

report. Indeed, the two reports stand together side by side reporting on the same accident and coming to different conclusions. Each is an expression of opinion by the author or authors. It would not be improper for me to suggest that opinions will vary in respect of the Erebus disaster. The fact is, that the office of Air Accidents Investigations suggested pilot error but the Royal Commission report suggested administrative error within Air New Zealand. The public can make up its own mind on which version it accepts."

The Committee considered that the *Close Up* programme posed the question: "What would happen following a public inquiry? Would the blame be placed on the pilot or would others be called to account?"

#### *Referral to the Tribunal*

On 27 March 1987, dissatisfied with the outcome of both his complaints, Mr Chippindale took them to the Broadcasting Tribunal.

He complained that the Corporation had misdirected itself in considering the complaint.

He also alleged the Broadcasting Complaints Committee did not comply with the rules of natural justice and fairness, and that the Committee misdirected itself in considering the complaint and failed to make a decision on the complaint. He said he had not had an opportunity to comment on a letter from the Corporation to the Broadcasting Complaints Committee, in which the Corporation submitted that the sentence complained of did not say that the Mahon report changed the findings of the Chippindale report: it referred to a change in blame, which quite clearly was the case. The letter said the reporter, by the rhetorical question, was asking if another conclusion could be reached (on the reason for the sinking) as had happened in the second of two reports on the Erebus disaster.

#### *Consideration by the Tribunal*

The Tribunal does not find it necessary to review in a legal sense the decision of the Broadcasting Complaints Committee or the procedure adopted by it. It has completely reheard the complaint of unfair and unjust treatment.

It has also considered anew the complaint to the Corporation of a breach of section 24 and of the Rules.

The complainant filed affidavits with the Tribunal setting out the facts.

The Corporation elected not to file any affidavits in response or cross-examine on the affidavits. The Corporation submitted that it had addressed the points raised.

In relation to the statement made by the reporter, the Corporation accepted that the statement that the Mahon report "changed" the Chippindale report was not literally true. It agreed that the question could have been worded more happily. The Corporation's submission agreed with the words used by the Broadcasting Complaints Committee that *Close Up* posed the question "What would happen following a public inquiry? Would the blame be placed on the pilot or would others be called to account?"

The Corporation said there was but a fleeting reference to Erebus and the Mahon and Chippindale reports at the end of the programme, about 20 seconds or so in a programme of more than 30 minutes. The sentence complained of did not compare the nature of the investigations, nor was the thrust to criticise the complainant, his report, or his office, the Corporation said.

The Corporation denied it had been responsible for any procedural breach in respect of the complaint before the Broadcasting Complaints Committee.

The Tribunal heard the parties. The submission made by the complainant made these points:

The Corporation had failed to comply with the obligation to have regard to the accurate and impartial gathering and

presentation of news, according to the recognised standards of objective journalism (section 95B (1) (a) (iii)).

The Corporation had failed to comply with Broadcasting Rules requiring a broadcaster—

- to be truthful and accurate on points of fact (1.1 (a));
- to deal justly and fairly with any person taking part or referred to in any programme (1.1 (e));
- to show balance, impartiality and fairness in dealing with political matters, current affairs and all questions of a controversial nature (1.1 (g)).

The complaint to the Broadcasting Complaints Committee was that the complainant had suffered unjust and unfair treatment in the programme broadcast by the Corporation.

Mr Chippindale's submission contrasted the extent and nature of the investigation by the Air Accidents Investigation Office with that carried out by a Marine Inspector in a preliminary inquiry for the Minister of Transport. The marine inquiry had heard evidence for 7 days and reported findings to the Minister 3 days later. The air inquiry began immediately it was known that the aircraft had crashed in November 1979 and the final report was dated 31 May 1980.

The use of his name in the programme was likely to have the effect of giving the viewing public the impression the Erebus investigation was carried out by him personally or supervised by him in an unsatisfactory and/or incompetent manner. It was submitted that the quality of the investigation by the office of the Inspector of Air Accidents had never been in dispute and to convey such an impression was to be unjust and unfair to the complainant. It was submitted that the Broadcasting Complaints Committee's interpretation of the question was not made clear—whether the Committee arrived at a conclusion as to the real meaning of the sentence, or whether it was a conclusion that the Committee thought an ordinary viewer watching the programme would come to.

The impression could be gained from comments made by people in the programme on the preliminary report by the Marine Inspector, that the Chippindale report was similarly unsatisfactory and was changed by the Mahon report.

The complainant sought the payment of costs under section 67C Broadcasting Act 1976 because of the way in which the matter had been dealt with by the Corporation and the Broadcasting Complaints Committee.

The Corporation denied that it had misdirected itself. The Board of the Corporation found that the sentence under review pointed out that in a previous situation, totally different conclusions had been drawn.

The Corporation accepted that the statement that the Mahon report "changed" the Chippindale report was not literally true but had reached different conclusions. The Corporation agreed that the sentence could have been worded more happily.

The Corporation noted that the thrust of the documentary could not be ignored; the fleeting reference to the Mahon and Chippindale reports came at the end of the programme.

#### *Decision*

The Tribunal finds that the statement made by the reporter:

"Is it to be another Chippindale report, that blamed the pilot while the Mahon report changed that?"

was not accurate.

There were other confusions in the programme. The reporter used the word "dispense" instead of "dispose" and "redeem" instead of "recover" and in the earlier part of the final passage suggested as a cause of the Erebus accident that "an Air New Zealand plane took safety risks to give tourists a great view, it crashed into a mountain". Strangely that statement accords rather more with the conclusions of the Office of Air Accidents than with the conclusions of the Royal Commission.

The statement made by the reporter and the subject of this