

Regarding Radio New Zealand's substitution of its own procedure for the Tribunal's direction, Mr Turner compared the Director General's position to that of a disqualified motorist asking a court to lift the disqualification on the grounds that it was a nuisance and simultaneously asking the court to ignore the motorist's driving in disregard of the disqualification. Mr Turner invited the Tribunal to substitute an even stronger direction.

Decision

Dealing with the Corporation's submissions, first, we do not consider that the lack of mention of specific warrants in the direction is a defect of any substance.

Mr Hudson's second submission raises more difficult questions. Section 83 (1) in 1981 read:

"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 . . . may give to the holder such directions in writing as the Tribunal thinks necessary to ensure that the rules are complied with."

In its present wording, Section 83 (1) reads:

"Where it appears to the Tribunal that the holder of a warrant has been failing to comply with any rules made under section 26 of this Act and notified to that holder, the Tribunal . . . may give to the holder such directions in writing as the Tribunal thinks necessary to ensure that the rules are complied with."

(The emphasis is the Tribunal's.)

Subsection 2 provides that if any matter is broadcast from a broadcasting station contrary to the provisions of any such directions, the warrant holder shall be deemed to have committed a breach of the conditions of the warrant.

If Mr Hudson is right, the Tribunal could not have imposed the direction on any BCNZ station which had not previously been in breach of the Rules.

Against Mr Hudson's submission, two points can be made:

1. Under both wordings of the Act directions are to be given to the holder of the warrant. No express words confine the terms of the direction to being applicable only to the station which has breached the rules.
2. The directions may be "as . . . necessary to ensure that the rules are complied with." Networking and national sales of advertising to run on several or on all the warrant holder's stations mean that, if a direction is given to centralise the procedure for approving advertising, the direction in practice will affect all stations owned by that warrant holder. In any event, on the evidence the Corporation failed to comply even in respect of those radio stations which had been the subject of the earlier complaints.

The Tribunal does not uphold the submission.

Dealing with Mr Hudson's procedural point, section 48 (2) of the Official Information Act protects the owner's copyright in documents disclosed under that Act. That protection does not however prevent such documents from being reproduced for the purposes of a judicial proceeding: Section 19 (4) of the Copyright Act 1962. In section 2 of the same Act, "judicial proceeding" means a proceeding before any court, tribunal, or person having by law or consent of the parties the power to hear, receive and examine evidence. Clearly this Tribunal is within that definition and therefore an objection to the production of documents cannot be founded on copyright grounds.

We did not consider that the Corporation was prejudiced by the production of the document and allowed its use in cross-examination.

The Tribunal has taken account of the Corporation's arguments that, after the initial period, compliance with the direction in its original form has practical difficulties. To a question from the Tribunal, Mr Craig responded that the Corporation had confined its thinking to having the direction revoked. It had not considered the possibility of having its own procedure substituted as a direction by the Tribunal in place of the earlier direction. When this possibility was put to him, he replied that he considered that the Corporation would have no problem in complying with such a direction if the Tribunal were to give it.

The Tribunal has also taken into account Mr Turner's arguments. The Tribunal notes that the Corporation appeared to put itself above the original direction. When the direction was issued in clear and specific terms the Corporation purported to modify it without reference to the Tribunal. This modified procedure was a substantial dilution of the Tribunal's direction. Even then, the Corporation failed, at least once, to comply with its own diluted version.

However, the Corporation's recent record of compliance is relatively good. Mr Craig gave evidence that Radio New Zealand dealt with 467 scripts for liquor advertisements in 1986 and that there was only one formal complaint in that time. The present policy and procedure which the Corporation itself designed in 1984 is a workable one and it appears to the Tribunal that, if Radio New

Zealand complies strictly with it, the consideration of liquor advertising will take place at the right level within the organisation. The Tribunal notes that Television New Zealand is not having difficulty in complying with the Tribunal's original direction.

The Tribunal is prepared to modify the direction insofar as it relates to Radio New Zealand to adopt, with some strengthening, (to ensure proper records are kept) the present Radio New Zealand house rules.

While compliance recently has been relatively good, the Tribunal considers it appropriate to record its displeasure at the Corporation's earlier failure to comply for which the Corporation as warrant holder is responsible. The Tribunal considers that it would be appropriate to leave a direction in place for some time yet, in the interests of monitoring the situation.

It is clear that advertisers and agencies put considerable effort into seeking ways to circumvent the rules relating to liquor advertising. The continuation of a direction at least temporarily would strengthen the Corporation's position and be appropriate until a clear pattern of adequate consideration of liquor advertising has become well established.

Because of network and national advertising, it is necessary for the direction to apply to all BCNZ Radio New Zealand warrants as it would not be practicable to direct it only at the warrants in respect of which the earlier breaches occurred. We are content to adopt substantially Radio New Zealand's in-house rule as a proper statement of policy and procedure.

Direction

The Tribunal therefore revokes the direction made pursuant to section 83 (1) in Decision No. 14/81 of 17 June 1981 and substitutes the following direction in respect of Radio New Zealand:

"Interpretation:

Interpretation of the rules on liquor advertising should be conservative so that the BCNZ cannot be seen to be promoting the use of alcohol for its own sake.

"New or Proposed copy:

New or proposed copy is to be cleared by the Chief Copywriter. In the event of any misgiving he/she will refer it to the Controller of Programmes. Anyone acting as deputy for the Controller of Programmes in his/her absence will have delegated authority to approve liquor advertisements.

Such copy shall be submitted in writing (whether by teleprinter message, memo or facsimile) or by audio tape.

"Location Broadcasts:

Any promotion associated with or intended to be held at or near a liquor outlet is to be cleared first with the Director of Sales and Marketing, or, in his absence, with the Controller of Programmes and is to have regard to Rule 1.11.4.

Notes: (a) This instruction should be interpreted as also applying to simulated location broadcasts (live or pre-recorded).

(b) Such clearance should be sought in writing through the Chief Copywriter who will obtain the necessary approval.

"Contests:

Prior to running an advertisement for a contest related to liquor, radio stations shall sight an entry form and retain this copy on file along with a signed certificate from the manager of the outlet that the entry does *not* require the purchase of liquor. The entry form must state that the purchase of liquor is not required directly or indirectly.

In addition, a complete list of prizes shall be obtained. Alcohol may not be offered as a prize in any competition, even if entry is free.

If there is to be no entry form, a poster or point of entry material must be sighted and a copy or description of the material retained on file.

The competition must not be likely to interest under 20 year olds or to lure them to a liquor outlet."

The direction to the Corporation in respect of Television New Zealand reads:

"No advertisements associated with liquor or mentioning liquor or including a liquor brand name or the name of any vendor of liquor shall be broadcast unless the copy has first been approved personally by one of the following:

- (a) The Director-General of Television New Zealand.
- (b) The Director of Sales & Marketing of Television New Zealand.
- (c) The person for the time being acting as deputy for any of the above-named persons."