

programme had been broadcast for many years in Britain, Australia and New Zealand, an alternative programme had been available to viewers as it played and the New Zealand ratings had been between 30 and 40 for the first run, between 25 and 30 for repeats.

The Corporation also submitted that if the complaints were upheld future playings of the series would be effectively prevented, which would not be consistent with the rule in the light of the programme's popularity and the low level of complaint.

Submissions in Response:

Mr Port submitted a lengthy rebuttal of the Corporation's argument, disputing it point by point, and restated his complaint as follows:

"Briefly, my complaint was made on the grounds that the inclusion of stuttering as a vehicle for comedy in the series breached good taste in that it is offensive to stutterers."

Later he summarised it again:

"Although the supporting arguments have become wide-ranging, the essence of the complaint is simple. It is patent that, in the series:

- (a) Arkwright stutters;
- (b) Arkwright's stuttering occasions laughter;
- (c) Granville mocks Arkwright's stuttering;
- (d) Granville's mockery occasions laughter;
- (e) from (b) and (d) it is undeniable that stuttering and the mockery of it are used as sources of comedy. Those elements of the series which are offensive to stutterers are summed up in (e) above.

For the Waikato Speak Easy Association, Mr Wilson expressed some objection to the complaints being considered together and to the Corporation's submissions regarding Mr Port's complaint being relevant to theirs.

He said it was apparent from the responses it had given that the Corporation intended to broadcast further series of the programme *Open all Hours* in which the Association contended an inherited affliction was used and abused for comic effect.

Mr Wilson disputed any suggestion that the stuttering in the programme could be described as a "contrived mannerism". He also said the popularity of the programme did not excuse the irresponsibility of the Corporation in continuing to broadcast it.

Decision:

First, the Tribunal considers that stuttering is an element of Arkwright's characterisation which is used to provide humour in the series. It is, of course, only one of the elements so used. Others include the generally penny-pinching behaviour of Arkwright, his bumbling manner with all mechanical appliances especially the cash register, his relationship with nurse Gladys Emmanuel . . . even the somewhat forlorn soliloquies with which he closes each episode.

Secondly, Arkwright's stuttering is mocked, as are many other aspects of his character and life at this particular level of English society, but the Tribunal did not consider his stuttering was singled out for vicious or malicious treatment. It was one element of many in a quite complex characterisation.

Thirdly, the Tribunal considers that, while some stutterers may be personally offended by the programme, the general lack of complaints and high ratings suggest that the majority of the population do not find it so—which must be one of the means of defining social norms. The series and the characters are well-known and there would be few surprises for stutterers in any particular episode. They are not compelled to watch that programme on that television channel, nor television at all for that matter. Mr Port's reference to the decline in popularity and eventual discontinuance of *The Black and White Minstrel Show* harked back to a time when, in New Zealand at least,

that programme was broadcast on the only television channel available and viewers had no choice other than to switch off.

As for the effect on others, the Tribunal was presented with nothing that amounted to evidence that the broadcast of the programme had resulted in any significant change in the manner in which the community at large viewed stuttering.

Nor did the Corporation produce evidence of any programme activity that would have led to a more enlightened public awareness of stuttering either.

The Tribunal is cautious about accepting some of the claims advanced by the complaints. The extent to which stuttering is diagnosed as an inherited or acquired complaint remains at least open to considerable debate.

Nevertheless, the complainants do represent a point of view that appears to be gathering some momentum and certainly shows no sign of diminishing. Mr Port's considered parallel with the change in attitude to blackface variety shows in the 60's may well be extended to include the changing attitudes to beauty queen shows in the 70's and 80's. A proper demand for respect appears to be at the heart of both these complaints.

This Tribunal would assess that the point has not yet been reached where *Open all Hours* could be regarded as being in breach of currently accepted norms. The basis for public acceptance of such characters as the butts of comedy does shift and taste changes. We nevertheless consider a ban on the broadcast of this series is not justified by the information before us. Such a serious decision would require substantial justification.

The complaints are not upheld.

The Tribunal is aware of news reports from Britain which indicate that no further new series of this programme are likely to be produced. The question remains as to whether Television New Zealand or any broadcaster of television programmes in New Zealand, is likely to broadcast any repeats of the series previously screened.

In that case, the Broadcasting Corporation is now well aware of the strongly held views of both Mr Port and the Waikato Speak Easy Association. Those views and the extent to which they are reflected in the community at large will need to be carefully weighed if any future repeats of the programme are mooted.

Co-opted Members:

Ms E. Glazer and Mr B. W. Stephenson were co-opted as persons whose certifications and experience were likely to be of assistance in dealing with the complaints. In accordance with the Act, they took part in the discussions but the decision is that of the permanent members.

Signed for the Tribunal:

B. H. SLANE, Chairman.
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2

Decision No. 12/88
COM 17/87

Before the Broadcasting Tribunal

In the matter of the Broadcasting Act 1976, and in the matter of a form of complaint by **Roger Brooking** of Wanganui, recording artist:

Chairman: B. H. Slane.

Members: Ann E. Wilson and Robert Boyd-Bell.

Ruling

Dated this 29th day of April 1988.

Mr Brooking lodged a complaint that, for a period of 4 months from 5 May 1986 between 6 a.m. and midnight, a number of Radio New Zealand stations failed to broadcast a recording made by him called "I Know You'll Find a Way".

Mr Brooking informed the Tribunal that a number of stations