

had applied for. The reason for this was that the Tribunal dealt with all university student radio applications at one time for convenience, which resulted in the decision being delivered close to the expected commencement dates of broadcast.

The Tribunal has also noted that there appears to be an expectation among some of the less experienced student broadcasters that any application to the Tribunal will be granted exactly as filed. Such expectations are not justified.

Signed for the Tribunal:

B. H. SLANE, Chairman.

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Decision No. 11/88

COM: 1/87
16/87

Before the Broadcasting Tribunal

In the matter of the Broadcasting Act 1976, and in the matter of a complaint by **Frederick Christopher James Port** of Ngatea; and in the matter of a complaint by **Andrew Noel Wilson** of Hamilton:

Warrant Holder: The Broadcasting Corporation of New Zealand, Television New Zealand:

Chairman: B. H. Slane.

Member: Robert Boyd-Bell.

Co-opted Members: E. Glazer and B. W. Stephenson.

Decision

Dated the 22nd day of April 1988.

These separate complaints both initially arose from the screening of the television comedy series *Open all Hours* on Television One during the latter part of 1986. The complaints have been individually considered but this decision is issued jointly for convenience.

The Complaints:

Mr Port lodged an official complaint with the Corporation on 11 August 1986, claiming that the series breached acceptable standards of taste because stuttering was used as a vehicle for comedy. He claims the series presented the attitude that stuttering was not only laughable but also an acceptable subject for mockery. Mr Port requested that the series be withdrawn from broadcast so long as stuttering featured as part of it.

Mr Wilson, Secretary for the Waikato Speak Easy Association, also lodged a formal complaint with the Corporation on 22 September 1986, claiming that the series was offensive to stutterers and did not reach an acceptable level of good taste and decency. He requested that no new series or repeats of *Open all Hours* be broadcast in the future.

The Corporation Response

The Board of the Corporation considered both complaints at its meeting on 4 November 1986, under the provisions of Television Rule 1.1 (b) which requires that broadcasters "take into consideration currently accepted norms of decency and taste in language and behaviour, bearing in mind the context in which any language or behaviour occurs.

The secretary of the Corporation, Mr I. H. McLean, subsequently advised both complainants separately that several series of the programme had been produced by the BBC and screened in New Zealand on and off since 1977, gaining high popularity ratings. The Board of the Corporation had considered the context of the stuttering and concluded that the humour was not of a cruel or unkind nature. The Board also observed that human frailties of one kind or another had long been a source of comedy.

The complaints were not upheld.

Reference to the Tribunal:

Mr Port was not satisfied with the Corporation's decision and, in December 1986, referred his complaint to the Tribunal seeking a ruling that no further series or repeats be transmitted.

Mr Wilson, on behalf of the Waikato Speak Easy Association, also referred his complaint to the Tribunal after the Corporation began broadcasting a repeat screening of the most recent series of the programme on Television Two in May 1987.

Mr Port said neither the longevity of the series nor its popularity justified the Corporation's rejection of his complaint. He drew a comparison with *The Black and White Minstrel Show* which had been highly popular over a lengthy period but eventually proved publicly unacceptable. He said there was growing resentment among stutterers at their handicap being exploited for entertainment or commercial purposes. While Australian television had broadcast several programmes sympathetic to an improved understanding of the causes, effects and treatment of stuttering, Mr Port said there was no evidence of any such endeavour by New Zealand television.

Mr Port said the mockery of stuttering was used never less than twice in any episode of the series and usually more often, the audience were clearly encouraged to laugh at it, stuttering was not an endearing trait and the programme's trivialising of the handicap was particularly offensive.

Mr Wilson also submitted that the long-running popularity of the series did not lessen its offensiveness to those affected by stuttering, which he had earlier advised was estimated to be some 3 percent of the population. He argued that, while human frailty may provide a source of satire and parody, stuttering was not an example of such frailty but an inherited handicap in the same category as hydrocephalus, Down's syndrome and spina bifida. Mr Wilson said the Speak Easy Association did not oppose the representation of stuttering where it was necessary to any plot, but in this series it was there to be laughed at. The principal sufferers were likely to be children and adolescents whose lives could be made utterly miserable by the teasing and victimisation which such programmes encouraged.

Corporation Submissions:

In its submissions to the Tribunal filed on 20 February 1987, the Corporation said the essential elements of its case were as the Secretary had replied to the complainant. Mr McLean added that the "so-called 'stuttering' occurs only spasmodically", was more of a contrived mannerism than a physiological affliction, and was at times deliberate to express incredulity.

The Corporation submitted that stuttering had long been an ingredient of humour and quoted from a medical columnist in the Wellington newspaper *The Evening Post* who referred to the comic star of the programme "walking the knife-edge between respectability and offensiveness". The Corporation also submitted that stuttering was not the principal form of humour in the programme and the affliction was not the source of laughter. It considered Mr Port had misconstrued or misunderstood any likely offensive implications of the programme, even to those afflicted. The Corporation did not consider the mannerism breached the programme rule and submitted that had it done so more complaints would have been received from the programme's 750 000 regular viewers.

The Corporation lodged formal submissions in response to Mr Wilson's complaint with the Tribunal on 3 November 1987, referring to the detailed submissions already made relating to Mr Port's complaint. The Corporation said it had also given full consideration to the complaint from the Waikato Speak Easy Association.

In reference to the programme rule's statement of "currently accepted norms", the Corporation again pointed out that the