

Zealand did consider the complaint on 5 April, we have had regard to Radio New Zealand's finding as well as further submissions from the complainant's solicitors and Radio New Zealand's response.

Radio New Zealand's Finding

In her letter to the complainant's solicitors, the Chief Executive of Radio New Zealand stated that the Broadcasting Act 1976 laid down only one provision against which the matters raised could be determined, namely section 95C (1) (iii) which concerns the obligation imposed by section 24 (1) (e) to have regard to the accurate and impartial gathering and presentation of news according to the accepted standards of objective journalism. Accordingly it was against this provision that the formal complaint had been considered by the board.

Radio New Zealand upheld the complaint on the ground of inaccurate reporting only and directed that the complainant be informed that the board considered the breach, both generally and also specifically in regard to the number of persons involved in the report's references, as technical only. (It was referring here to the other persons and matters referred to in the radio report of which the words complained of were only a small part.)

Complaint to the Tribunal

As stated above, the complainant asked the Tribunal to uphold his various complaints to Radio New Zealand. These were that there was no allegation that the complainant and another accused had beaten the complainant with a broom: only the complainant had been alleged to have done that. In that respect the programme statement was incorrect and prejudicial to the other defendant (not a complainant). The complainant was going to plead justification for having done so. He would plead he was entitled to use force by way of correction pursuant to section 59 of the Crimes Act. The complaint to us was that these and other facts were not referred to in the report.

Further, only the co-accused had been alleged to have forced the young person to drink from a toilet bowl. In that respect the facts were also wrong, it was said. The co-accused had denied doing so. Both accused denied making the complainant kneel with soap in her mouth.

In addition to these claims of factual inaccuracy, the complainant said that the programme reported the toilet bowl and soap allegations as true, whereas the accused said they were false.

The solicitors for the complainant said the allegations made in the programme were unwarranted at a time when at that stage the accused had not been committed for trial. Even when they were committed for trial they remained matters yet to be considered by a jury.

Finally the complainant stated that the whole tenor of the programme (which was about child abuse) suggested that the accused persons were guilty. Generally, the whole programme was prejudicial to the complainant.

The complainant went on to say through his solicitors that, had the programme researched this aspect properly, it would not have used these details as an example of child abuse.

In addition, in a letter to the Tribunal dated 3 May commenting on Radio New Zealand's finding, the solicitors for the complainant said it was incomplete and, in describing the breach as "technical only", inadequate.

The solicitor's clients asked the Tribunal to reprimand the reporter and Radio New Zealand for:

- (c) The fact that the programme plainly suggested that the complainants were guilty of child abuse without attempting to ascertain any explanation or justification from the complainants or their representatives;
- (d) The off-hand manner in which the detailed complaint was dealt with;
- (e) The pointed lack of contrition or remorse expressed by Radio New Zealand having regard to the disturbing consequences the serious breaches referred to had on our clients."

Radio New Zealand's Submissions to the Tribunal

In its submissions, Radio New Zealand noted that the reference complained of was brief and of a general nature.

The complainant was not named or identified in the programme and the name suppression imposed by the court had been fully observed.

The subsequent acquittal showed the complainant was not prejudiced.

The allegation that the words complained of had caused distress to the complainant was of a general nature and no evidence was offered to substantiate it.

The question of accurate and impartial reporting remained to be determined.

Radio New Zealand stated that the reference was beyond argument both inaccurate and journalistically careless. Nevertheless, its board did not consider there had been a breach of impartiality but rather one of accuracy arising from that carelessness.

The board found no difficulty in agreeing that the various considerations could not excuse inaccuracy and the board therefore upheld the complaint on the particular ground of failure to ensure accuracy.

But taking into account all the circumstances it had directed that the complainant, when informed of the ruling, should be advised it was considered that the breach had been a technical one only.

Radio New Zealand considered an apology to the complainant was neither required by the Act nor justified in view of the passing nature of the reference to one case in a wider context of many cases.

Decision

The Tribunal is in agreement with Radio New Zealand's decision on the complaint to the extent that the inaccuracies in the broadcast should not have occurred. However we do not agree that it was a technical matter only. In matters of this nature, accuracy is of the essence and can be achieved by checking facts and accurate reporting.

There is however the central issue when criminal proceedings are pending or likely. This is the question of prejudice. Even though the complainant and co-accused were not identified, the item was broadcast in the district where the complainant was facing a depositions hearing and would appear for trial if that was the court's ruling (as it turned out to be). The particular district where the depositions were being heard was specifically mentioned in the report. There was a risk in this case that a local person who heard the report would have been able to identify the complainant. That local person might later serve on a jury hearing the case.

The Tribunal did not take into account in its decision the fact that the complainant was later found not guilty.

Broadcasters have an obligation to respect the legal principle fundamental to our criminal justice system that accused persons are deemed to be innocent until they are proved guilty. Accordingly, reports should indicate that individuals are *accused* of a particular crime or *alleged* to have committed them, even when the particular accused person is not personally identified.

- "(a) The number of serious factual errors in the report;
- (b) The timing of the programme and the negative inferences raised by the programme, in relation to the criminal proceedings which were then only at a preliminary stage in the trial process;