

is in any event mindful of the fact that fantasising is of help to some. This was a consideration when *Forum* was under review in Decision 877. In that case evidence from psychiatrists had been called to support this view. There remains in the minds of the Tribunal a grave doubt whether this particular publication is a suitable vehicle to assist in marriage guidance counselling. There have been a number of publications submitted in the past and we would consider some of them as more suitable (For example, *Sexual Adventures in Marriage*, Decision 988). Some of the photographs are more explicit than one would expect in a book of this nature and there are illustrations of troilism which once again we would not consider as being helpful in the counselling situation. The texts do not appear appropriate for the purposes to which Mr Wright wishes to put them. We are left with the distinct impression that the publication lacks honesty of purpose and is injurious to the public good. It has some appeal for the prurient. In all circumstances it is classified indecent.

District Court Judge W. M. WILLIS, Chairman.

3

Decision No. 8/83  
Reference No. Bro. 12/83

*Before the Broadcasting Tribunal*

In the matter of the Broadcasting Act 1976, and in the matter of an application by Broadcasting Corporation of New Zealand to amend warrants for TV2 (hours of transmission):

Messrs B. H. Slane (Chairman), L. R. Sceats.

Hearing: Auckland, 30 March 1983.

Counsel: Mr J. B. Thomson for Applicant.

Amendments Applied for: An amendment to the following terms of the warrants, viz:

Hours of transmission:	Monday-Friday	1430-2400
	Saturday-Sunday	hours
Hours during which	Monday-Friday	1430-2400
advertising permitted:		hours

by deleting the said terms and substituting the following terms, viz:

Hours of transmission	Monday-Sunday	1200-2400
		hours
Hours during which	Monday-Friday	1200-2400
advertising permitted:		hours

The effect of the amendments if granted will be to enable Network Two, Television New Zealand, to extend the hours of transmission.

#### ORAL DECISION

THE application fairly sets out the purpose of the application. The evidence of Mr Monaghan has given us the programme justification for the extension of hours. There have been no objections or submissions from members of the public although Mr Monaghan has mentioned that there has been some listener support for alternative programmes to the serials available on Television 1.

The extension of the hours, in the opinion of the Tribunal, is in the public interest and the application will be granted with the amended time of commencement as indicated by Mr Monaghan today, namely 23 May 1983.

Dated at Wellington this 30th day of March 1983.

For the Tribunal:

B. H. SLANE, Chairman.

0

Decision No. 6/83  
Bro. 8/83

*Before the Broadcasting Tribunal*

In the matter of the Broadcasting Act 1976, and in the matter of an application by Independent Broadcasting Company Limited for consent to the acquisition of shares by Independent Newspapers Limited:

Chairman: B. H. Slane.

Member: Lionel R. Sceats.

Hearing: Hamilton, 21 February 1983.

Counsel: R. L. Maclaren for the Applicant and for Independent Newspapers Limited.

Appearance: B. N. Meltzer.

#### REASONS FOR DECISION

INDEPENDENT BROADCASTING COMPANY LIMITED (IBC) holds the sound-radio warrant for *Radio Waikato* (1XW).

When the warrant was granted by the New Zealand Broadcasting Authority a condition was imposed:

The total shareholding by a news company as defined by the News Media Ownership Act 1965, whether as beneficial owner or otherwise and whether by one or more such news companies in Independent Broadcasting Company Limited shall not exceed 30 percent of the authorised capital of the company.

(It is accepted that the reference ought to have been to the issued capital.)

The original percentage permitted by the Broadcasting Authority was 35 percent. In an appeal to the Administrative Division of the Supreme Court, a full court (Wild, C. J. and Speight, J.) changed the figure to 30 percent (Supreme Court, unreported, 29 July 1970).

An application was made to this Tribunal by the warrant holder in 1977 for a substitution of 45 percent for 30 percent to enable the acquisition of shares totalling 14.5 percent of the capital of the company from existing shareholders by Independent Publishers Ltd. (I.P.L.) which already held 30 percent of the issued capital.

In a decision dated 6 October 1977 (Decision No. 3/77) the Broadcasting Tribunal declined to grant the application for the amendment of the warrant but amended the clause to make it clear that the reference was to the issued capital of the company and not to the authorised capital.

The shares were taken up by Waikato shareholders of the warrant holder.

On 2 February 1983 the Broadcasting Tribunal granted an amendment sought by the warrant holder to substitute a new and fuller clause which had the effect of strengthening the provision but did not alter the percentage of issued capital. It also provided that the restriction was to apply "Except with the prior written consent of the Tribunal..."

The new clause covered the situation of a company such as Independent Newspapers Ltd. (I.N.L.) which itself may not have been by the former definition a news company since it did not directly publish newspapers but rather owned subsidiary companies which did.

Relying on that interpretation of a similar clause Independent Newspapers Ltd. has already purchased shares in Capital City Radio Ltd. the warrant holder for *Radio Windy* which it could not have done if it was itself a newspaper publisher. The Tribunal makes no comment on that transaction. It will no doubt come to be considered at a later date.

The company has now made the present application which was contemplated when the new clause was substituted.

It is not an application to amend the warrant. It is an application for consent to be given to this particular transaction.

The application is necessary because I.P.L. (a wholly owned subsidiary of I.N.L.) owns 30 percent of the capital. Both companies are news companies within the new definition set out in the amended Condition 5 of the warrant—I.P.L. as publisher of the *Waikato Times* and I.N.L. (the proposed purchaser of shares) as a company which has control over companies which publish newspapers.

Mr R. B. Waddington, directly and indirectly, has a shareholding of a little under 21 percent and wishes to sell his shares at 85 cents to I.N.L.

The Board of I.B.C. supported the acquisition of the shares. In evidence, Mr B. J. Paterson, a longstanding Board member, said that I.P.L. had held 30 percent of the capital of the company since it began broadcasting. The directors unanimously agreed to initiate the application and saw no disadvantage in I.N.L. either directly or through its subsidiaries holding up to 51 percent of the share capital. They saw possible advantages in management support and assistance with a FM application.

Mr Paterson said he had not been aware of any direction or attempted direction or exercise of control by I.N.L. over either the Board of I.B.C. or the shareholding of I.B.C. It had never endeavoured to exercise a measure of control.

Mr J. H. D. Wickham was originally appointed a director of I.B.C. by I.P.L. before I.P.L. had been acquired by I.N.L. It was, and is, the publisher of the *Waikato Times* newspaper. He remains a director. Mr J. M. Robson, Group General Manager of I.N.L., had more recently been appointed. The 2 were the only directors who had an interest in or were connected with I.N.L. or I.P.L. Although under an unofficial non-legal agreement I.P.L. had the right to appoint 2 directors, they failed to replace a former "nominee" when he retired and the existing directors chose Mr G. P. McElwee to fill the vacancy. Mr McElwee has no connection directly or indirectly with I.N.L. and did not receive instructions or directions from either of those companies.

Mr Paterson said the news service of *Radio Waikato* was controlled by a news editor and there had not been any attempt by I.N.L. or I.P.L. or any of their subsidiaries to influence or direct the content of the news service and editorial independence had