

reasonable technical regulatory and conservation concerns, together with its own decision not to seek an early commencement of a technically satisfactory service because that did not accord with its own technical assessment of its needs, were the fundamental reasons for the lengthy time which has elapsed. As early as 8 May 1985 the New Zealand Post Office refused certification which is a prerequisite to the grant of a warrant. It said, "The proposed maximum e.r.p. of 40 kW is grossly excessive for the coverage objectives published by the Tribunal". Despite amendments, certification has still not been obtained. The applicant should not seek to blame regulatory procedures or this Tribunal since its amendments have not met the technical objections.

This Tribunal was ready to consider its decision very shortly after the hearing on 24 June 1985. It trusts that this interim decision may clear the way to an early certification and final decision.

Signed for the Tribunal:

B. H. SLANE, Chairman.
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Decision No. 1/88
Com 6/87

Before the Broadcasting Tribunal

In the matter of the Broadcasting Act 1976, and in the matter of an application by **Alexander Tod** of Wellington: Warrant Holder Broadcasting Corporation of New Zealand (Television New Zealand):

Chairman: Judge B. H. Slane.

Member: Robert Boyd-Bell.

Co-opted Member: John Coleman.

Co-opted Member: J. A. Kelleher.

Decision

Dated the 18th day of February 1988.

This complaint arose from the broadcast on Television One on Tuesday 18 November 1986 of a documentary entitled "The Triple Crown—The Paradox of Papacy", written and presented by novelist, Morris West. The broadcast preceded the Pope's visit to New Zealand, which began on Saturday 22 November 1986.

The Complaint

Mr Alexander Tod lodged a formal complaint with the BCNZ on 12 January 1987. Mr Tod submitted that the Corporation had breached the provisions of section 24 (e) of the Act which provides for

"The principle that when controversial issues of public importance are discussed, reasonable efforts are made to present significant points of view either in the same programme or in other programmes within the period of current interest."

Mr Tod also submitted that the Corporation had breached the terms of programme rule 1.1 (g) which requires broadcasters

"To show balance, impartiality and fairness in dealing with political matters, current affairs, and all questions of a controversial nature."

Mr Tod explained that he had telephoned the Controller of Programmes for TVNZ before the documentary was screened "to express my concern that the West documentary to be screened the following night would be partial and one-sided, given Morris West's dissenting position within the Catholic Church and his previous invective and vituperation against the Papacy". He had agreed to withhold judgment until he had seen the programme, but subsequently determined formal complaint was justified.

Mr Tod advanced 2 basic grounds for his complaint—that the documentary itself was not balanced in its view of the Papacy,

nor was it balanced by a separate programme presenting a different view. He variously described the documentary as "thoroughly tendentious and partisan", "a series of insidious attacks", "an apologia for dissent in the Church", "a hatchet-job on an institution", and a "2-hour diatribe against the Papacy".

The Corporation's Response

The Corporation advised Mr Tod on 12 March 1987 that his complaint had been considered by the Board but not upheld. In his letter to Mr Tod the Secretary of the Corporation, Mr McLean, said the documentary had to be placed in the context of all the other material broadcast in connection with the Pope's visit to New Zealand. It was a personal viewpoint and an 'essay' type of programme.

The Board had noted the professional credentials of the makers of the documentary including the producer, Mr Peter Montagnon, who was the person behind the "Heart of the Dragon" and "Civilisation" series for which he had won a British Academy of Film and Television Arts Award. He had also won other international broadcasting awards. Mr McLean said that while the documentary may have been provocative to some, no member of the Church hierarchy complained and no other complaints were received.

Reference to the Tribunal

Mr Tod was not satisfied and referred his complaint to the Tribunal on 25 March 1987. He claimed that the Corporation had misdirected itself, that the documentary was clearly controversial and that "such a partisan and controversial presentation needed to be balanced by a positive view of the Papacy in general and Pope John Paul II in particular". Mr Tod requested a hearing before the Tribunal but not earlier than June 1987 as he would be out of the country during the intervening period.

The Corporation's Submission

The Corporation lodged submissions with the Tribunal dated 17 August 1987, drawing attention to the provisions of rule 1.1 (g), which does not require that balance, impartiality and fairness be achieved in one programme. Section 24 (1) (e) of the Broadcasting Act expressly provides that significant points of view may be presented over a period of current interest. The Secretary of the Corporation attached a schedule of TVNZ programmes relating to Pope John Paul II's visit totalling more than 13½ hours, excluding news coverage.

He submitted that TVNZ provided ample opportunity in a variety of broadcasts for viewers to see "a contrary presentation of the Papacy", much of it by direct representation.

Mr Tod's Response

Mr Tod responded to the Corporation's submissions on 21 September. He said he was gratified at the very generous coverage given during the Pope's visit to New Zealand but that "such coverage is quite irrelevant to the question of balancing the West documentary by screening a contrary personal appraisal of the Papacy by someone sympathetic such as Muggidge". Mr Tod submitted that neither the programme rule nor the Act was concerned with how well-produced the documentary was, but rather with balance, impartiality and fairness.

He also said that "Everything about West's tone, body language, leading interviews, historical and theological selectivity betrayed unmistakable contempt for the institution of the Papacy and Pope John Paul II".

Mr Tod submitted a schedule of radio and television programmes and *Listener* articles and claimed that the Corporation gave disproportionate coverage to opponents of the Papacy in programmes and articles "all saturated with anti-papal bile".