

BEFORE THE BROADCASTING STANDARDS AUTHORITY

Decision No: 12/90

Dated the 18th day of June 1990

IN THE MATTER of the Broadcasting Act 1989

AND

IN THE MATTER of a complaint by

GEORGE S WOOD

of Auckland

Broadcaster

RADIO NEW ZEALAND
LIMITED

I.W. Gallaway Chairperson

J.B. Fish

J.L. Hardie

J.R. Morris

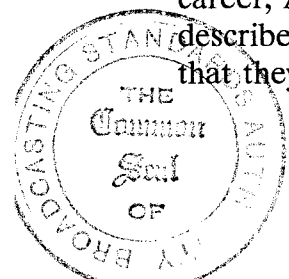
DECISION

Introduction

Between 8 and 9 pm on Thursday 26 October 1989, Mr G.S. Wood of Auckland was listening to 1ZB Newstalk, a programme described by its host, Mr Chris Carter, as "open-line talkback". In broad terms, the subject under discussion was the legislation under which bailiffs may be empowered by warrant to enter premises and to seize property for subsequent sale in order to satisfy a defendant's debts.

The topic was being discussed because a number of callers had telephoned two nights earlier to comment on a *Frontline* programme (broadcast on TVI on Sunday 22 October) in which a Palmerston North bailiff, Mr Kerry Nicholls, had been interviewed extensively about his work. Mr Carter had not, at that time, seen the programme nor had he read the legislation; by Thursday, he had done both.

Mr Carter set the tone of his programme from the outset, more than once describing the legislation as "fascist" and implying certain parallels between modern-day New Zealand and Hitler's Germany. The Prime Minister, for example, " ... had seemed such a nice man when he was the Attorney General. But then, I suppose, at some stage in his career, Adolf Hitler probably seemed OK as well ...". And bailiffs, for their part, were described as "court-appointed goons" who could, like the defendants at Nuremberg, say that they were "only following orders".



The remainder of the programme, or at least its 8 - 9 pm segment, was mainly given over to Mr Carter's views that New Zealand was no longer a democratic society, but was being "... run by people who are directly related to Adolf Hitler", who had enacted legislation that was "pure Nazi" which was being implemented by bailiffs "carrying on like Attila the Hun ... as Nazis purely and simply ...".

Mr Wood's Complaint to Radio New Zealand Limited

On 7 November 1989 Mr Wood wrote to RNZ formally complaining that Mr Chris Carter had made unjust and derogatory comments about his friend, Mr Kerry Nicholls, the Palmerston North bailiff who had featured on the *Frontline* programme.

Mr Wood alleged that the broadcast of these remarks did not comply with the responsibility of broadcasters to maintain standards consistent with the observance of good taste and decency (as required by section 4(1)(a) of the Broadcasting Act 1989).

Although he had not taken down the offending remarks verbatim, Mr Wood recalled that Mr Carter had referred to Mr Nicholls as a "square-headed person"; had associated him with the German SS and a named German wartime concentration camp; had called Mr Nicholls "the Fuehrer" and mentioned Hitler and Joseph Stalin to reinforce his assertion; and had mentioned that Mr Nicholls only had "bone between his ears".

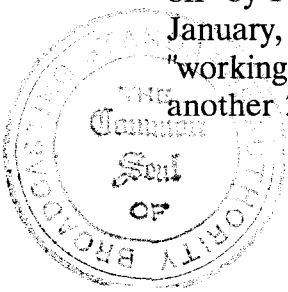
Mr Wood considered it was not right to malign other people in such a way and stated his belief that Mr Carter should face disciplinary action.

RNZ's Response to Mr Wood

The Acting Chief Executive of RNZ replied to Mr Wood on 13 November advising him that "... it would be inappropriate for the formal complaints procedure to be taken any further while there is a possibility of legal action on the same matter, and I have therefore suspended consideration of your complaint until the legal aspect is resolved ... At that time I shall write to you again".

Following the receipt of this letter, Mr Wood wrote to RNZ on 17 November questioning whether the Broadcasting Act enabled the company to "set aside" his complaint and to desist from taking disciplinary action against Mr Carter. RNZ responded on 27 November saying that it had "deferred" rather than "set aside" consideration of Mr Wood's complaint pending resolution of the legal issues and reminded Mr Wood of the provision in the Act requiring broadcasters to notify complainants of decisions (and actions taken) on complaints within 60 working days of receiving the complaint.

On 21 January 1990, Mr Wood wrote to the Authority claiming that he had been "fobbed off" by RNZ and that the 60 working day time-limit had expired. In its reply dated 26 January, the Authority informed Mr Wood that, bearing in mind that the definition of "working days" in the Act excludes the Christmas - New Year period, RNZ had at least another 20 working days in which to advise him of its decision of action taken on his



complaint. If, however, a reply was not received during that period, Mr Wood could reactivate his complaint to the Authority.

RNZ's Further Response to Mr Wood

On 15 February, the Chief Executive of RNZ wrote again to Mr Wood. The letter was brief and to the point and is worth quoting in full (apart from its introductory and closing passages):

I have considered your complaint that the broadcast on Thursday October 26 1989 on 1ZB was not consistent with the observance of good taste and decency. In approaching the question of whether any programme meets the requirement of good taste and decency, I must have regard not only to the nature of the language actually used but also to the context in which it was used, and indeed to the programme as a whole. I am not concerned with whether the sentiments expressed are correct; the issue is whether the nature of expressing the particular sentiments fails to observe the requirements of good taste and decency.

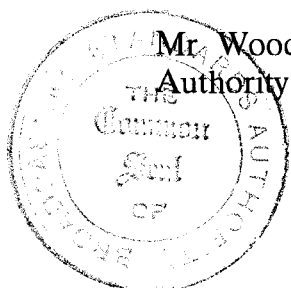
In dealing with the particular matters of which you have complained, I have had regard to the nature of the programme itself, which might fairly be described as "racy", forthright and generally good-natured. It is in the nature of talk-back programmes that listeners call the host and express their views with some degree of vigour. The host encourages vigorous debate and indeed invites listeners to agree or disagree with any views expressed in the course of the programme. The purpose of the programme is to enable listeners to express their view on a variety of topics with some degree of candour.

As you will appreciate, the invitation for listeners to express their views on a variety of topics often generates opposite opinions expressed with equal force. As long as the language used is neither coarse nor indecent, and is not mere abuse, the expression of views in forthright terms does not in my opinion constitute a failure to observe the standard of good taste and decency required of any programme. Equally, particular phrases are often not intended, and should not be taken to be meant literally.

I do not consider that the particular expressions of which you complain were either coarse or indecent, or merely abusive; and accordingly I must find that the complaint is not justified and that no further action is required.

Mr Wood's Complaint to the Broadcasting Standards Authority

Mr Wood was dissatisfied with RNZ's decision and referred his complaint to the Authority on 20 February for an investigation and review. Mr Wood challenged



" ... The right of the host to malign the character of individuals in order to generate listeners to telephone his programme. If this was the reason for the comments that Mr Carter made then I believe it was not in good taste and was indecent."

As to RNZ's statement that particular phrases are often not intended, and should not be taken, to be meant literally, Mr Wood commented that it was

" ... a sad state of affairs if a talkback host has licence to say things or comment in the belief that people will not believe what he says ... ".

In elaboration of his complaint on a Broadcasting Complaint Referral Form, Mr Wood reiterated that he took exception to the terms Mr Carter had used to describe Mr Nicholls, i.e. that he was "a square-headed person", "the Fuehrer", etc. He considered that RNZ had not taken his complaint seriously and had not commented on the specific allegations he had made.

RNZ's Response to the Authority

In response to an invitation to comment on Mr Wood's referral of his complaint to the Authority, the Chief Executive of RNZ advised that Mr Wood was mistaken in alleging that his complaint was not given serious consideration.

In addition, the Chief Executive stated that she " ... did not believe that in the context of the programme the section which he has specifically addressed was offensive, or that the question of decency can arise."

A transcript of the relevant part of the talkback programme was enclosed with the letter.

Decision

In investigating and reviewing this complaint, the Authority was fortunate in having before it not only a transcript of the relevant part of the 1ZB Newstalk programme of 26 October 1989, but also a tape recording of that programme and a video cassette of the *Frontline* programme of 22 October. Members were thus able both to view the television programme that had inspired the radio programme and to listen to the radio programme itself.

On the evening of 26 October, the host of 1ZB Newstalk, Mr Chris Carter, clearly felt strongly that there is something very wrong with legislation that, as *Frontline* had shown, enables court-appointed bailiffs to enter a defendant's last-known place of address and to seize property in order to satisfy the defendant's debts, irrespective of whether the property is actually owned by the defendant and regardless of the replacement value of the property in relation to the amount of the debt.



But Mr Carter not only considered the legislation wrong, he pronounced it as "fascist", repressive and un-New Zealand. He likened the Prime Minister to Adolf Hitler and maintained that New Zealand is now being run by people directly related to Hitler. New Zealand was, he said, no longer a democratic society but one going down the road to totalitarianism. He urged New Zealanders to concentrate on major issues that are direct attacks on their freedom and said that New Zealanders should not let so much be taken without a whimper.

On the role of bailiffs under the legislation, Mr Carter found no difficulty in fitting them into his scenario of fascism run rampant. On examination of the transcript of the programme, the Authority has isolated the following such references:

- (a) [Mr Carter asked whether anyone would have imagined, before the *Frontline* expose,] " ... that short, square-headed, humourless, very unpleasant automatons would ever be given the power to break into your house, even as a totally innocent person, and remove your possessions for public auction on the flimsiest pretext, that they were only "following orders"?" (page 1)
- (b) [Mr Carter mentioned that he had been given a copy of the "fascist" legislation] " ... under which these court-appointed goons operate." (page 1)
- (c) [Mr Carter referred to a scene on *Frontline* showing a man working for a newspaper] " ... who was being screwed by the system, and certainly by the Fuehrer that was employed down there at Palmerston." (page 3)
- (d) [Mr Carter said that he was] " ... more interested in what's happening under the legal system of the law whereby bailiffs, warranted people, working on behalf of the courts, are carrying on like Attila the Hun." (page 4)
- (e) [Responding to his caller's immediate interjection that bailiffs were not carrying on like Attila the Hun but "like Nazis", Mr Carter retorted with] " ... well, not like Nazis ... as Nazis purely and simply. This legislation is frightening in the extreme, mate." (page 4)
- (f) [After quoting from the legislation and giving an example of the sort of comment that could, in his view, render a person liable to be convicted of interfering with a bailiff in the execution of his duty, Mr Carter said that this sort of thing would happen] " ... for simply opening your mouth, my son. How dare you open your mouth as the Gruppenfuehrer walks in with his little piece of paper?" (page 6)



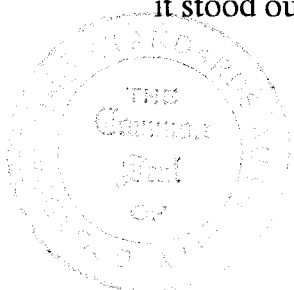
- (g) After asking his caller what he thought of "this character from Palmerston North", Mr Carter answered the question himself with] " ... I've seen photographs, I mean, I was reading a book on Auschwitz the other day, and he'd have fitted in very nicely with the SS guards. I couldn't believe that man's attitude. He was devoid of any human feeling whatsoever, certainly as far as it was expressed on television anyway." (page 6)

The Authority has concluded that - with one exception - Mr Carter's references to bailiffs generally, and to Mr Nicholls in particular, were within currently acceptable standards of good taste and decency.

In reaching this conclusion, Members have taken particular note of the fact that these references were scattered throughout the programme and could be said to have always been made to illustrate Mr Carter's main theme, namely that New Zealand is being run by "fascists" who have brought down "fascist legislation" which is being implemented by people content to "follow orders". The transcript shows that there was no sustained attack on the person of Mr Nicholls; rather, he was used as an example of the type of person who is carrying out these repressive laws. Mr Carter referred generally to bailiffs, and not specifically to Mr Nicholls, as being "square-headed" and "carrying on like Attila the Hun ... as Nazis purely and simply". His reference to Mr Nicholls as "the Fuehrer" was a *personal* reference, but it was not, of course meant literally - it seems to have been made simply in order to place Mr Nicholls squarely in the category of those who carried out the "fascist" and "repressive" legislation Mr Carter had quoted. (As to the other phrases and expressions complained of by Mr Wood, there was no mentioning of Stalin and Hitler to reinforce the reference to "the Fuehrer" and there was no reference in the programme to Mr Nicholls as having "only bone between his ears".)

Members have also placed considerable weight on the context in which the allegedly offensive remarks were made. Listeners to open-line talkback shows do so by choice and in Auckland listeners have a wide range from which to choose. Regular listeners to Mr Carter's programme have come to expect to hear a man of strong opinions encouraging debate on topical issues. Members of the public who choose to listen to his programmes must expect that they are likely to contain material that will be controversial and, in another context, inconsistent with standards of good taste and decency. Viewed in this context, the Authority is convinced that, with the one exception alluded to above, the comments made by Mr Carter concerning Mr Nicholls were not inconsistent with the maintenance of standards of good taste and decency.

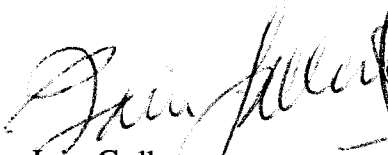
The one exception was when Mr Carter suggested that Mr Nicholls would have "fitted in very nicely with the SS guards [at Auschwitz]". The Authority considers that Mr Carter, on this occasion, went beyond the bounds of good taste and decency. The Authority views this comment as being repugnant and clearly derogatory of Mr Nicholls - it stood out as being particularly insulting in comparison with, for example, the reference



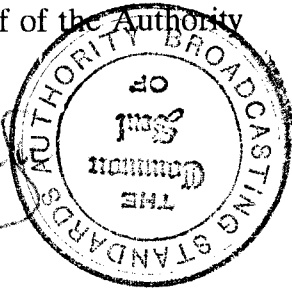
to Mr Nicholls as "the Fuehrer", a term now quite commonly used to ridicule someone perceived to be exercising power and authority in an unrestrained or tyrannical manner.

For the reasons set forth above, the Authority upholds the complaint to the extent noted in the foregoing paragraph.

Signed for and on behalf of the Authority



Iain Gallaway
Chairperson



18 June 1990