

3. *Unfairness and Natural Justice:*

Regulation 15, Broadcasting Regulations 1977 (S.R. 1977/11) requires the Tribunal to advertise applications for warrants and to receive relevant evidence and representations.

If the application were amended to be an application for a programme warrant, and we were to proceed to deal with it then we would deny possible objectors an opportunity to be heard and possibly deny the Tribunal relevant evidence and submissions.

A proper procedure would require a full application to be filed and advertised, evidence submitted in writing and any interested persons given ample time to consider the matter, which would lengthen the hearings by months.

To do so at this stage of a long hearing may actually inhibit interested parties from making submissions or objecting because they might believe that ABS has been given some special preference as an applicant because it had earlier applied for a different type of warrant.

If the Tribunal were to proceed to a hearing without adequate opportunity for other applications to be considered there would be a likelihood of unfairness to objectors or to potential applicants who may wish to provide Maori programming for any private warrant holder. Because the ABS application for television warrants was supported by the New Zealand Maori Council and by District Maori Councils, ABS has contended that the possibility of any other application for a programme warrant should not be considered by the Tribunal. Mr Gault said he could find nothing in the Act or regulations which required the Tribunal to flush out other potential competing applicants. We find no justification in the Act for the Tribunal to favour an applicant by permitting an application of one kind (which had been advertised and heard) to be changed after the hearing to an application of another kind. Public notice would be required on the grounds of fairness to possible objectors. The amended application may be open to objection on different grounds. There may be others who would wish to apply for a programme warrant, especially if they were to learn there may be an opportunity to be fully financed by a television applicant and possibly to receive capital grants towards the establishment of studios.

It also appears on the evidence that the possibility of a programme warrant had not been considered by ABS previously. Yet it was open for it to negotiate a position with any of the applicants before television warrant applications were even filed. It chose not to follow that course.

ABS has claimed that it is now put in an adverse position because of the proximity to the scheduled end of the hearings. Certainly if opposition of other counsel were based solely on the shortness of time before final addresses, we agree there would be merit in the ABS argument. But it has to be said that ABS has received concessions that no other applicant has received in relation to the timing of its evidence, the nature and extent of the evidence being filed, the conduct of hearings and the procedures to be adopted. It could not have coped with an early date for the hearing of its case.

In fact if ABS had been ready it may well have been dealt with earlier in the list and the same situation would have occurred upon the withdrawal of Corporation support. An application to amend would have been made after ABS had closed its case.

If a grant of warrants were made to ITV, then there would be no difficulty about dealing with an application from ABS or any other applicant to provide programmes pursuant to a programme warrant.

However, Mr Thomas submitted that once the hearings were over, if television warrants were granted, successful applicants (other than ITV) would do their best to avoid carrying out public interest responsibilities.

The Tribunal does not agree. Upon the grant of warrants to any applicants, the Tribunal would be capable of imposing conditions regarding programming and in particular Maori programming if, after hearing all submissions, it thought that to be appropriate. Such a condition could, for instance, require arrangements to be made for autonomous broadcasting through a programme warrant holder or some other arrangement if this were thought to be appropriate. We therefore consider there is no advantage in dealing with the question of a programme warrant for Maori programming at this stage.

There are in fact advantages in dealing with it afterwards. Those who may be interested in producing and broadcasting Maori programmes would be dealing only with successful warrant holders.

Negotiations would be carried out within the framework of any public interest requirement that the Tribunal saw fit to impose as a condition.

ABS has offered no evidence on basic matters under section 80 including the financial and commercial ability of the applicant to carry on the proposed service. A later application would enable ABS to get staff into a position to organise its finances and other operational matters and to give evidence to satisfy the Tribunal as to its financial and commercial ability. ITV is prepared to undertake to keep its offer open for a year after the grant of warrants.

If there were no grant of any warrant to any applicants then there would have been a great deal of time and effort saved on the part of all concerned. Considerable delay in the hearings would have been avoided.

Since submissions can be made on the desirability of Maori programming conditions it is actually premature to be considering now an amendment application for a programme warrant before the Tribunal's position on Maori broadcasting and programmes has been established.

In all the circumstances the Tribunal considers it is undesirable to grant the application for amendment.

The Tribunal will allow Mr Fernyhough to give the draft evidence concerning the proposed arrangements with ABS.

The evidence is similar in kind to that which the Tribunal has previously allowed to be given. It states a changed intention but does not extend the detail much beyond the information given through Professor Winiata.

The revised offer relating to ABS updates evidence produced in cross examination of Professor Winiata and will be admitted.

The draft letter will not be admitted. Its probative value is quite limited and it opens up matters of detail which are not needed at this stage but which would be relevant to a programme warrant application.

Co-opted Members:

In accordance with the Act the co-opted members participated in the hearing of this application and in the deliberations but the ruling is that of the permanent members.

Dated the 14th day of August 1986.

Signed for the Tribunal.

B. H. SLANE, Chairman.

Private Schools Conditional Integration Act 1975

PURSUANT to section 10 of the Private Schools Conditional Integration Act 1975, notice is given that supplementary integration agreements have been signed between the Minister of Education and the proprietors of the following two schools:

St Anthony's School, Huntly.

St Patrick's School, Wainuiomata.

The said supplementary integration agreements came into effect on 11 August 1986. Copies of the supplementary integration agreements are available for inspection without charge by any member of the public at the Department of Education, Head Office, National Mutual Building, Featherston Street, Wellington, and at regional offices.

Dated at Wellington this 14th day of August 1986.

CHERYL HENSHILWOOD,
for Director-General of Education.

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Notice of Intention to Vary Hours of Sale of Liquor at Licensed Premises—Invercargill Licensing Committee

PURSUANT to section 221A (14) of the Sale of Liquor Act 1962, as amended by section 22 (1) of the Sale of Liquor Amendment Act 1976, I, David Oughton, Secretary for Justice, hereby give notice that the Invercargill Licensing Committee on 28 April 1986 made an order authorising variations of the usual hours of trading for the licensed premises known as the Mary Street.

To the intent that on days other than those on which licensed premises are required to be closed for the sale of liquor to the general public, the hours for the opening and closing of the said premises shall be as follows:

Mary Street, corner Mary and Yarrow Streets, trade hours will be as currently:

Monday–Thursday: 10 a.m.–1 p.m. and 2 p.m.–7 p.m.

Friday and Saturday: 10 a.m.–7 p.m.

Except that:

(1) On Anzac Day the hours will be 1 p.m.–7 p.m.

(2) On evenings prior to days on which licensed premises are required to be closed (i.e., Christmas Day and Good Friday) and on the evening prior to all other statutory holidays when premises are entitled to operate the hours shall be 10 a.m.–7 p.m.