

was made specifically for the purpose of *promoting* the consumption of liquor.

The Tribunal does not accept his interpretation which requires that payment be made for the purpose of promoting the consumption of liquor. The reference to the *purpose* in the words "being a programme for which a payment is made for that purpose to the holder of the warrant" refers to the *broadcast* of any programme. It is not necessary, therefore, that the purpose of the payment be to promote the consumption of liquor but merely that the purpose of the payment was to broadcast the programme. This is consistent with the approach taken in the definition of an advertisement (an advertising programme) in the Act.

The Tribunal does not accept that reference to the availability of liquor for sale is not a furthering, or advancing, or encouraging of the consumption of liquor and finds that such advertisements must be in breach of the condition imposed by regulation 14 (3). We accept that such an advertisement does not necessarily have to promote the general consumption of liquor. Indeed many advertisements, to a greater or lesser degree, promote the sale of the type of product being advertised, some pressing upon the viewer the need for this type of product, others emphasising merely that when the purchase is made a particular brand should be chosen. We do find that even the latter type of advertisement in the liquor field must, if broadcast, constitute a breach of the regulation.

Mr Darby put an interesting proposition to the Tribunal arising from regulation 14 (3) imposing a condition on all warrants. He suggested a breach of warrant condition should be determined in the case of complaints against corporation stations only in accordance with the procedures set out in sections 83 (3) and (4). Section 83 reads:

"83. **Infringements of requirements**—(1 Where it appears to the Tribunal that any broadcasting station is being operated in a manner contrary to the programme rules made under this Act and notified to the holder of the warrant issued in respect of that station, the Tribunal, notwithstanding any action taken by the Committee of Private Broadcasters in respect of private broadcasting stations, may give to the holder such directions in writing as the Tribunal thinks necessary to ensure that the rules are complied with.

(2) If the holder of the warrant fails, within such time as may be specified in the directions, to comply with any directions under this section, or if any matter is broadcast from a broadcasting station contrary to the provisions of any such directions, he shall be deemed to have committed a breach of the conditions of the warrant.

(3) The Tribunal may at any time notify the holder of a warrant that it proposes to impose a monetary penalty on him or to revoke or suspend the warrant on the ground that the broadcasting station to which the warrant relates has not been carried on in conformity with the terms and conditions of the warrant.

(4) If the Tribunal is of the opinion that the broadcasting station has not been carried on in conformity with the warrant, it may, after consideration in accordance with Part X and this Part of this Act, revoke or suspend the warrant for such period as it thinks fit or reduce the term of the warrant, or may impose on the holder a monetary penalty not exceeding \$500.

(5) Notwithstanding the provisions of this section, no warrant held by the Corporation in respect of any broadcasting station shall be suspended or revoked except on the request of the Corporation or with the approval of the Minister.

(6) The amount of any monetary penalty imposed on any holder of a warrant pursuant to this section shall constitute a debt owing by him to the Crown, and shall be recoverable accordingly in any Court of competent jurisdiction."

He then suggested that if the Tribunal was unable to accept his interpretation of regulation 14 and considered the advertisements were in breach of the regulation, all advertisements associated with the sale of liquor were prohibited.

In that case, he submitted, the Tribunal in exercising its discretion to invoke section 83 (3) could, and probably should, take into account the intentions of the Government in passing the regulation because of the provisions of section 68 in which the Tribunal must have regard to the general policy of the Government in relation to broadcasting.

It was further submitted that the intention of the Government is clear from the Minister's press statements and from a letter to the Corporation dated 16 May which reads:

"Mr. I. R. Cross

CHAIRMAN OF THE BROADCASTING CORPORATION

Dear Mr. Cross:

ALCOHOL ADVERTISING

This letter will serve to confirm my concern, expressed to you orally, about the decision of the Special Broadcasting Rules Committee to permit extensive liquor advertising on radio.

This decision has been correctly interpreted by the Corporation as contrary to Government policy, and I am pleased to note the responsible attitude it is taking in not changing its present policy on liquor advertising on radio or television.

I should be grateful if you would arrange as a matter of urgency to take what steps may be available to you to have the matter re-opened with the Broadcasting Rules Committee on the basis that the decision is contrary to Government policy.

Yours sincerely,
Hugh Templeton,
Minister of Broadcasting".

However, the Tribunal is reluctant to accept these as indicating the general policy of the Government on liquor advertising. Mr Darby considered that these matters could be taken into account in considering whether any disciplinary measure need be taken under sections 83 (3) and (4).

We do not consider we should take into account either the Government's view of regulation 14 (3), or of the Radio Standards and Rules, or its general policy on broadcasting when possible action under section 83 (3) is contemplated, but rather what the warrant holders thought the regulation and rules meant.

We have no intention of invoking what could be described as the penal provisions of the Act in view of the difficulties of interpretation.

Finally, Mr Darby suggested that it was not open to a person to advance an allegation of a breach of the condition in the warrant because the complaints procedure under which the corporation dealt with Mr Turner's complaint (section 25) does not specifically permit a complaint in respect of a breach of condition of a warrant. (In this respect the position is different in the case of a private station where the Tribunal can receive complaints which were dealt with first by the Committee of Private Broadcasters—under section 90—which clearly has jurisdiction to consider breach of warrant complaints.)

However, the Tribunal considers that the insertion in the rules of the text of regulation 14 (3) effectively incorporates that regulation into the Rules and Standards. In arriving at this decision it has regard to the fact that a previous general statement was removed. It must, therefore, be accepted that this condition (now in all warrants) forms part of the rules. It is only sensible that it should do so.

As Mr Turner points out, the effect of the Rules Committee having removed the previous provision and inserted the new one would otherwise be to deprive him of the right to complain to the Tribunal. (And we observe that Mr Turner has had to exercise considerable persistence to get to the Tribunal. It would be unfortunate if the corporation were to give the impression that a technical procedural point would be taken against him.)

The alternative, on the other hand, may not be particularly acceptable to the corporation since, if the information is made available to the Tribunal by a complainant who does not have to go through the procedures for complaints to be referred first to the corporation, the Tribunal could itself initiate penal action under sections 83 (3) and (4). It is considered unlikely that this was the real intention of the Broadcasting Rules Committee.

Finally, the Tribunal expresses its concern that the interpretation of the conditions, regulations, and rules, imposed in relation to liquor advertising has become burdensome to broadcasters. It was made no easier by the regulation. The Tribunal has not found it easy to arrive at a correct and practical interpretation.

It appears to us, however, that the policy stated in the regulation is to ban from television and radio any advertisements that promote the consumption of liquor. We have had to take these plain words and interpret them in a straightforward way. If our interpretation is wrong, no doubt it will be put right elsewhere.

We now turn to the individual complaints.

Com. 12/79—Radio Waikato. Advertiser: Lion Breweries Limited.

Mr Turner complained to the Committee of Private Broadcasters under section 91, Broadcasting Act 1976, that Radio Waikato had broadcast a commercial for Lion Breweries involving a competition in which the underside of the caps from bottles of Lion beer are inspected so that the contestants can collect those printed with letters which make up the word Lion.