

"I have tried to be as frank as possible and the offer to bring you or one of your colleagues together with Tim on the air is made in the hope that further frank discussion will enable each party to better understand the other."

Mr Kelly's Complaint to the Tribunal

Mr Kelly said that the station management saw justification for unacceptable lapses from currently accepted norms of decency and taste in language because of the tone of the programme.

He said it has assumed by Radio Pacific that the currently accepted norms of decency and taste in language in the Act were those of a rugby dressing room rather than the average living room in which the programme are listened to. He opposed that view despite his previous wartime army service and about a quarter of a century of experience as a rugby coach. The casual listener had a right by law not to have his/her ears assaulted in an open broadcast by language better suited to the casual standards of a public bar pretty late at night, notwithstanding that the station and Mr Bickerstaff wanted to project a rough diamond image. He referred to the Tribunal's decision 6/88 at page 7 where the Tribunal said:

"The Tribunal does not accept that a host with a 'rough diamond' image should be allowed to make racist remarks to maintain that image.

"Any warrant holder must recognise that its warrant to broadcast is a privilege subject to revocation for breach of conditions. A radio station granted a warrant is not thereby granted a licence to initiate or permit controversial discussions with the mere hope that no breaches of the law will occur. If a warrant holder conducts such programmes then it must accept full responsibility for them and take reasonable steps to ensure no breaches occur . . . The hosts must also be very clear that style or projection of an image can never excuse illegal racist comment. If errors or slips do thereafter occur the attitude of the host, any immediate attempts to remedy the error, the safeguards in place for dealing with risky topics and the past record of both station and host may well be crucial to the renewal of the warrant."

Mr Kelly ended his complaint with this statement:

"I find the station management's tolerance (or encouragement?) of the style of this broadcaster more surprising in that I have not infrequently heard other Radio Pacific 'hosts' issue a warning to callers whose language has lapsed into looseness. And Mr Lowe must be well aware that his other hosts, both female and male, seem to manage very competently and professionally to handle issues of every degree of complexity without resorting to the kind bar-room argot that is Tim Bickerstaff's trademark. And that, it seems to me, without the slightest risk of appearing wimpish. I cannot see that the requirements of the Act can allow special licence to this broadcaster."

The Tribunal decided that it was necessary to defuse the situation as soon as possible and arranged for an oral hearing on 13 May 1988. It was felt that bringing the parties together might at least help by emphasising the importance of the complaint and confront the station and Mr Bickerstaff with the issues. In this, the Tribunal considers it was successful and over about an hour and a half there was a frank and open exchange of views.

For Radio Pacific, Mr Lowe argued that there were a range of contributors to Radio Pacific's talkback programming which balanced the tone and style of Mr Bickerstaff, who he felt had been caught up in the "sport and politics don't mix" issue. An audience had developed which liked his style and his candid approach. Other Radio Pacific listeners had long since tuned elsewhere. His approach had mellowed, matured and broadened considerably in recent times and there had been fewer complaints compared with 1982, 1983. The "Auckland Tonight" format had been a significant step forward in his

credibility. He considered Mr Bickerstaff to be one of the better interviewers in New Zealand and urged the Tribunal not to look at the language in isolation. He produced the complete file of complaints in relation to Mr Bickerstaff for perusal.

Mr Kelly pointed out there was no specific defence to the particular complaint. He was not a person who had listened very much at all to the programme, although he did admit that there had been a recent campaign to get Mr Bickerstaff put off the air as was disclosed at the station's renewal hearing.

Asked whether his comment were not "over the top", Mr Bickerstaff said it had been a style used for 28 years in broadcasting, he had always used that sort of language and it had been part of an image that had been projected as a sort of bar-room personality talking sport to people. He never had any rules as such "that you cannot use certain words" but he had avoided obscenities. It had never been an issue with Radio I or Radio Pacific. He cited another of his programmes in which an Australian entertainer who used stronger language had appeared and there had been only 1 complaint. He said he did not know there were any rules. He pointed out that it needed to be taken in the context of his programme and he said that on another programme he would not use the same language.

For Radio Pacific, it was pointed out that language standards had changed and that some years previously there had been a conviction for the use of the word "bullshit" in public.

When asked about the allegation that the language was directed at a person or group, it was said that Mr Bickerstaff had been subjected to public criticisms and that morning there had been a *New Zealand Herald* billboard story. Nevertheless, it appeared from the evidence given to the Tribunal that it was not a boiling over by Mr Bickerstaff but rather an image, a deliberate ploy, in the use of language. He was reacting strongly because of criticism and because his craft as a broadcaster was at risk.

It was submitted for Radio Pacific that Mr Cuthbert was a public figure and a distinction should be drawn between him and another person who might in similar circumstances have drawn this comment. The audience was a 40+ audience. It was not a programme listened to by children. In 16 years, Mr Bickerstaff said, he had not drawn any complaint for language but Mr Lowe admitted that in respect of some words he had raised the question of language with Mr Bickerstaff.

Mr Kelly pointed out that Mr Bickerstaff's job was the use of language and, if he was such a skilled broadcaster, he could express himself in language that would not breach the standards. Mr Lowe argued that the language itself was not objectionable as was evidence by the lack of complaints about it other than Mr Kelly's.

Examples of recent use of "wanker", "bugger" and other similar words used in this programme in other media was also discussed.

The Tribunal drew attention to the fact that broadcasters made the broadcasting rules and that one of the most important things was to consider the norms of the time and the context within the rules. It was submitted for Radio Pacific that norms do differ from one audience to another.

The Tribunal considered that Mr Bickerstaff was frank and open in his evidence as was Mr Kelly.

Mr Kelly's position was straight forward. He objected to the use of "Jesus" and "Christ" which he and other people considered blasphemous. He would not have considered the use of any other single word would have been "meat enough" for a complaint. It was the fact that the other words were used together and the summary effect of them that caused his complaint.

Decision on Complaint 9/88 on Standards

Mr Kelly's complaint is a reasonable one.

No attempt was made in the programme to give a plain report