

complaint does present an inaccurate comparison with the marine inquiry. We accept completely the differences between the two inquiries outlined by the complainant. It becomes important when the reference is made to the Mahon report and the suggestion that it had changed what had been contained in the earlier report of the Office of Air Accidents inquiry. If the reporter had said the Mahon report had differed or dissented from the finding of the earlier inquiry, it would not have been inaccurate.

We find that the ordinary viewer's interpretation of that sentence would be that there was an actual change brought about by the Mahon report.

We completely accept that the Mahon report could not overrule, amend or otherwise change the report of the Inspector of Air Accidents, and that a significant element of the difference between the two reports lay in the conclusion reached about the cause of the accident which was a matter of reasoning and judgment about which it was possible for ordinary people to arrive at their own conclusions. These were not findings of one superior tribunal that another body's findings were wrong, but simply that the Royal Commissioner did not arrive at the same conclusions as were reached by the Office of Air Accidents investigation.

In the circumstances the Tribunal upholds the complaint of a breach of the rule requiring accuracy on points of fact and in dealing justly and fairly with any person referred to in a programme. It does not accept that the programme failed to show balance or impartiality as the Tribunal does not consider there was any question of balance or partiality involved.

The Tribunal is not prepared to uphold a complaint under section 24 that the programme failed to be accurate and impartial in the gathering and presentation of news according to recognised standards of objective journalism. We consider that this reference in the programme itself was less a presentation of news and more a part of a current affairs documentary for which this section of the Act has less applicability. Also, the breach was one that occurred in passing in an unguarded comment since it is accepted by both parties that the general thrust of the programme had nothing to do with the Erebus accident and its aftermath.

The Tribunal therefore upholds the complaint made to the Broadcasting Complaints Committee and finds that Mr Chippindale and his Office have been unfairly and unjustly treated in the programme.

The Tribunal also finds that a statement to redress the situation should have been broadcast.

It is unfortunate that the Corporation did not make a simple statement promptly disavowing any intention to cast any doubt on the Inspector of Air Accidents and his Office, confirming that the Royal Commission did not change the report of the Inspector of Air Accidents and that both reports still stand, and confirming that the marine and air inquiries were different in their nature and extent and were carried out by different types of appointees.

The Tribunal requires that a statement now be made to this effect by the Corporation and if the parties cannot agree on the statement the Tribunal will determine it. The complainant should accept that the statement will need to be brief.

As the series in which the programme was broadcast is no longer being broadcast the Tribunal directs that the statement

be made during or proximate to the programme known as *Frontline* broadcast from Television One at 7 p.m. on Sunday nights.

Costs

The Tribunal has some sympathy with the application made, particularly since the complainant filed affidavits to this Tribunal to provide the factual basis for its conclusion, and because the procedures adopted by the Broadcasting Complaints Committee and its failure to make clearly defined findings led to the need to come to this Tribunal.

While there is a general provision relating to the payment of costs, the Tribunal is disinclined to exercise its discretion to do so in this case. In making that decision it has taken into account that the costs incurred have been met by the Office of Air Accidents rather than by Mr Chippindale personally. We have also had regard to the general undesirability of awards of costs in the complaints procedure.

The form of statement to be broadcast and the publicity given to this decision, while necessary to redress the unjust and unfair treatment Mr Chippindale and his Office have suffered, will coincidentally have a beneficial effect for him of tending to prevent similar errors being made in the future, since we perceive it to be a common impression that the Royal Commission "overruled" the Office of Air Accidents. (Just as it is sometimes wrongly thought that the Court of Appeal and the Privy Council in some way "overturned" the essential findings of the Royal Commission.)

The complaint does illustrate the predicament of an individual or private complainant without corporate or other backing wanting to go through the process to obtain an acknowledgment of error or an explanatory statement. We give due warning that, where there is a situation which could be met by a statement being broadcast and the broadcasting body chooses not to follow that course, there may be occasions when an award of costs is appropriate when the complaint is upheld and the Tribunal finds in favour of such a statement being broadcast.

Co-opted Members

Ms Billing and Mr Kelleher were co-opted as persons whose qualifications and experience may be of assistance to the Tribunal in the determination of the complaint. They took part in the hearing and the deliberations of the Tribunal but the decision is that of the permanent members.

Signed for the Tribunal.

B. H. SLANE, Chairman.
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Criminal Justice Act 1985

Confiscation of Motorbike

Pursuant to section 84 of the Criminal Justice Act of 1985, an order of confiscation was made in the District Court at Stratford on the 14 June 1988 against Harry William Harris, in respect of a motorbike registration No. 67GEC.

Dated at Stratford this 7th day of October 1988.

M. J. WEIR, Deputy Registrar.
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