of correspondence he had from August 1977 to April 1978 with the Director-General of Radio New Zealand, the Chairman of the Standing Committee for Radio New Zealand, the Minister of Broadcasting, and the Editor of the New Zealand Listener, and the Secretary of the Corporation.

Because it is important to some aspects of the complaint, and some remarks that the Tribunal will make in this decision, Dr Ehrhardt's relationship with the Corporation during this period should be outlined. His first letter of complaint concerned a *Checkpoint* programme broadcast by 4YA (as were all the other broadcasts complained of) on 19 August 1977. His complaint resulted by the end of August in a letter from Mr G. Whitehead, the Director-General of Radio New Zealand, which conceded, "that there is some ground for your complaint." Mr Whitehead acknowledged that the producer was at fault and "... we must accept your criticism of the impression the programme gave about medical opinion generally." He did not accept all the criticisms made by Dr Ehrhardt.

From that time on Dr Ehrhardt kept up a steady stream of correspondence both in relation to previous letters and complaining of later broadcasts.

By letter dated 7 October 1977 the Minister of Broadcasting informed Dr Ehrhardt that he could not interfere in programmes and said, "... your proper course, if you are not satisfied, is to place a formal complaint before the Broadcasting Corporation of New Zealand." Dr Ehrhardt did not do that but continued his correspondence with the Director-General until on 13 December he asked for full details of how he could make an official complaint "(I suppose to the Broadcasting Tribunal, but you no doubt know the details and I don't)" by return post. By letter dated 16 December he was informed that he should lodge a complaint with the Secretary of the Corporation whose address was given.

He continued his correspondence with the Director-General but was finally informed, by letter dated 22 December 1977, that the Director-General believed there was nothing further to add to previous comments and there was no point in protracting correspondence.

By letter dated 23 December he lodged a formal complaint with the Secretary of the Corporation which was acknowledged immediately after the New Year on 6 January. The complaint was in general terms but asked what further steps would be taken to pursue it. There was no reply to the request for details and on 9 February Dr Ehrhardt wrote again to the Secretary and to the Director-General of Radio New Zealand.

On 22 February the Secretary of the Corporation wrote to the complainant and, in effect, adopted the statements made by Mr Whitehead earlier.

The Corporation said that it could not analyse every locally produced news and current affairs programme on Radio New Zealand from mid-August until the end of the year as this would be impracticable and would be unlikely to produce any finding more acceptable than the letters already had from Mr Whitehead. Dr Ehrhardt was referred to the Broadcasting Tribunal. On 1 March Dr Ehrhardt asked how he should approach the Tribunal and what its requirements were. By letter dated 21 March he was informed of the Tribunal's address and on 31 March he acknowledged that letter.

On 6 May Dr Ehrhardt wrote to the Tribunal forwarding his file of correspondence. He was given a copy of the Broadcasting Act with a reference to the relevant sections. He was asked to complete the formal complaint form and the declaration required by the Act.

The complaint was formally lodged on 31 May. The Tribunal referred the complaint and the correspondence to the Corporation which initially took the view that it did not wish to make any representations. It was then requested to supply the Tribunal with copies of the transcripts or recordings by the end of July.

As soon as these were received a date was tentatively fixed for a hearing on 28 August and Dr Ehrhardt was invited to attend. He indicated that he would be involved in his work as a university teacher on that day and had an important academic visitor from overseas at the university. He was then offered 25 August which was in the university vacation; he declined this as he would be holidaying at Lake Ohau with his family. An endeavour was made to find a date convenient to Dr Ehrhardt on which all five members of the Tribunal would be available. The Tribunal was reluctant to allow the matter to be delayed as Dr Ehrhardt wished until mid-October or November, although he stated there was no urgency to deal with it.

In any event his full letters and the submissions he made in writing to the Tribunal have enabled us adequately to understand the points he was making and, as he was not personally involved in any of the broadcasts, the Tribunal did not consider his personal attendance at the hearing necessary.

As a result of his request the hearing was held in public.

The complaint made can be summarized as follows:

1. That his complaint was sent to the Corporation on 23 December 1977 but the correct procedure was not followed thereafter.
2. That the programmes complained of infringed section 24 (1) (d) of the Broadcasting Act.
3. That the programmes infringed section 24 (1) (e) Broadcasting Act.
4. That some of the programmes infringed section 24 (1) (f) Broadcasting Act.

The complaint listed 54 programmes or news items to which objection was taken and in respect of complaints 2 and 3 considered the effect produced by the sum total of the programmes breached the provisions of the Act.

The relevant portions of section 24 (1) are as follows:

The Corporation shall be responsible for maintaining, in its programmes and their presentation, standards which will be generally acceptable in the community, and in particular it shall have regard to:

- (d) The accurate and impartial gathering and presentation of news, according to recognised standards of objective journalism;
- (e) The principle that when controversial issues of public importance are discussed, reasonable efforts are made to present significant points of view either in the same programme or in other programmes within the period of current interest;
- (f) The maintenance of law and order.

Section 25 provides that the Corporation shall receive and consider formal complaints about programmes broadcast contrary to section 24 and shall establish procedures for investigating any such complaint. Complaints are to be lodged in writing with the Secretary. If a complaint is found to be justified in whole or in part, the Corporation is to take appropriate action and inform the complainant in writing of the action taken. If the complaint is found not to be justified, in whole or in part, the complainant shall be notified of the decision.

If the complainant is dissatisfied with the decision, or with the action taken by the Corporation, or if the Corporation has not within 14 days after receiving the complaint, notified the complainant in writing of the date on which the complaint will be considered (being within a reasonable time after the lodging of the complaint), the complainant may refer the complaint to the Broadcasting Tribunal to be dealt with under section 67 of the Act.

Section 67 of the Act empowers the Tribunal to receive and determine complaints from persons who are dissatisfied with the outcome of complaints to the Corporation under section 25 and permits the Tribunal, if it thinks fit, to consider and determine any complaint without a formal hearing. In that case the Tribunal shall have regard to all relevant submissions made to it in writing in relation to the complaint. The Tribunal may not hear or determine any complaint until the complainant signs and lodges with the Registrar a declaration that legal action will not be taken in respect of the subject matter of the complaint or the investigation of the complaint by the Corporation or the Tribunal. The Tribunal may determine its own procedure except to the extent that it is prescribed by regulations.

The Broadcasting Corporation did not within 14 days of the receipt of the complaint, notify the complainant in writing of