Privacy:

The Parameters for Broadcasters
and their Implications for Journalistic Practice
in New Zealand

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## CONTENTS

<table>
<thead>
<tr>
<th>Chapter</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>Contents</td>
<td>i</td>
</tr>
<tr>
<td>Acknowledgements</td>
<td>ii</td>
</tr>
<tr>
<td>Abstract</td>
<td>iii</td>
</tr>
<tr>
<td>I</td>
<td>Introduction</td>
</tr>
<tr>
<td>II</td>
<td>Chapter One</td>
</tr>
<tr>
<td></td>
<td>Literature Review</td>
</tr>
<tr>
<td>III</td>
<td>Chapter Two</td>
</tr>
<tr>
<td></td>
<td>The Issues of Privacy</td>
</tr>
<tr>
<td>IV</td>
<td>Chapter Three</td>
</tr>
<tr>
<td></td>
<td>The Evolution of Privacy</td>
</tr>
<tr>
<td></td>
<td>in the New Zealand’s Broadcasting System before 1989</td>
</tr>
<tr>
<td>V</td>
<td>Chapter Four</td>
</tr>
<tr>
<td></td>
<td>Broadcasting Standards Authority (BSA) and Privacy</td>
</tr>
<tr>
<td>VI</td>
<td>Chapter Five</td>
</tr>
<tr>
<td></td>
<td>Methodology</td>
</tr>
<tr>
<td>VII</td>
<td>Chapter Six</td>
</tr>
<tr>
<td></td>
<td>Content Analysis of the BSA’s Privacy Complaint Decisions</td>
</tr>
<tr>
<td></td>
<td>from 1996 to 2003</td>
</tr>
<tr>
<td>VIII</td>
<td>Conclusion</td>
</tr>
<tr>
<td>IX</td>
<td>Appendix 1 – Interview with Michael Stace</td>
</tr>
<tr>
<td>X</td>
<td>Appendix 2 – Coding Schedule for Content Analysis</td>
</tr>
<tr>
<td>XI</td>
<td>Appendix 3 – Coding Manual for Content Analysis</td>
</tr>
<tr>
<td>XII</td>
<td>Bibliography</td>
</tr>
</tbody>
</table>
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Privacy has always been an area broadcasters find problematic to deal with, as there are many grey areas existing when it comes to discussing privacy issues. Over the past 15 operating years since its establishment, the Broadcasting Standards Authority (BSA) has been playing a very significant role in laying down the parameters regarding broadcasting standards for broadcasters in New Zealand. This thesis sets out to examine the Authority's role in the area of privacy in broadcasting. The Authority's privacy complaint decisions between 1996 and 2003 were examined in pursuit of this objective. The evolution of the Authority's privacy principles was also explored in this study. As a result, it was found that the Authority has defined the parameters of privacy for broadcasters more explicitly and precisely than ever before.
INTRODUCTION

In Peter Weir’s 1998 film “The Truman Show” starring Jim Carrey, Truman Burbank was a character who lived in an artificially constructed world, and his life had been broadcast around the world with tremendous success since the day he was born. In the film, Truman was a star for the mere fact that he existed, and he had no idea that there were cameras in every corner of his world. At the end of that film, the character chose to walk out of that place and enter the real world, and the movie ended with the switching off of a television channel, which was supposed to be a happy ending. However, if that character walked out of there and entered the contemporary real world we are living in now, he might gradually realise that the reality might not be much different to that artificial world as he would probably expect.

When it first came out in the late 1990s, the concept of the film was considered to be very interesting and extreme. However, if we take a good look at what is now available on the television screen, it is not hard to discover that an increasing number of television programmes are moving towards being more and more ‘reality-based’. We used to have some conventional prize-winning game shows like “Wheel of Fortune” and “Sale of the Century”, but now there are programmes like “Survivor” and “The Apprentice” for participants to compete in either savage or civilised ways for some prizes of ever greater value. Years ago, a voyeuristic programme looking into people’s personal lives would be regarded as an inconceivably outrageous idea, but now it is no longer so unthinkable. We were first provided with “The Real World” in some earlier years, and it evolved into some programmes like “Big Brother” which simply let viewers look at almost every detail of someone else’s daily living routines.
During the 1990s, there were some dating shows on television, and they were already regarded as objectionable by some people at that time, but now we have shows like "The Bachelor", "Outback Jack" and "Average Joe" which feature even more intimate details of people's love relationships. And just recently, there even started to appear programmes such as "Living the Dream" and "My Big Fat Obnoxious Fiancé" in which it is claimed that some of the people involved did not even know about the true purposes of their participation in the programmes. All these reality programmes seemed to be getting more and more similar to what was featured in "The Truman Show". Gradually the crazy idea conveyed by that film has become not so provocative anymore, and this is after merely half a decade.

This kind of situation is not just exclusively found in the world of television. If we listen to radio, we can also find that the topics discussed on the programmes are also getting more and more controversial, and from time to time an aggressive style adopted by a host in a programme might even be found to be popular amongst its listeners.

We can see that privacy is becoming a growing issue in the broadcasting scene all around the world, and it has attracted a number of scholars in the field of the mass media who have devoted their studies to discussing the issues involved in the area of privacy. However, in New Zealand, such issues are found to be tackled less frequently. From the 1960s, when broadcasting standards bodies were set up for radio and television broadcasters in this country, up to the late 1980s, privacy was not given as much attention as it deserved in terms of its importance. Research in this field was also lacking. The situation changed in 1989 with the deregulation of this country's
broadcasting media. That unleashed a competitive environment for the media, and since the deregulation radio and television broadcasters have often tested the limits of broadcasting standards with their programming. That was destined to bring pressure onto the new Broadcasting Standards Authority (BSA). The Authority was established under the Broadcasting Act 1989, to perform an important responsibility in providing the broadcasters with specific guidelines and markers with regards to broadcasting standards. Privacy was singled out in the broadcasting act as a significant area in which special care needed to be exercised. It has also stood out as one particular area in which the Authority has significantly contributed to the understanding of the issues involved for the local broadcasters, especially with its enumeration, application and ever evolving development of its privacy principles.

Over the past 15 years since the deregulation, numerous privacy issues have arisen from the broadcasting media in this country. Despite the mounting concerns regarding privacy issues, the academic studies done in this field have been surprisingly minimal. The most significant study in this field would have to be Michael Stace’s (1998) study based on his interpretation of the Authority’s privacy complaint decisions from January 1990 to June 1998.

This present study sets out to determine the current parameters of privacy for New Zealand broadcasters and their implications for journalistic practice in this country. The Authority’s decisions on privacy complaints during the 8-year period from January 1996 to December 2003 have been used as the basic research material of this study. The 8-year period started up with the addition of two further privacy principles to the original five enumerated by the Authority in its early years. This study takes up
from where Stace (1998) left off in his study on the privacy complaints decisions from January 1990 to June 1998, adding another five and a half years of material on new privacy cases since determined. Content analysis was carried out to examine some noteworthy privacy issues that emerged from the Authority's determination of the complaints. The evolution of the Authority's privacy principles has been another area where there have not been many relevant previous findings, so the author will make an attempt in this thesis to tackle this topic in more depth. This thesis will be divided into seven chapters, and they are as follows:

In Chapter One of this thesis, previous studies conducted by a number of scholars in the fields of broadcasting standards, media ethics and journalistic practices will be outlined. Their findings have had a significant contribution in providing the author with the background knowledge and supplementary material essential to the carrying out of this study.

Chapter Two serves as a guide to the comprehension of the different facets of privacy. In this chapter, many issues relating to privacy will be raised and discussed, in order to construct an understanding of the concept of privacy and the expanding issues derived from it.

Chapter Three provides a big picture of the historical background regarding the evolution of privacy in New Zealand's broadcasting system since 1961 up to the late 1980s. It illustrates the lack of attention devoted to privacy issues in the local broadcasting media during that period of time.
Chapter Four introduces the important role of the Broadcasting Standards Authority (BSA) in terms of the handling of privacy issues under its supervision. This chapter also sets out to deal with the evolution of the Authority’s privacy principles in more depth.

In Chapter Five, the author will talk about the research methods adopted in the process of this study. All the pros and cons of using each of these methods will be detailed in this chapter.

Chapter Six contains the author’s interpretation of the results derived from the content analysis conducted on the Authority’s privacy complaint decisions during that 8-year period. Several important privacy issues will also be raised along the way, and the privacy complaints relating to them are going to be comprehensively discussed as well.

In the concluding chapter, after having addressed a number of significant privacy issues – such as consent, intention interference and the protection of children – in the previous chapter, the author will discuss the findings on such issues in more depth to discover their implications for broadcasters on some areas that they might need to be more mindful of while dealing with privacy cases in the future. Suggestions will be made for future refinements in similar research, and some related topics that should be worth further exploration will be proposed at the end of this study as well.

Through this study, it is hoped that more understanding will be contributed to the contemporary privacy issues in this country’s broadcasting media.
CHAPTER ONE
LITERATURE REVIEW

At the very beginning of conducting this study, the author had to familiarise himself with the previous studies that have been done in the past which are relevant to this field of study. In order to be more informed, before getting into the content analysis carried out in this study, the author had to gain some background knowledge on matters such as the concept of privacy, general privacy issues, the privacy issues specifically in New Zealand, as well as the historical background of this country’s broadcasting system. All of the resources mentioned in this chapter were of great help in contributing significant insights on those relevant topics, and their findings have played a very important role in forming a firm foundation for this study.

Privacy and alleged invasions of privacy by the media are regarded as central issues in the ethics of journalism (Belsey, 1992).

Patterson & Wilkins’ (1998) chapter on privacy serves as a clear description of the definition of privacy and several concepts related to it, providing an understanding of concepts such as discretion, right to know, need to know, want to know, circles of intimacy and the application of Rawls’s veil of ignorance as a tool for ethical decision making. It also includes a number of case studies, which tackle such issues as naming suspects, photographing people in grief, and so on.

In Belsey’s (1992) article, he discussed about the nature of privacy, and the whole article concerns mainly the correlations amongst privacy, publicity and politics. He
made distinctions between three different groups of people when it comes to a point where the media should draw the ethical boundaries of privacy – personalities, ordinary people, and politicians or similar powerful figures.

Wilson’s (1996) book is really a journalist’s ethical dictionary. It serves as a very comprehensive guidebook on all kinds of issues involved in journalistic practice. Several privacy-related issues, such as public interest and the right to privacy of certain groups of people, are detailed in this book.

Burrows’ (1994 (2)) article provides a look at the growing concern with privacy in the early 1990s from a legal perspective, and, with several related privacy complaint cases mentioned, a brief discussion was done on the five original privacy principles enumerated on 25 June 1992.

On the other hand, Tully’s (1994) article looks at privacy issues from a more journalistic point of view. He encouraged broadcasters to adopt self-regulation as a solution to privacy issues. In this article, the efficacy of codes of practice was discussed, and suggestions were given on the ethical concerns that broadcasters need to address in constructing a model privacy code.

Privacy is definitely an ethical issue that needs to be taken into consideration for responsible journalistic practice.

For understanding the general principles of responsible broadcasting and media ethics, Phillis’ (1994) article tackles several concepts involved – such as fairness,
objectivity and impartiality, and so on — with reference to the British broadcasting system.

Lambeth’s (1992) *Committed Journalism* also serves as a guidebook that provides a look into the ethical issues involved in the journalistic profession from an American perspective.

As for the New Zealand context, Tully (1992) has provided a more relevant account of the media ethics in the local broadcasting system, discussing a number of problems encountered by journalists — such as conflict of interest, chequebook journalism, and so on — which have become more and more of a concern after the deregulation of the local broadcasting system and the increasing sophistication of technology.

Shellock’s (1996) article also contributed to a better understanding of the relationship between privacy issues and journalistic practice in this country as well. It presents a noteworthy discussion on the critical roles played by the Broadcasting Act 1989, the Authority and its privacy principles in that relationship.

Although it is not focused on the broadcasting media, Burrows’ (1994(1)) article in an Independent Newspapers Limited (INL) training manual can be considered to serve as a very comprehensive guidebook for journalists working in the news media. It tackles privacy issues such as access to specific information, public disclosure of private facts, intrusive filming/recording and use of photographs.

Cropp’s (1997) book on investigative journalism might not be closely related to the
privacy issues discussed in this study. However, it provides an interesting look into the problems that might be encountered in using the tricky methods adopted in investigative journalism, and of course one of the areas of concern will be privacy.

Shook's (1996) book deals with the matters involved in television production, while McLeish's (1999) book serves as a complete practical handbook on every aspect of professional radio production. Apart from these two books, Boyd's (1988) book explores the techniques adopted in news gathering and presentation in both radio and television. All of these three books contribute to a better understanding of the operation of broadcasting media production, and thus enable their readers to comprehend the challenges faced by journalists daily, especially the ethical issues that they have to deal with.

Since this study is focused on New Zealand's broadcasting system, it is really crucial for the author to have some background knowledge regarding the evolution of this system. Day's (2000) second volume on the history of New Zealand broadcasting provides a considerably detailed look at this topic. Although there is not much mentioned about privacy in it, it offers a comprehensive set of information on the establishment and application of the broadcasting legislation in this country over the years, as well as that of the broadcasting bodies before the Authority.

While dealing with privacy issues in New Zealand's broadcasting system, it is obvious that such issues are inseparable from the existence of the Authority, which plays a major role in determining privacy complaints.
Clemens' (1995) thesis on New Zealand's broadcasting standards provides a good fundamental knowledge on the historical background and factors that led to the establishment of the Broadcasting Standards Authority, and it enables its readers to have a more concrete understanding of the structure of the Authority and how it functions with regards to codes of practice and procedural matters.

In order to clarify the common misconceptions people have about the role of the Authority, Dawson's (1994) paper to the New Zealand Broadcasting Summit also provide a comprehensive account on the actual functions of the Authority and the procedure by which the members of the Authority deal with complaints. According to Dawson's (1994) paper, different people tend to have different thresholds of the levels of broadcasting standards that they find acceptable, and sometimes the Authority does encounter difficulties in determining complaints due to such differences. It is also mentioned in this paper that competition for ratings has triggered the temptation for broadcasters to challenge the existing broadcasting standards.

Longworth & McBride's (1994) analysis of the Privacy Act provides discussion on the historical background that led to the establishment of the Privacy Act 1993, the content of the Act and its application. It also talks about overseas developments in privacy laws. This book takes a considerably legal perspective in its content, and its application is not solely restricted to the media. Besides news media, its content is also targeted at domains such as health, employment, banking, finance & credit, marketing, technology, and so on.

Different from Longworth & McBride's (1994) book mentioned in the previous
paragraph which is less concerned with the media, Burrows & Cheer's (1999) book on media law in New Zealand can be considered a very comprehensive guidebook that provides a more contemporary perspective on how matters such as privacy and complaints are dealt with under the current media law in this country.

Stace's (1998) book on privacy focuses on interpreting the Broadcasting Standards Authority's previous decisions on privacy complaints since the establishment of the Authority. It tackles those privacy complaints, which arose in the period from January 1990 to June 1998, case by case, and occasionally addresses the issues raised by the Authority from time to time. It can be considered as taking a rather descriptive approach in the dealing of with such complaints, and it also looks at them from a legal perspective. Unlike Stace, this study intends to take a more analytic approach in interpreting such complaints from a more journalistic perspective to see what implications the decisions on such complaints have on journalistic practice. The period that this study is going to focus on will be the period from January 1996 to December 2003, which begins with the time when the two further privacy principles were added to the original five, and it takes up from where Stace has left off with his study (1998).

After going through all these previous studies relevant to this field, it was found that resources specifically relating to the New Zealand context remain relatively few. Therefore, it is hoped that this study could serve to contribute to a better understanding of the issues involved in this field of knowledge, especially for the New Zealand scene.
CHAPTER TWO
THE ISSUES OF PRIVACY

Privacy is a highly delicate issue that journalists need to deal with while pursuing their news stories. Not only is the concept of 'privacy' difficult to define, it also involves many complicated issues that journalists need to comprehend and tackle during their work. In this chapter, before going any further with the study, the author will attempt to provide an outline and some discussion on a number of concepts and issues involved in the matter of privacy, in the hope that a better understanding can be achieved concerning the nature of the relationship between privacy and the media.

Definitions of Privacy

Section 4(1) of the Broadcasting Act 1989 provides that: 'Every broadcaster is responsible for maintaining in its programmes and their presentation, standards which are consistent with – ... (c) The privacy of the individual'. However, the Act does not provide a definition of the phrase 'the privacy of the individual' (Stace, 1998).

Privacy has been described as having three elements: 'Our interest in privacy is related to our concern over our accessibility to others: the extent to which we are known to others, the extent to which others have physical access to us, and the extent to which we are the subject of others' attention' (Burrows & Cheer, 1999).

According to Patterson & Wilkins (1998), today privacy is guarded legally in four distinct ways:
1. Intrusion upon a person’s seclusion or solitude, or into private affairs, such as invading one’s home or personal papers to get a story;

2. Public disclosure of embarrassing private facts, such as revealing someone’s notorious past when it has no bearing on that person’s present status;

3. Publicity that places a person in a false light, such as enhancing a subject’s biography to sell additional books;

4. Misappropriation of a person’s name or likeness for personal advantages, such as using a celebrity’s likeness to sell a commercial product without his / her permission.

As for ethical definition, privacy is considered to be a right, a way of protecting oneself against the actions of other people and institutions (ibid). Privacy carries with it the connotation of control and limited access. The individual should be allowed to control who may have certain sorts of information and sometimes the context within which that information is presented.

According to Belsey (1992), there are three areas of personal life where the protection of privacy might be sought, and hence three types of privacy. The first two could be considered to be direct, and the third indirect.

1. Bodily or physical privacy: this provides a space in which the body can exist, function and move, free from physical intrusions like the too close proximity of other people or bodily contact and touching, and free from observational intrusions of eyes and cameras (and other senses and sensors).
2. Mental or communicational privacy: this allows a person to be alone with their thoughts and feelings, wishes and desires, to keep written or electronic records of them and to communicate them to selected other people, free from eavesdropping, intrusion and other forms of psychological invasion.

3. Informational privacy: this provides protection for personal information which is legitimately held in the files of public and private organisations, and prevents the disclosure of such information to third parties. ‘Legitimately’ means not only in accordance with the law but also with the subject’s knowledge and consent. Such information includes details of bank accounts, tax returns, credit status, social-security records, education records, employment records and medical records.

The Distinctions between Privacy and Secrecy

It is also important to distinguish between the concepts of secrecy and privacy. These two concepts are closely linked, yet are essentially different. Secrecy can involve a range of related concepts, including sacredness, intimacy, privacy, silence, prohibition, furtiveness and deception (Belsey, 1992). The core of secrecy is, however, intentional concealment. It can be defined as blocking information intentionally to prevent others from learning, possessing, using, or revealing it, so it is to ensure that information is kept from any public view (Patterson & Wilkins, 1998). On the other hand, privacy differs from secrecy in its moral status. It has been pointed out that whereas lying is (prima facie) bad, secrecy in general is neither good nor bad but morally neutral: it is only particular cases or practices of secrecy that can be morally evaluated (Belsey, 1992). And if secrecy is morally in the middle and
lying is on one side of it, privacy is surely on the other side: not just prima facie good but good without qualification or exception (ibid). That which is private is not always secret: the ordinary events and experiences of everyday life are not intentionally concealed but are simply maintained within the personal domain, not offered to the gaze and scrutiny of the public. If privacy can be regarded as ‘the condition of being protected from unwanted access by others’, then secrecy might be considered to be a means to or a form of privacy as well. Privacy is more concerned with determining who will obtain access to the information. Privacy does not imply that information will never reach public view, but rather that an individual has control over what information becomes public and to whom (Patterson & Wilkins, 1998). Privacy does not imply that there is something to hide, and certainly not that it hides a shameful secret (Belsey, 1992). It simply recognises the importance of not handing over the power to control one’s own life to someone else, and thus relates itself to such concepts as self-fulfilment and self-respect, personal dignity and security, autonomy and identity, and in general the integrity and immunity of the person (ibid). Furthermore, it differentiates itself from the consequences of its negation: feelings of defencelessness and nakedness, fear and embarrassment, bewilderment, distress and emotional upset (ibid).

Fulfilling the Public Interest or Keeping the Public Interested

The public interest does not mean whatever interests the public; it refers to serious matters in which the public have or ought to have a legitimate interest, better still a legitimate concern (Wilson, 1996). The public interest is being served if the efforts of a journalist detect or expose crime or a serious misdemeanour (ibid). If a story would
help to protect public health and safety, it is also regarded as being served (ibid). Moreover, with an editorial eye on public figures who live by images that are often partial and by fine-sounding statements that may be in conflict with their private lives, a story would be serving the public interest as well if it could prevent people at large from being misled by some statement or action of an individual or organisation (ibid). The public interest argument is clearly a strong one to justify a news story being produced. However, on the other hand, its worth is also damaged due to the spurious use of the public interest defence by journalists to justify their intrusions into the privacy of individuals where such intrusions are unnecessary.

While determining whether to intrude an individual’s privacy for getting a story or not, one of the first steps that journalists should take is to determine whether they are doing a story for the public interest or simply for keeping the public interested. There are significant differences between these two intentions. In order to understand more about these differences, it is really important for journalists to be able to distinguish between the concepts of ‘right to know’, ‘need to know’ and ‘want to know’, which are distinct and not interchangeable. These three concepts are explained in depth by Patterson & Wilkins (1998) in their article on privacy, thus the following discussion on the concepts will be heavily based on their findings.

‘Right to know’ is a legal term often associated with open-meeting statutes and based on the philosophy that government runs more honestly in the open, so it is regarded as a form of counterbalancing government power (Patterson & Wilkins, 1998). However, ‘right to know’ does carry with it ethical considerations. Is it ethical to print everything a journalist has a legal right to know? When an argument is framed
in terms of ‘right to know’, it reduces the journalist to ethical legalism: I will do precisely what the law allows. It might be the best way for a journalist to get the facts regarding a crime or misconduct by asserting his/her right to know, but only by weighing the public’s need to know will the journalist be satisfied with the decisions s/he makes in airing the story (ibid).

Different from ‘right to know’, when an argument is framed in terms of ‘need to know’, it means that counterbalancing forces have been weighed and that bringing the information to light is still the most ethical act. It has been argued that one of the functions of the mass media is to provide information to citizens that will allow them to go about their daily lives in society, regardless of political outlook (ibid). Citizens may have a legal right to much of this information, but perhaps not all of it. In this view, providing information the public needs to know includes within it the concept of journalistic tenacity and responsibility (ibid). Amongst the three concepts, ‘need to know’ is the most ethically compelling argument. It demands that an ethical case be constructed for making known information that others wish to keep private, and also that journalists present the information in a manner that will make its importance evident to a sometimes lazy citizenry (ibid).

Finally, as for ‘want to know’, it is considered to be the least ethically compelling rationale for acquiring information and disseminating it, and it simply speaks to the curious human being in all of us (ibid). We all want to know a lot of things – the amount of income of others, what our neighbours do in private, the luxurious lifestyles of celebrities, and so on. However, while we might want that information, we do not really need it. It only serves the function of gossip, providing us with small
talk or a smile. As mentioned above, ‘want to know’ speaks to normal curiosity, and fulfilling that curiosity can be profitable (ibid). Nevertheless, it is not a good basis for ethical decisions particularly when another’s privacy is at issue.

After discussing the differences between these three concepts, it is clear that the necessity to intrude on the privacy of an individual for a story really depends on the types of stories that a journalist is aiming to get. Ethically, personal privacy should only be intruded upon where someone’s understandable desire to be left alone runs counter to proper public interest (Boyd, 1988). One important point that cannot be stressed enough is that journalists inevitably need to know the difference between reporting an item for the public interest and producing a story just for keeping the public interested, then they might be able to make a more sound judgment on their story choices.

Different Levels of Privacy for Different Groups of People

Furthermore, with regards to media coverage, different groups of people are also considered to deserve different levels of privacy. According to Belsey (1992), in considering where the media should draw the ethical boundaries of privacy, distinctions should be made between three different groups. First are personalities, those who are created and sustained by publicity. Second are politicians and similar public figures who occupy positions of power in society. Third and last are people who find themselves involuntarily thrust into the public eye. This group would include children, police and crime suspects, victims and their families, and so on. This third group needs to be handled with special care.
1. Personalities

When we talk about 'personalities', we mean people involved in what we call 'show business'. It is reasonable to say that these people are created by publicity, because they would not be who or what they are without exposure in the media (Belsey, 1992). They range from people who are only famous for being famous to those who have genuine talents to offer to the world. They live on and off the media; they require publicity and would shrivel without it (ibid). All such people, who tend to live according to the maxim that all publicity is good publicity, cannot consistently claim the protection of privacy when they discover the negative side of publicity. When the publicity suddenly becomes painful, as it might when it concerns death, disease, legal charges or shameful deeds, claims to a right to a private life shade quickly into hypocrisy, and this is outside the protection of privacy. However, although journalists do not offend against privacy in reporting such matters, it does not follow that they ought to report them, as lapses of taste are no more justifiable than invasions of privacy (ibid).

2. Politicians and Similar Authoritative Public Figures in Society

The media is not there simply for entertainment and providing free publicity for personalities. According to Belsey (1992), the media should critically scrutinise those who exercise power, as its actual role is the central democratic function of casting a sceptical eye on the processes and personnel of politics and power and, most importantly, keeping the public informed of the results. Ordinary members of the
public do not have access to this information, which is why it is essential for the media to be free and fearless in trying to maintain a democratic society.

Nowadays the personal image of the leader of a political party is as important an electoral issue as that party’s policies. In some ways, top politicians may be considered to have become like personalities. It is true that the genuinely personal aspects of the life of a politician should be granted the protection of privacy, so the politician is no different from anyone else in this respect (ibid). However, the peculiar ethical demands of political life imply that this protected area is smaller for politicians, and, furthermore, not very secure. Paradoxically, the privacy of a politician is always liable to be under scrutiny. It is considered to be unacceptable for what is to be regarded as private to be dependent on the politician’s own wishes (ibid). That would make politicians to be judges and juries in their own cases, whereas empirical studies of corruption show that politicians are very poor at drawing an ethically acceptable line between their public and private lives.

Making decisions on whether to intrude on the private life of a politician for a story is a matter of relevance that journalists need to take into consideration. It is only where performance in a politician’s private life is relevant to his/her performance in public life that his/her private life should become a proper object of concern or investigation (Belsey, 1992). According to Cropp (1997), publicity is warranted if there is conflict between a public figure’s private activities and his/her public responsibilities. This is referred to by some journalists as the ‘hypocrisy test’. Moreover, it is also warranted where there is good reason to believe that personal matters may be affecting his/her public role (ibid). Where the private life is irrelevant, there is the outer limit of
privacy (Belsey, 1992).

3.1 Children

Special care should be given to dealing with privacy issues involving children. Generally speaking, a child is defined as anyone under the age of 18. Children are usually considered to be vulnerable and easily taken advantage of, and they have little or no appreciation of the possible consequences of publicity (Cropp, 1997). As they can generate so much of the world’s human sympathy and emotion, courts ought to be extra sensitive about protecting children’s right to privacy (Shook, 1996). Therefore, it would be wiser for journalists to think of any juvenile – delinquent or otherwise – as a child and to act accordingly.

For any interview, there is no guarantee of the child’s legal consent to talk unless the person is at least 18 years of age (ibid). Therefore, when journalists intend to interview children for their stories, they should first seek parental permission or at least permission from their guardian(s). However, even if parents agree to waive a child’s right to privacy, journalists should consider their motives for doing so before going any further with the stories, because they may, unconsciously or deliberately, be putting their own needs ahead of those of the child (Cropp, 1997). For example, a father facing a criminal charge for child abuse or a mother involved in a legal battle for custody issues may be so eager to garner public support that they are willing to sacrifice the privacy of the child to further their own agendas. The privacy rights of the children should take high priority. Even if parents are willing to be named and identified, and even if they are prepared to expose their children to media coverage,
journalists have to consider seriously about the pros and cons of doing the story (ibid). And if the story is truly warranted, journalists should further consider whether it is absolutely necessary to film, photograph or identify the children involved.

An important point illustrated here is that parental permission is not always sufficient, because parents might not be clear about the best interests of their children when it comes to media coverage. Children are vulnerable under the media spotlight, and parents might not be aware of the extent to which their children are going to be exploited in some cases. However, the broadcasters themselves would be more equipped to anticipate the effects of media coverage due to their experience with and expert knowledge of the medium they are working with. Thus it should be up to them to take their responsibility to act in the children’s best interests. That is probably the reason why the Broadcasting Standards Authority’s privacy principles were altered in 1999 to especially take children into consideration¹.

3.2 Police and Crime Suspects

Crime reporting tends to be quite tricky for journalists as well. When it comes to reporting stories about the police or crime suspects or both, one of the major problems that may arise is that of defamation.

It has been argued that police officers are particularly vulnerable to charges of defamation due to the front-line nature of their work (Wilson, 1996). It is further argued that when a police officer is suspected of misconduct, even though s/he may

¹A number of related privacy cases involving children will be discussed in detail later in Chapter Six of this thesis.
not be named in a defamatory news report, the officer’s colleagues none the less know who it refers to, and thus damage may be done professionally (ibid). The officer may be condemned by his/her colleagues, and a stained reputation could harm the individual’s prospects in the force (ibid). As a result, when the officer’s misconduct is not proved, it is possible that the police might in return bring an action for defamation against the media for publishing the story, and then journalists would be just as vulnerable to charges of defamation as the police officer is to defamatory comments in the first place (ibid). Therefore, in such conditions, the safer journalistic course will be not to report complaints of misconduct until they have been officially investigated, and then perhaps only to report those few that are upheld. In short, this is considered to be quite a risky ground for journalists.

In the case of crime suspects, it is important for journalists not to rush into naming them. Injustice is occasionally done by the media naming people held by the police who are subsequently released without charge and sometimes even without any justified suspicion attaching to them (ibid). The stain of being named in this way can dog innocent people for years, so journalists must be careful while making judgments about naming. A decent option for journalists would be not to name suspects until they are charged, unless there is a legitimate reason to name them earlier (ibid). Competitive pressures are surely not considered as good reasons. Moreover, not only would naming people in such cases stain their reputations, it is possible that it might jeopardise the proceedings of a fair trial as well (McLeish, 1999). Therefore, journalists need to make sure that they do not exceed the defined limits, or else they might run the very severe risk of being held in contempt of court – an offence which is viewed with the utmost seriousness since it may threaten the law’s own credibility
3.3 Victims and their Families

Charges of intrusion of privacy are nearly always made against the news media after accidents and disasters, and such charges are usually provoked by pictures and sound of grief stricken people or badly injured victims (Wilson, 1996). At times of tragedy, the media is frequently accused of preying on distressed victims by subjecting them to a further ordeal by camera (Boyd, 1988). Compassion is essential when covering disasters or human tragedies. It is a delicate balancing act to tell the story fully, yet to remain sensitive to the feelings and emotions of those directly affected. According to the policy on privacy in the journalistic code of ethics issued by the New Zealand Engineering, Printing, and Manufacturing Union, it is stated that journalists should respect private grief and personal privacy and have the right to resist compulsion to intrude on them. Journalists should always display humane respect for the dignity, privacy and well-being of persons with whom the news deals; and especially for victims of trauma and calamity and people in grief, journalists should show extra sensitivity in treating them (Cropp, 1997). Their vulnerability, including their inexperience in dealing with the media, should not be abused.

It should be remembered that when in shock, people may be in no state to give or withhold consent and may not even realise that they are talking to a reporter or being filmed (ibid). Therefore, it is very important for journalists to understand that victims do react differently from what one would expect of people in their normal state of mind. For example, some victims may be very talkative or hyperactive and may be
perfectly happy to tell their story to anyone who asks, simply to reduce the tension. Journalists should take caution about quoting from the conversations held with these victims under such conditions, because they are almost certainly in no position to judge the wisdom of what they say or to whom they say it and their grasp of the facts at the time may be highly dubious (ibid). So when they read their stories in the papers later, they may have no recollection whatsoever of what they said and could find the whole matter extremely embarrassing.

Not only would interviewing victims under such conditions be considered to be taking advantages of them, in some circumstances the very act of filming or photographing may in itself be regarded as an invasion of privacy too, especially if the scene is gruesome and involves footage of bodies (ibid). The footage and pictures taken under such circumstances may be criticised as sensationalism, showing a lack of compassion and likely to distress the families of the victims. Sometimes the public interest does justify the use of such material, but journalists should certainly at all times be more mindful about not using them gratuitously.

Victims of sexual offences are also considered to deserve special care. It is important for journalists not to cause any further unnecessary harm to these people, especially children, who have been sexually assaulted (Wilson, 1996). Anonymity is usually granted by courts to these victims in such cases.

Although many different groups of people have been included in the discussion above, actually the list does not end there. For example, while dealing with the health sector, journalists also need to take caution about obtaining details of patients and the
use of such information (Cropp, 1997).

The differences between these groups must be taken into consideration when journalists decide on how far they would go for their stories. If not, they could easily get themselves into trouble with privacy complaints.

*The Impact of Free Market and Advanced Technology*

Through the deregulation of the broadcasting system in New Zealand, an unprecedented degree of market competition has been introduced. It has brought about immense change in radio and television broadcasting, especially in the category of news and current affairs (Tully, 1992). Competition is supposed to bring about a more varied news flow and offer the public a wider range of perspectives. However, competition does also pose dangers when the stakes are high. For example, in television, news programmes are regarded as a vital part of the strategy to win and hold viewers at peak times. When competition is on and journalists are under strong pressure to get every story first, ethical and other issues can easily arise, and privacy appears to be among the top ones on the list.

As technology becomes more and more advanced, privacy is also becoming more and more controversial as an issue to be tackled. Advanced technology now enables journalists to monitor other people's conversations by means of sophisticated listening equipment; and to film other people unbeknown to them by the use of concealed long-range cameras (Burrows, 1994(1)). Along with the introduction and constant development of these high-tech tools of trade, journalists are presented with more and
more ethical issues such as the level of intrusion into private lives (Tully, 1992).

With regards to the intrusive conduct enabled by these sophisticated devices, there exists some statutory control but not very much. When a journalist monitors someone else's conversation by a listening device, and also to publish information thus obtained, it can be considered to be a criminal offence (Burrows, 1994(1)). However, the prohibition is a fairly narrow one. It does not apply where the person intercepting the private communication is a party to it, or where the interception takes place with the consent of one of the parties, or where the parties to the conversation ought to have anticipated that their conversation could have been intercepted; thus there would appear to be nothing wrong with a journalist's tape-recording an interview or a telephone conversation to which that journalist is a party (Burrows & Cheer, 1999). To go one step further, it probably does not prevent the media listening in to police radio\(^2\) either, even though there are certain regulatory controls about the use of the information so obtained (Burrows, 1994(1)). Therefore, although the penalty can be imprisonment, this statutory provision is considered to be so narrow in its operation that it has not had much effect (ibid). Furthermore, one thing also worth mentioning is that this legislation controls only listening devices; it does not, therefore, in any way apply to the use of hidden cameras for filming people (Burrows & Cheer, 1999).

Use of hidden cameras for filming people can be considered to be quite a flawed area in broadcasting standards. Before the establishment of the Broadcasting Standards Authority, it used to be guided only by the internal protocols available within the

\(^2\) According to comments made by David Shellock, it is understood by both sides (media and the police) that news media do listen in to police radio. However, journalists cannot identify police radio as the source of their enquiries when they phone up the police to check about the validity of something they have heard over police radio.
broadcasters themselves. Now it is an area under the Authority’s determination, and
the Authority has, since its establishment, dealt with numerous cases involving an
issue of intrusive filming, such as the Morgan Fahey case\(^3\) in 2000 in which the
Authority referred to the BBC Producers’ Guidelines 1993 and the British
Broadcasting Standards Commission’s Code on Fairness and Privacy in its
determination.

So far, the common law has not yet developed any clear controls over this kind of
intrusive conduct; nevertheless, this is not to say that it is incapable of doing so. The
nearest it has got is an elaboration of the law of trespass, which allows one to enter
premises for the purpose of holding a legitimate conversation with the occupier, but
when one exceeds that permission and does things which one knows would not be
permitted by the occupier, one risks becoming a trespasser (Burrows, 1994(1)).

The number of privacy complaints has increased tremendously during the last decade
or so after the deregulation of the New Zealand broadcasting system in 1989. As
mentioned by John Burrows and Ursula Cheer in their preface to the fourth edition of
*Media Law in New Zealand*, the law of privacy, which commanded only a brief
discussion in the third edition published in 1990, has so expanded in the past few
years that it now merits a chapter of its own in this latest edition. This shows how
important the issues of privacy have become in the media of this country. As shown
by the paragraphs in this section, privacy is indeed a very complex ethical issue to
deal with, and there are many different privacy-related factors that need to be taken
into account in journalists’ decision making on their stories. Privacy issues are simply

\(^3\) This case will be discussed in more detail later in Chapter Six of this thesis.
too important to be ignored in the contemporary broadcasting system. Journalists just have to make sure that they do not cross the boundaries and abuse their freedom of expression.

As claimed by many scholars, privacy should belong to the realm of ethics, courtesy and good behaviour rather than law (Burrows, 1994(2); Tully, 1994). If there has to be any further legal protection of privacy in the media, it should not be done through the medium of all-encompassing legislation like the Privacy Act (Burrows, 1994(2)). It should be something specifically designed for the media, so that a proper balance between privacy and freedom of information can be maintained. The media must be able to regulate itself and provide a system for public redress (Shellock, 1996). Therefore, the best way at the moment is still to refine the codes of practice currently in use, targeting those parts related to privacy, so that broadcasters, who are bound by those codes, can do a better job of self-regulation.
CHAPTER THREE
THE EVOLUTION OF PRIVACY
IN THE NEW ZEALAND’S BROADCASTING SYSTEM
BEFORE 1989

For broadcasters and journalists to know how they should deal with privacy issues in their practice, it is essential to have a set of laws for them to refer to as their guidelines. Therefore, while looking at the changes in the relationships between privacy issues and the broadcasting system in New Zealand, it is important to take into consideration the evolution of the broadcasting legislation in this country.

At present, the Broadcasting Standards Authority (BSA) is the current legislative body overseeing any matter related to programme standards in our broadcasting system, and privacy is categorised as one of those programme standards. When we examine the procedure and principles set up by the Authority to deal with privacy complaints, it is fair to say that privacy issues are regarded as matters of significant importance in the contemporary broadcasting system of this country. However, privacy has not always been considered to be that significant as a matter of concern. In fact, it has only been gradually carrying more and more weight over the last two decades or so. If we trace back as far as the beginning of the 1960s when the broadcasting legislation dealing with radio as well as television standards was first introduced, we can easily see that privacy issues were not given much attention at that time. We could go even further to say that no attention whatsoever was granted in respect of such issues.
This chapter will go back in time to look at the relevant legislation and explore how the organisations established under those Acts were instructed to deal with privacy issues. This will give a better understanding of the way privacy has come to evolve into one of the major concerns with regards to programme standards in the current broadcasting system over the past four decades or so.

The Broadcasting Corporation Act 1961

The Broadcasting Corporation Act 1961 was an Act ‘to establish the New Zealand Broadcasting Corporation and to define its functions and powers’ (preamble, Broadcasting Corporation Act 1961). When the Act was introduced, it was one of the more fiercely debated proposals, and one of the reasons for that was because it dealt with television, a new medium in New Zealand at that time (Day, 2000). Under this Act, the governor-general was required to appoint a three-member board, whose function was ‘to carry on a broadcasting service within New Zealand’ (section 10(1)(a), Broadcasting Corporation Act 1961). The Act could be regarded as the acceptance of public as opposed to state broadcasting, in which responsibility for broadcasting was starting to be removed from the government of the day and given to the board of the Corporation (Day, 2000). Most of the previous ministerial responsibility had by then passed to the Corporation, and the only broadcasting remaining to be controlled as before was shortwave broadcasting. Although it seems like the tenets of public broadcasting applied to most of the Corporation’s operations with the government removed from direct involvement, but this separation was never enough to allow broadcasting full independence (ibid). The government could still exert its will, and the Corporation was required to comply with the government’s
'general policy... with respect to broadcasting' and 'with any general or special directions given in writing by the minister' (section 11, Broadcasting Corporation Act 1961). Financial independence and freedom from parliamentary influence on programming were considered to be the two main areas of difficulty for the broadcasting system at that time.

The New Zealand Broadcasting Corporation 1962 – 1975

With the acceptance of television and the change of status to an independent public corporation, the New Zealand Broadcasting Corporation (NZBC) could be considered to be the most significant change to New Zealand broadcasting since its incorporation into the government service in the 1930s. According to the Broadcasting Corporation Act 1961, it was the duty of the Corporation to make sure that, so far as possible, the programmes broadcast by the Corporation comply with certain requirements (section 10(2), Broadcasting Corporation Act 1961). Among the requirements stated, programme standards such as good taste, decency, crime, disorder, offensiveness, balance, quality, accuracy, impartiality and public interest were mentioned, but privacy was never uttered as one of the concerns. Although the Corporation was responsible for watching over those requirements, no procedure or specific guidelines whatsoever had been set up for any complaint regarding programme standards under the Act.

The Broadcasting Authority Act 1968

The Broadcasting Authority Act 1968 was an Act ‘to establish the New Zealand
Broadcasting Authority and to define its power and functions’ (preamble, Broadcasting Authority Act 1968). In the wake of the Radio Hauraki incident, the government promised in its 1966 election manifesto to relieve the NZBC of the responsibility of acting as the sole official broadcasting agency dealing with the allocation of private broadcasting warrants, and this became fact in the Broadcasting Authority Act 1968 (Day, 2000). In order to avoid monopolistic news media, the New Zealand Broadcasting Authority was set up. In fact, it was even stated clearly in the Act as one of the matters to be considered by the Authority before determining whether or not to grant any application for a warrant that the Authority should have regard to ‘the desirability of avoiding monopolies in the ownership or control of news media’ (section 21(h), Broadcasting Authority Act 1968). After the establishment of the Authority, although the Corporation was and might remain New Zealand’s principal broadcaster, it would no longer have a monopoly or be able to make unilateral decisions about the country’s broadcasting requirements (Day, 2000). The power to allow private broadcasting stations was transferred to the Authority, and the Corporation could no longer permit or deny private broadcasting as it used to do.

The New Zealand Broadcasting Authority 1968 – 1973

According to its first official annual report in 1969, the New Zealand Broadcasting Authority (NZBA) was established under the Broadcasting Authority Act 1968 ‘to implement the stated policy of the government to set up an independent administrative tribunal to consider applications for warrants to establish and operate radio and television stations’, in order to ‘provide the stimulus of competition and the benefits of programme choice while at the same time preserving the services given by the New
Zealand Broadcasting Corporation*. Its functions fell principally into two groups: first, to adjudicate on applications to establish broadcasting stations and, second, to ensure that broadcasters complied with various broadcasting standards (New Zealand Broadcasting Authority’s annual report 1969). The Authority was granted the power to supervise all broadcasting, to make rules regarding the character of advertising and programming in general and to encourage the broadcast of as much locally-produced material as reasonably possible (Day, 2000).

In order to assess the applications for additional radio station warrants, the Authority did set up its programme rules, technical rules, advertising rules, procedural rules, administrative rules, and so on, all of which had to be observed by all warrant holders. However, even though one of its major functions was meant to be ensuring that broadcasters abided by certain standards, and although it did start to mention briefly in its 1971 annual report about the complaints received, the Authority was not required under the Broadcasting Authority Act 1968 to have any public notification of those standards or of decisions made as to whether programmes did or did not conform to them, same as the situation with the Broadcasting Corporation Act 1961 and the NZBC. Just like the Corporation, the Authority did not have any appeal procedure either, which made it remain as the sole judge regarding standards (ibid). Again, nothing about privacy was mentioned among the programme standards to be complied with. Probably it was because the number of complaints received was quite small (14 complaints in 1971, 6 in 1972 and 5 in 1973 (the number of complaints was not mentioned in its final report for the period from 1 April to 17 December, 1973)), and, among them, no complaint had been made regarding privacy during the Authority’s operating years.
The Broadcasting Act 1973

The Broadcasting Act 1973 was an Act 'to make better provision for the carrying on of radio and television broadcasting services; to establish the Broadcasting Council of New Zealand, Radio New Zealand, Television Service One, and Television Service Two; to define the functions and powers of those bodies; and to provide for certain other matters in relation to radio and television broadcasting' (preamble, Broadcasting Act 1973). The Act came into force by the end of 1973, but it did not bring along a rapid change.

The New Zealand Broadcasting Corporation was to be abolished and replaced by three distinct corporations: the Corporation of Radio New Zealand (RNZ) would control all the radio stations previously held by the NZBC; Television Service One (TV1) would control the existing channel at that time; and Television Service Two (TV2) would control the forthcoming second channel. Moreover, a fourth body, the Broadcasting Council of New Zealand, was to supervise the performances of these three broadcasting corporations and to coordinate matters that affected them all. Although this arrangement of replacement was stated in the Act, there was a requirement that the second television channel should be transmitting, at least in major cities such as Auckland, Wellington and Christchurch, before the abolition of the NZBC, and it was announced that there was no immediate need to dismember the Corporation (Day, 2000). The Corporation was estimated to continue its operation for the next one year or so, but, in fact, it turned out to be much longer. TV2 did not begin its transmission until mid-1975, and the Corporation was finally abolished on 1
April, 1975 (ibid). Although, in theory, it seems like public broadcasting was headed by two organisations with overlapping responsibilities until that date, this was, in practice, avoided with the reconstitution of the NZBC board from 1 February, 1974, and the entire NZBC board was replaced by the 12 members of the boards of the new Council and the three corporations on that date (ibid).

As for the NZBA, it was also discarded under the Act, and some of its responsibilities were given to the Council; those were the powers to make rules for programmes and to ensure that those rules were being complied with by all warrant holders along with the terms of their warrants. Due to the traditional Labour dislike for private broadcasting, the government at that time did not want any extension in the number of private broadcasters, so the Authority’s power to issue new warrants was not transferred to the new Council (ibid). No new warrants were to be granted to private stations, and the renewal of existing warrants was categorised as a matter for ministerial decision.

The Broadcasting Council of New Zealand 1973 – 1977

As mentioned in the previous paragraph, unlike its predecessors, the Broadcasting Council of New Zealand was no longer responsible for dealing with any application for a warrant. Under the Broadcasting Act 1973, the functions of the Council could be broadly defined as the provision of common services, which included, for example, the transmitting of programmes, audience research, the provision of overseas news services on behalf of the three public broadcasting corporations (RNZ, TV1 and TV2) and coordination in matters affecting the public broadcasting system as a whole, such
as achieving complementarity in the programmes provided by the television corporations, representing New Zealand’s public broadcasting interests in the international broadcasting community, allocating the net proceeds of the license revenue between the Council and the corporations, and so on (Broadcasting Council of New Zealand’s annual report 1975).

Besides such functions, one of the Council’s other important responsibilities was to prescribe and monitor standards of performance in the programme, advertising, and technical fields both for the public corporations and the private stations (ibid). The Broadcasting Act 1973 imposed on the Council a duty ‘to receive and consider any complaint from any person who believed himself to have been treated unjustly or unfairly in any programme broadcast by any of the corporations; and to establish a procedure for adjudicating upon any such complaint with a view to the taking by the corporation of appropriate action to deal with the matter where there was reason to believe that the complaint was justifiable’ (section 11(1)(l), Broadcasting Act 1973). Just as stated in the Council’s 1974 annual report, that was a function not previously provided for in broadcasting legislation and the procedure for dealing with that and other types of complaints was beginning to be taken into consideration from then on.

As mentioned in the Council’s 1975 annual report, the Council did establish a Complaints Review Committee, whose function was ‘to investigate complaints from any person who believed himself to have been treated unjustly or unfairly in any programme, and to consider any other complaints regarding programmes which might be referred to it by the Council or by a complainant who was not satisfied with the explanation given to his complaint by a corporation or station’ (Broadcasting Council
of New Zealand’s annual report 1975). It was expected that the majority of these programme-related complaints would first be taken up with, and handled by, the broadcasting organisation concerned; and, as part of its work, the Committee would review the incidence of complaints and the manner in which they were being handled by the corporations and the private stations (ibid). Since most of the complaints were probably settled by the broadcasting organisations themselves, there were only a few complaints referred to the Committee, and again no privacy issue was raised.

Although it seems like the Council was given quite a number of a combination of authoritative and coordinating functions, in practice it had no more authority than the earlier NZBC boards, and this is particularly apparent in the case of programme scheduling (Day, 2000). The corporations still remained largely independent of council control.

The Broadcasting Act 1976

The Broadcasting Act 1976 was an Act ‘to establish the Broadcasting Corporation of New Zealand and to define its structure, functions, and powers; to establish the Broadcasting Tribunal and to define its functions and powers; to provide for the establishment and operation of private radio broadcasting stations; and to provide for matters incidental thereto’ (preamble, Broadcasting Act 1976).

It was stated as one of the general purposes of this Act that there was a need ‘to ensure that programmes reflected and developed New Zealand’s identity and culture’ (section 3(1)(c), Broadcasting Act 1976). This was an attempt to counter the low
level of local content, especially on television, and, as a matter of fact, it was the first appearance in this country’s legislation of what would become an increasingly important aspect in New Zealand’s understanding of the purpose of public broadcasting (Day, 2000). Not only was local content starting to get attention, but privacy was also first mentioned as a matter of concern in this Act. As stated in another part of the general purposes of the Act, there was a need to ensure ‘that programmes were produced and presented with due regard to the need for good taste, balance, accuracy, and impartiality, and the privacy of individuals’ (section 3(1)(c), Broadcasting Act 1976). This was the first time ever for privacy to be included as a matter to be taken into consideration in the broadcasting legislation of this country.

The Broadcasting Corporation of New Zealand

Under this Act, the four previous entities formed under the Broadcasting Act 1973 – the Council and the three corporations (RNZ, TV1 and TV2) – were combined into the Broadcasting Corporation of New Zealand (BCNZ), which was controlled by a government-appointed board of seven to nine members. The requirement was restored for the Corporation ‘to have regard to’ the government’s broadcasting policy, and it was also required to comply with any ministerial directions provided (Day, 2000).

As mentioned in the Broadcasting Act 1976, one of the main functions of the Corporation was to ‘carry on public broadcasting services, and to develop, extend, and improve those services in the public interests’ (section 17(1)(a), Broadcasting Act 1976). In particular, the Corporation had to ensure that Radio New Zealand, TV1 and
TV2 would provide their services as far as practicable for the whole of New Zealand. Besides, it was also stated in the Act that the Corporation should have the responsibility for maintaining, in its programmes and their presentation, standards which would be generally acceptable in the community (section 24(1), Broadcasting Act 1976); and formal complaints could be lodged against the Corporation if such standards were not complied with by any programme provided by the Corporation. In the Broadcasting Act 1973, it was only stated that complaints could be made by 'any person who believed himself to have been treated unjustly or unfairly in any programme broadcast by any of the corporations' (section 11(1)(l), Broadcasting Act 1973), which wording was just too restrictive. Then, in the Broadcasting Act 1976, a formal complaints procedure was set up, and a clearer guideline was provided with five specific areas of concern listed in the provisions, and one of these particular areas that it should have regard to was 'the privacy of the individual'.

The Broadcasting Tribunal 1977 – 1989

Under the Broadcasting Act 1973, the third Labour government had acknowledged political necessity and accepted the existing private stations but allowed no addition to their number. However, as National's reversal of that policy, the Broadcasting Tribunal, which came into existence on 1 February 1977, was created under the Broadcasting Act 1976. The principal purpose for its establishment was to extend private broadcasting, and thus the Tribunal's principal task was considered to be adjudicating on applications to start private broadcasting stations. That resulted in both a new growth in private radio broadcasting and a new regime in which private broadcasters and the BCNZ were required to surrender much of their autonomy to a
tribunal that determined the number, location and transmitting strength of stations, along with their permissible commercial and non-commercial activity, and attempted to define their ownership structures and the nature of their broadcasting formats (Day, 2000). Although the growth of private radio stations was slight under the Broadcasting Tribunal regime, these private stations attracted a disproportionately large audience and emphasised listeners' desire for an alternative to the Corporation's broadcasting styles (ibid).

One of the major innovations in the Broadcasting Act 1976 was its formal complaints procedure. Under this Act, the Broadcasting Tribunal was made the appeal authority for complaints about broadcasts. Complaints against BCNZ programmes were to be addressed first to the Corporation and then, if the complainant were not satisfied with the decision or action taken, to the Tribunal. Complaints about private stations were heard by a committee of private broadcasters; again complainants had a right of appeal to the Tribunal. As for the minister of broadcasting, he, however, could complain directly to the Tribunal about any programme broadcast or about to be broadcast that he considered infringed the standards prescribed in the Act. The minister also had the power to refer a programme intended for broadcast to the Tribunal. In short, it could be said that the Tribunal was the ultimate complaints authority at that time.

The Committee of Private Broadcasters

The Broadcasting Act 1976 instituted the Committee of Private Broadcasters to deal with complaints about private broadcasters, and this Committee was later abolished in
1982 when the complaints procedure became the same as for corporation stations, namely that complaints were made in the first instance to the broadcasters, and, if a complainant was dissatisfied with the response, the matter could then be taken to the Broadcasting Tribunal.

It was soon apparent that the Committee was unwilling to accept the wide range of complaints allowed within the legislation (Day, 2000). The great majority of the early complaints were not upheld, and there was an indication from the Committee that it was reluctant even to hear them. In opposition to the government’s own view of the permissible range for complaints, the Committee ruled it had jurisdiction to hear a complaint only when the complainant was directly involved in the broadcast or in the matter complained of, which means it would not consider any complaint made on behalf of other people or in the public interest (ibid).

It appears that all broadcasters were reluctant to discipline themselves. Conflicts of interest were experienced where the same people were required both to attract an audience and to judge what was permissible in that process, with the desire for popular programming often outweighing the ability or willingness to acknowledge the accepted limits to programme content (ibid).

The Broadcasting Amendment Act 1982

The Broadcasting Amendment Act 1982 created the Broadcasting Complaints Committee and abolished the Committee of Private Broadcasters. According to the Broadcasting Tribunal’s 1983 annual report, a fast-track system for dealing with
complaints which personally affect the complainant was essential, and thus such a replacement was necessary.

In addition to that, this 1982 legislation further refined the formal complaints procedure for the Broadcasting Tribunal by getting into details about the decisions on complaints and the notice of such decisions, as well as granting the Tribunal the power to award costs and to enforce such orders for costs. Due to the gradual rise of the importance of the complaints procedure, the Act also devoted a whole section to discuss in detail all the steps involved in lodging and processing a complaint.

The Broadcasting Complaints Committee

In the Broadcasting Amendment Act 1982, the Broadcasting Complaints Committee was established. It was later abolished with the passage of the 1989 broadcasting legislation. The Committee’s establishment followed the government’s acceptance of a BCNZ proposal that ‘personal injury’ complaints should be handled by a separate body, instead of the Broadcasting Tribunal. The Committee’s function was to investigate allegations made to the Committee by any person of breaches by broadcasting bodies of the conditions of warrants or authorisations (section 95o(1)(a), Broadcasting Amendment Act 1982). The Committee was empowered only to receive and consider complaints of unjust and unfair treatment in programmes and unwarranted infringement of privacy in, or in connection with, the obtaining of material included in programmes (95o(1)(b), Broadcasting Amendment Act 1982). In such cases, complaints had to be lodged by the persons directly affected or by persons authorised by them to make the complaints for them (section 95p(2), Broadcasting
Amendment Act 1982). Few complaints were made to the Committee, and, of those received, most were either not upheld or just declined by the Committee for being taken into consideration.

While looking at the evolution of the broadcasting legislation in this country from early 1960s to late 1980s, it could be discovered that not only were privacy issues just starting to get attention little by little, but actually the whole complaints issue was gradually becoming more and more important as a matter of concern in New Zealand’s broadcasting system. Even though complaints were found to be taken more and more seriously, the nature of the complaints still remained an under-investigated matter throughout those years. For example, while reading through all the annual reports of the Broadcasting Tribunal, it can be seen that the numbers of complaints dealt with in each year were clearly reported, but nothing whatsoever was mentioned about the grounds of such complaints.

Under the Broadcasting Act 1989, a new body entitled the Broadcasting Standards Authority (BSA) was established along with the deregulation of the broadcasting system in this country. Under this new Authority, an even more structured formal complaints procedure began to be developed. With the development of the new complaints procedure, privacy started to become more and more important as a matter of concern, and specific principles and guidelines to deal with privacy complaints have been set up and refined over this past decade or so. All of this will be discussed in more detail in the next chapter of this study while looking at the relationship between privacy and the Authority.
CHAPTER FOUR

BROADCASTING STANDARDS AUTHORITY (BSA) AND PRIVACY

The Broadcasting Act 1989 was a considerably significant departure from the previous broadcasting legislation in this country, in that it set up some specific guidelines regarding the complaints procedure for determining privacy complaints. The Broadcasting Standards Authority (BSA) then went on to develop its privacy principles based on some American jurisdictions, and these privacy principles were later validated by the High Court in its ruling on one particular case. All of these will be discussed in more depth later in this chapter, but first of all the chapter will provide a general overview of the Authority before dealing with these specific privacy matters.

The Nature of the Broadcasting Standards Authority (BSA)

As a crown entity set up by the Broadcasting Act 1989, the Authority was established as an independent body to act as the industry’s watchdog for our broadcasting system, reporting to the Parliament through the Minister of Broadcasting (Clemens, 1995). It is a group consisting of four members, and these four Members of the Authority are to be appointed by the Governor-General on the recommendation of the Minister of Broadcasting. The chairperson is required to be a barrister or solicitor of no less than seven years standing, one member has to be appointed after consultation with the broadcasters (so as to represent the broadcasting industry), and another after consultation with appropriate public interest groups (so as to represent the public). Iain Gallaway was appointed as the inaugural chairman, followed by Judith Potter,
CHAPTER FOUR
BROADCASTING STANDARDS AUTHORITY (BSA) AND PRIVACY

The Broadcasting Act 1989 was a considerably significant departure from the previous broadcasting legislation in this country, in that it set up some specific guidelines regarding the complaints procedure for determining privacy complaints. The Broadcasting Standards Authority (BSA) then went on to develop its privacy principles based on some American jurisdictions, and these privacy principles were later validated by the High Court in its ruling on one particular case. All of these will be discussed in more depth later in this chapter, but first of all the chapter will provide a general overview of the Authority before dealing with these specific privacy matters.

*The Nature of the Broadcasting Standards Authority (BSA)*

As a crown entity set up by the Broadcasting Act 1989, the Authority was established as an independent body to act as the industry’s watchdog for our broadcasting system, reporting to the Parliament through the Minister of Broadcasting (Clemens, 1995). It is a group consisting of four members, and these four Members of the Authority are to be appointed by the Governor-General on the recommendation of the Minister of Broadcasting. The chairperson is required to be a barrister or solicitor of no less than seven years standing, one member has to be appointed after consultation with the broadcasters (so as to represent the broadcasting industry), and another after consultation with appropriate public interest groups (so as to represent the public). Iain Gallaway was appointed as the inaugural chairman, followed by Judith Potter,
Sam Maling and Peter Cartright; Joanne Morris is the current chairwoman.

It is the mission of the Authority to encourage broadcasters to develop and maintain programme standards which respect human dignity, reflect current social values and acknowledge research findings, while providing a process for the consideration of complaints from the public about broadcasting standards. Unlike the Broadcasting Tribunal established under the Broadcasting Act 1976, the Authority is not a warranting body; but, like the Tribunal, it is responsible for receiving and determining complaints (Day, 2000). Its revenue comes from the Crown and from a levy on broadcasters, and complaint adjudication is its main power.

Just as its title indicates, the Authority focuses on dealing with broadcasting standards. Most of its functions are advisory rather than mandatory. Since its establishment, the Authority has been aiming to serve seven functions, which are:

1. To receive and determine formal complaints;
2. To approve codes of broadcasting practice developed by broadcasters;
3. To develop and issue codes if broadcasters’ codes are inadequate;
4. To issue advisory opinions on broadcasting standards and ethical conduct;
5. To publicise the complaints procedures and decisions;
6. To encourage broadcasters to consult with interested parties on codes; and
7. To conduct research on broadcasting standards matters.

Most of the Authority’s work is concerned with complaints, and the complaints procedure was formally set down in the Broadcasting Act 1989. When viewers or
listeners are unhappy about, or even upset by, what they see on television or hear on radio, formal complaints must initially be made first to broadcasters within 20 working days of the programme going to air (Stace, 1998). However, where there is dissatisfaction with the decisions of the broadcasters on the complaints or the actions taken, the Authority is the final recourse for them to refer their complaints to for investigation and review, unless they want to make further appeals to the High Court about the Authority's decisions, which seldom takes place (ibid). The broadcasters are obliged to inform the complainants of this right of referral when they respond to those formal complaints initially made to them (ibid).

In section 4 of the Broadcasting Act 1989, four broadcasting standards are set out, and all broadcasters in New Zealand must ensure that all programmes comply with these standards. According to section 4(1) of the Act, broadcasters are required to maintain standards that are consistent with:

1. The observance of good taste and decency; and
2. The maintenance of law and order; and
3. The privacy of the individual; and
4. The principle that when controversial issues of public importance are discussed, reasonable efforts are made, or reasonable opportunities are given, to present significant points of view either in the same programme or in other programmes within the period of current interest.

These are the broad standards that the Authority needs to take into consideration while dealing with the complaints it receives. Moreover, under section 4(1)(e) of the
Act, the Authority is permitted to approve codes of broadcasting practice, and that has led to more specific standards.

Originally the Authority covered all broadcasting, but advertising was removed from its domain under a 1993 amendment (Day, 2000). Instead, an Advertising Standards Authority (ASA) was instituted, with an Advertising Standards Complaints Board. Therefore, normally the Authority does not deal with complaints about advertisements except for party political and parliamentary candidate advertisings on radio and television during the lead-up to an election. The placement of liquor advertising is also another exception.

When talking about compensation, not only may the Authority award compensation to the complainant, it can also order the broadcaster found in breach to pay costs to the complainant and to the Crown. Under the Broadcasting Amendment Act 1996, the Authority was granted the power to claim costs up to NZ$5,000 from broadcasters, and this power has been used often (ibid). This claiming of costs has been regarded by the Authority and broadcasters as effectively a fine, and it is used particularly in cases where a breach of privacy is alleged. Through email correspondence with Joanne Morris (current chairperson) and Kate Ward (communication and research advisor), the author asked them how the Authority decides on the amount of costs for broadcasters to pay to the Crown, the reply was that each case is decided on its merits when it comes to costs. The Authority's decisions themselves provide the reasoning for those orders of costs on a case by case basis.

*Privacy in the Broadcasting Act 1989*
The privacy standard differs from the other standards in the Broadcasting Act 1989 or in the approved codes of broadcasting practice. The Act acknowledges that by providing three distinct processes, which apply only to complaints that allege a breach of section 4(1)(c). The three differences are:

1. Privacy complaints may be made directly to the Authority. All other complaints must be made to the broadcaster and may be referred to the Authority only after the broadcaster has ruled on the complaint and when the complainant is dissatisfied with the broadcaster’s decision.

2. When a privacy complaint is upheld, the Authority may award compensation to the complainant up to a maximum of NZ$5,000. There is no other type of complaint on which the Authority can impose an order for compensation.

3. The legislation does not allow the Authority to develop a Code of Broadcasting Practice relating to privacy. Privacy is not referred to in section 21 of the Act which lists the issues about which codes of practice may be developed. Consequently, the Privacy Principles which have been developed by the Authority, and which are used as guidelines when it determines privacy complaints, are issued by way of an Advisory Opinion.

_The Privacy Principles_

With regards to privacy issues, according to Michael Stace in a face-to-face interview with him (see Appendix 1), Decisions 5/90, 6/90 and 19/92 were three of the most significant early decisions that brought about the Authority’s development of its
privacy principles.

On its establishment in 1989, Iain Gallaway, Joycelyn Fish, Jan Hardie and Joanne Morris were the initial members of the Authority. These members, and in particular Joanne Morris, were responsible for drafting Decisions 5/90 and 6/90. The determinations of these cases set down a solid and, with hindsight, enduring foundation for the development of the privacy principles.

When the Authority was first required to determine a privacy complaint in 1990, the Authority was confronted with a dilemma when it had no specific guidelines whatsoever to refer to for its determination of the complaint. As Stace explained (see Appendix 1), there was a need to set up some principles simply because there was a need to determine a complaint.

In Decision 5/90, the complaint involved a television news item which showed the funeral of a young man who had committed suicide immediately after shooting dead a worker with the local council. The murder evoked considerable public interest as it involved the apparently motiveless killing of the son of a well-known former cricketer by one of a group of skinheads. The complainant was the mother of the young man who had been charged with the murder and had subsequently committed suicide. She complained that filming for the item occurred despite a request that it not take place, and the television crew’s presence had denied family members the opportunity to mourn in private. In its decision on this case, the Authority drafted an extensive section on “the concept of privacy”. Judicial consideration of the concept of privacy was, in 1990, at its early stages in New Zealand. In contrast, there had been extensive
consideration of the concept in the jurisprudence of the United States, although American legal doctrine was not as common a source of precedent for New Zealand law as the doctrines of Commonwealth countries. In that section, the Authority noted that, in the area of privacy, the New Zealand High Court had called upon the aid of United States’ law in a particular case (Tucker v News Media Ownership Ltd [1986] 2 NZLR 716, at 733, as cited in the Broadcasting Standards Authority’s Decision 5/90) about the public disclosure of private facts. It also referred to an American text (Prosser and Keeton on Torts, Fifth edition, Hornbook Series, Lawyer’s Edition, p851, as cited in the Broadcasting Standards Authority’s Decision 5/90) which contained the discussion of the four American torts of privacy. From there it emerged that two of the torts might cast light upon the limits of the protection afforded to an individual’s privacy by section 4(1)(c) of the Broadcasting Act 1989. The Authority decided to use such material to determine the case, and take them into consideration in its setting up of the privacy principles.

Then, in Decision 6/90, the complainant was a well-known commentator on racial issues, and he had been reported as observing that theft was a form of income redistribution. In response, two radio hosts had given the commentator’s name, address and telephone number, and had invited listeners to telephone him and/or go around to his house, and, in the name of redistribution, help themselves to his property. Of course the complainant would find this to be a breach of his privacy. In this decision, the Authority had made clear the three general principles it had set out in Decision 5/90 about the legal notion of privacy which it believed should guide its decisions upon complaints alleging a breach of section 4(1)(c) of the Broadcasting Act 1989. The first principle was that an individual’s privacy could not be protected
to such an extent as to override the legitimate interests of other members of society. The second principle was that an individual's privacy might be infringed by the public disclosure of private or public facts pertaining to that individual, provided, in both cases, that the facts disclosed would be highly offensive and objectionable to a reasonable person of ordinary sensibilities. The third principle recognised that an individual's privacy might be infringed by unreasonable intrusions upon his or her solitude or seclusion. Again, the intrusion must be of a nature which would be offensive or objectionable to the reasonable person. In this case, the Authority noted that one of the features that distinguished it from the circumstances in Decision 5/90 was that the complainant was a public figure, and that fact, in the Authority's view, affected the application of the principles it had just set up.

Finally, in Decision 19/92, the complexity of the facts in this case provided the impetus to the Authority to issue an Advisory Opinion to outline the privacy principles which it had developed. In an Advisory Opinion dated 25 June 1992, five relevant privacy principles were enumerated by the Authority. They were the principles which the Authority had been applying and which it intended to continue to apply in respect of complaints which alleged a breach of section 4(1)(c) of the Broadcasting Act 1989.

Then, in 1996, the Authority was required to deal with some factual situations involving broadcasters' abuse of the airwaves to which these principles promulgated earlier did not apply. However, the Authority was in no doubt that section 4(1)(c) had been breached. As a result, a further two privacy principles were enumerated by the Authority, and they were principles relating to "disclosure of private facts to abuse,
denigrate or ridicule an identifiable person” and “disclosure of private details of an identifiable person without authorisation”. Cases relating to the enumeration of these two principles will be discussed in more detail in Chapter Six of this thesis.

Moreover, in 1999, it became apparent that the responsibility of broadcasters in regard to the privacy of children needed to be clarified, and that was done by an addition to the seventh principle on privacy. Again relevant cases will be discussed later in Chapter Six of this thesis.

These seven privacy principles (as issued on 20 September 1999), which have been applied so far by the Authority to determine privacy complaints under the Broadcasting Act 1989, are listed as followings:

i. The protection of privacy includes legal protection against the public disclosure of private facts where the facts disclosed are highly offensive and objectionable to a reasonable person of ordinary sensibilities.

ii. The protection of privacy also protects against the public disclosure of some kinds of public facts. The “public” facts contemplated concern events (such as criminal behaviour) which have, in effect, become private again, for example through the passage of time. Nevertheless, the public disclosure of public facts will have to be highly offensive to the reasonable person.

iii. There is a separate ground for a complaint, in addition to a complaint for the public disclosure of private and public facts, in factual situations involving the intentional interference (in the nature of prying) with an individual’s interest in solitude or seclusion. The intrusion must be offensive to the ordinary
person but an individual’s interest in solitude or seclusion does not provide the basis for a privacy action for an individual to complain about being observed or followed or photographed in a public place.

iv. The protection of privacy also protects against the disclosure of private facts to abuse, denigrate or ridicule personally an identifiable person. This principle is of particular relevance should a broadcaster use the airwaves to deal with a private dispute. However, the existence of a prior relationship between the broadcaster and the named individual is not an essential criterion.

v. The protection of privacy includes the protection against the disclosure by the broadcaster, without consent, of the name and/or address and/or telephone number of an identifiable person. This principle does not apply to details which are public information, or to news and current affairs reporting, and is subject to the “public interest” defence in principle (vi).

vi. Discussing the matter in the “public interest”, defined as a legitimate concern to the public, is a defence to an individual’s claim for privacy.

vii. An individual, who consents to the invasion of his or her privacy, cannot later succeed in a claim for breach of privacy. Children’s vulnerability must be a prime concern to broadcasters. When consent is given by the child, or by a parent or someone in loco parentis, broadcasters shall satisfy themselves that the broadcast is in the best interest of the child.

*Affirmation by the High Court*

Decision 1/94 was a significant privacy case for the enumeration of the Authority’s privacy principles. It was a case in which the Authority’s determination of a
complaint arising from an item on a 20/20 programme entitled “Hear No Evil – Speak No Evil” was appealed to the High Court by TV3 – the broadcaster. (As a matter of fact, there were not many decisions on broadcasting standards which had ever been appealed to the High Court. According to Stace (see Appendix 1), there were only two privacy cases that had ever been appealed to the High Court. One was this case mentioned here, and another one was the ECPAT case (Decision 2002-031/032) in 2002, which was about child prostitution in Fiji.) In this case, the Chief Justice’s decision (TV3 v BSA [1995] 2 NZLR 720, as cited in Stace (1998)) clarified the Authority’s approach to the interpretation of section 4(1)(c) of the Broadcasting Act 1989. Until this decision, no authoritative legal guidance had ever been received by the Authority on the applicability of its approach in setting out the privacy principles, which had been sourced from the United States. In this High Court case, the Authority’s privacy principles were taken into consideration for a court case for the first time, and it granted the Authority the validity of its privacy principles in their legal application.

*The Privacy Act 1993*

When talking about privacy issues, it is easy to get the wrong idea that the Authority is somehow related to the Privacy Act 1993. However, reference to Longworth & McBride (1994)’s book shows that the Authority has little to do with the Privacy Act 1993, just as stated by Stace in the interview (see Appendix 1). The Authority is not involved in the administration of the Privacy Act 1993, as that Act provides explicitly that a “news medium” is not an “agency” to which the Privacy Act 1993 applies. A “news medium” is defined as any agency whose business, or part of whose business,
consists of a news activity. Complaints to the Authority alleging a breach of privacy almost invariably concern the news activity of the broadcaster complained about. However, it is important to note that news media are exempted only in respect of their news gathering activities.

*The number of Privacy Complaints*

Privacy has increasingly become a focus of attention in the 1990s and now into the 21st century, both in New Zealand and throughout much of the world. In New Zealand, there has been a significant rise in the number of privacy complaints received by the Authority over the last decade or so. It has gradually increased over the years, from just two cases in 1990 to a maximum in the year 1999 of fifty-two privacy complaints received and determined during that year. Since then, it has gradually decreased to 10 cases in 2003. ‘Privacy’ is one of the top three categories with the highest number of complaints, contributing to 15% of the total complaints received since the establishment of the Authority – only exceeded by ‘Fairness and Balance’ (45%) and ‘Good Taste and Decency’ (40%). Besides, according to Zwaga (2000), it is also the category with the third highest uphold rate (36.5%), following ‘Alcohol Promotion’ (39.5%) and ‘Violent Programming’ (39.1%).

It is apparent from the statistics mentioned above that privacy has become an issue of great concern with regards to broadcasting standards in the contemporary New Zealand broadcasting system. Therefore, it is important for the author to find out and address some current privacy issues of concern in this country in the following chapters, so that a better understanding of this standard could be fostered.
CHAPTER FIVE

METHODOLOGY

As previously cited in the Literature Review, in his study on privacy, Stace (1998) took a considerably descriptive approach in looking at his data from a legal perspective. In contrast, this present study will take on a perspective different from Stace's. The author intends taking a more analytic approach to interpret the data in this study, and will attempt to adopt a more journalistic perspective to see what implications such data have on journalistic practice. The period that the author conducted research on was an 8-year period from January 1996 to December 2003. This began with the time when the further two privacy principles were added to the original five, and it took up from where Stace left off with his study (1998).

As mentioned above, instead of simply providing descriptions on the details of the data involved in this study, the author will strive to discover from such data the parameters that broadcasters should adopt while dealing with privacy issues and the implications such data should have on journalistic practice. In search of such parameters and implications, the answers to the following questions will need to be sought out:

- Which medium received the greatest number of privacy complaints? Was it radio or television? What were the figures?
- On what grounds were the complaints usually made for each of these two media?
- How many complaints were upheld/rejected for each medium?
- Which grounds of complaint got upheld/rejected more?
• When the complaints were upheld, what were the penalties imposed by the Authority for each case?
• What were the positions adopted by broadcasters regarding privacy?
• What were the differences between the decisions made by the Authority and those of broadcasters? Was there a divergence?
• How often did the Authority express concerns in its decisions? What kinds of concerns were they?
• What did the Authority’s decisions mean for broadcasters?
• Etc.

One of the ways to gather the data for one’s research is to look at how organisations have documented their activities, strategies and decisions, and we can take advantage of consulting the voluminous official records produced by state agencies, courts and legislative bodies. We can use this documentation either to supplement the materials we have previously collected ourselves or as the primary focus of our research.

As for this study, the Broadcasting Standards Authority (BSA)’s decisions on privacy complaints could be considered to be the primary focus of the research. The sample consisted of every single privacy complaint case that received a decision during the period from January 1996 to December 2003. As stated above, this period began with the addition of the further two principles to the original five; and when Stace’s study ended with the privacy complaint decisions published till the end of June, 1998, this study took up from where he left off by carrying on to include the decisions for the next five and a half years till the end of December, 2003. The author did realise that, as a general rule, the bigger a content sample is, the better (Deacon et al., 1999), and it
would certainly be more desirable if all the privacy complaint decisions since the establishment of the Authority could be included in the sample. However, in this study, practical constraints (time, costs, the availability of archives, and so on) were taken into consideration, and the author had to trade off what was desirable with what was feasible within the timeframe and resources available to this research. Stace (1998)’s study came to be of great help in filling the gaps for the background information along those early years of the Authority.

The whole sample of this study was selected based on calendar years. Although the Authority usually published its annual official reports by the end of June every year, it was more or less due to a matter of convenience since the Authority’s annual financial reports were also prepared at around that time. As for this study, there was no significant reason for it to stick to this pattern, and the author believed that it would be more comprehensible to sort out the decisions by calendar years instead of the Authority’s financial years, so that the research outcomes could be more easily understood.

As for which complaint decisions were to be included in the sample, the appendixes of the Authority’s annual reports from 1996 to 2004 were of great help. (Although the Authority’s 2003-2004 annual report has not been published by the completion date of this thesis, the Authority did provide the author with a copy of the appendix pages of that annual report in advance.) All the complaints received and determined over the years were listed in those appendixes. If one goes through the complaint decisions of all those years one by one, one might find that some decisions would have mentioned matters of privacy. However, they were not necessarily regarded as
questions such as the following:

- Was there any particular part of the complaint that got singled out and discussed in more depth? If any, what was it? What was its significance?
- Did the Authority express any special concern in its decision? What was the concern?
- Etc.

Although these questions were not countable or easily categorised and thus could not be assisted by the coding frame used in the content analysis, the author did take note of cases with significances in such aspects along the process of the analysis conducted, and such cases were also expressly taken into consideration in the discussion of the research outcomes.

As a method for the systematic and quantitative analysis of communications content, content analysis is very suitable to be used for analysing and mapping key characteristics of large bodies of text, and it lends itself well to the systematic charting of long-term changes and trends in media coverage (Hansen et al., 1998). It is a method generally used for producing a ‘big picture’ (delineating trends, patterns and absences over large masses of texts) and essential political insights for any research that deals with the ‘massness’ of the mass media. However, by looking at aggregated meaning-making across texts, content analysis tends to skate over complex and varied processes of meaning-making within texts, so it is not well suited to studying ‘deep’ questions about textual and discursive forms. Since meaning-making within texts was not the major focus of this study, and special attention was given to the parts of
decisions where the content analysis was not well suited as mentioned above, this issue was not regarded as a serious problem for this particular study.

As a popular form of research method, there are a number of advantages to using content analysis in a study. Firstly, it is considerably unobtrusive. Unlike some other research methods such as participant observation, the researcher does not need to 'intrude' on what is being studied, and thus does not affect the research outcomes (Berger, 2000). Secondly, while being compared to some other research methods, content analysis can also be considered to be relatively inexpensive. For most content analyses, the costs of obtaining the material to be analysed are not great, since the processes are normally nothing more than duplicating printed matter or making videos of television programmes, unless the researcher is going for a very large-scale analysis, which will cause the coding process of the material to be much more time-consuming and expensive than it usually is (ibid). Not only is the process of obtaining material inexpensive, normally the material used in content analyses is also relatively easy to obtain and work with. Usually such material is readily available at libraries or similar research archives, and that was also the case with this study. Furthermore, a major reason for using content analysis in this study was that the data collected from the analysis could be quantified, and thus some insights on the privacy issues in this country could be gained from such numerical data generated.

On the other hand, content analysis does have some drawbacks. While any number of text characteristics could be categorised, counted and quantified, probably the main pitfall of this research method is to get carried away with the measurement and counting of any number of text characteristics simply or mainly on the basis of what
can be counted or on the basis of what lends itself easily to counting (Hansen et al., 1998). Therefore, while designing the coding frame for this study, the author had to be cautious in making the choices on the variables to be counted and developing the categorisation frame for each of the variables. A coding frame comprises two research instruments: the first is a 'coding schedule' (see Appendix 2), which is a pro-forma sheet upon which the coder enters the values for each of the variables; the second is a 'coding manual' (see Appendix 3), which contains the codes (numbers) for each of the variables listed on the coding sheet (Hansen et al., 1998). Some things are easier to categorise than others. For example, in this study, it was not difficult to categorise the results of the complaint decisions (1 = 'declined', 2 = 'upheld', 3 = 'upheld with penalty/order', 4 = 'not determined'). However, when it came to categorising the grounds of complaint, it was proven to be more problematic, as the author would have to devise a list of values that covered the vast range of acts that were privacy-related. The author did try to make the list as extensive as possible; nevertheless, there was always a possibility that the author still overlooked something that should be included.

As for the categorisations of radio and television programmes, although it was not difficult to come up with the categories, it was found to be hard to decide for some programmes which categories they should belong to. For example, some television programmes could seem to be both informational and entertaining, such as competition-based home renovation programmes and police chase/investigation programmes. Current affairs programmes could sometimes to found to be presented in the form of documentaries as well, when informational programmes could, from time to time, also appear like current affairs programmes. Apart from that, for some
radio programmes involving talkback, it might be more appropriate to categorise them as entertainment rather than talkback. Since it was impossible for the author to have watched or listened to all those programmes, the author could only make his own judgment on the categorisations of such programmes based on the descriptions of those programmes provided in the Authority’s decisions. Unavoidably there could be a possibility of bias due to the author’s subjectivity in his judgments.

Moreover, by using content analysis in one’s research, there is also a matter of ‘coder reliability’ which needs to be taken into consideration. The researcher has to decide how to code the material so that every coder will classify the elements in the texts being analysed the same way (Berger, 2000). That is important, because if different coders code a particular action in a text differently, this will surely raise doubts about the results’ usefulness. However, in this study, this matter was not regarded as a problem, since the only coder conducting the content analysis was the author himself, but that then raised the issue about subjectivity.

According to Berelson (1952), content analysis should be ‘a research technique for the objective, systematic and quantitative description of the manifest content of communication’. In fact, the method could never be objective in a ‘value-free’ sense of the word: it does not analyse everything there is to analyse in a text – instead the researcher starts by delineating certain dimensions or aspects of text for analysis, and in doing so, of course the researcher is also being subjective and making choices on what count as important or significant aspects to look at (Hansen et al., 1998).

Content analysis provides a set of guidelines about the ways to analyse and quantify
media content in a systematic and reliable fashion. However, what it does not, and cannot, tell us is what dimensions (categories) of content to analyse, or how to interpret the wider social significance or meaning of the quantitative indicators generated by content analysis (ibid). These two aspects need to be drawn and developed from the theoretical framework circumscribing one’s study, a framework which among other things must articulate the relationship of the texts analysed to their wider context of production and/or consumption (ibid). Therefore, since it is unavoidable for the researcher to be subjective in one way or the other, the researcher should become well-informed in the background knowledge of the topics concerned. Thus a clear theoretical framework can be developed, so that choices can be more wisely made and research outcomes can be more appropriately interpreted.

In order to obtain a strong background knowledge regarding the privacy issues in this country, archival research / library search came to be a handy method. Not only was this method used to collect all the privacy complaint decisions during that 8-year period for the content analysis conducted, it was also useful in sifting out relevant materials on privacy in general and particularly on the history of privacy issues in New Zealand. For example, broadcasting acts previously published and annual reports of the Broadcasting Authority, Broadcasting Tribunal, Broadcasting Standards Authority, and so on, helped to provide insights about how these organisations and the whole broadcasting system used to treat privacy issues over the years. Library search is also useful in providing a literature review for a study by summarising the major findings of scholars and researchers who have previously conducted research in the particular area concerned (Berger, 2000).
There are three main issues that need to be addressed while using documentation in a research. These are questions of representativeness, authenticity and credibility (Deacon et al., 1999). For questions regarding representativeness, the issues with the decisions chosen to be included were already tackled in the discussion above about the limitations the author faced in using content analysis. And for those official acts and reports, the author tried to consult their whole collections if they were available. The author did encounter a problem of availability at a certain point of the research where a number of copies of the Broadcasting Standards Authority’s annual reports were not available at local libraries. However, a later visit to the national archive solved the problem. As for questions of authenticity and credibility, since most of the resources consulted in this study were acts, decisions and reports produced by official agencies in recent decades, there was not so much of a problem regarding these two issues.

Other than the methods mentioned above, as the author reached a certain more advanced level in the study (after having the content analysis on the Authority’s decisions completed), an face-to-face interview and email correspondence were also conducted with some former and current members and staff of the Authority to acquire their expert opinions in the domains of privacy and the broadcasting media regarding the current situation of the existing privacy issues in the contemporary broadcasting system. It would surely have been desirable to do face-to-face interviews with all the figures intended to be interviewed, but due to the busy schedules of all these people and the time constraint of this study, choices had to be made.
For Michael Stace, the former complaints manager of the Authority, the search for more detailed information regarding the evolution of the privacy principles was the major focus for an interview with him, therefore a face-to-face semi-structured interview was carried out. This type of interview requires more effort to be organised, and usually the presence of an interviewer inevitably raises the spectre of interviewer bias (ibid). However, it does tend to generate more comprehensive responses out of the interviewees, because the interviewer can immediately ask them face-to-face whenever there is a need for clarity and/or in-depth discussion.

As for the current member and staff of the Authority – namely Joanne Morris (current chairperson) and Kate Ward (communications and research advisor), the feedback sought from them through the interviews in the form of email correspondence was mainly for their opinions on some specific details of the ways privacy cases were determined by the Authority. Such interviews were done in the forms of self-completion questionnaires through emails. Non-face-to-face questioning was considered to be most convenient and cost-effective, especially when there were geographical constraints involved. Although this interview method is more structured and easier to be conducted, it tends to be harder to get into detailed and deeper exploration of the issues raised in the study. With regards to rapport and response, self-completion questionnaires are somewhat disadvantaged (Deacon et al., 1999). The absence of personal contact might limit the opportunities to persuade people to participate. However, in this study, this constraint was overcome by having constant contacts with the interviewees through emails and phone calls. This interview method was conveniently used in this study for saving time and a certain level of effort, since the author could work straight from the responses through emails without having to
transcribe any interview. However, it did require the author to divert considerable time and effort to devise the questionnaires as comprehensive as possible, so that both the author and the interviewees could get the same ideas about what the questions hoped to deliver.

Normally when it comes to using interviews as a research method, there will also be a question raised regarding the credibility of the interviewees and the validity of what they say (Berger, 2000). However, in this case, since the interviewees were all well-established scholars in this field of study, their credibility would not be questionable, and their opinions were of great benefit to this study.

There is no such thing as a perfect methodology. Every research method will have its weaknesses and limitations (ibid). Too often, quantitative and qualitative approaches have been regarded as mutually incompatible (Deacon et al., 1999), while, in fact, a combination of both types of approaches in a study has often proven to derive more insights from the data. In this study, after all the analyses and interviews were carried out, the author tried to combine the findings extracted from the expert opinions of those interviewees with the data generated from the analyses conducted on those decisions of the Authority on privacy cases. Then the author examined some current privacy issues in this country’s broadcasting media and tried to come up with some suggestions for future research on similar topics. The author also attempt to produce recommendations for further refinements in the current codes of practice and other broadcasting policies adopted in the contemporary New Zealand broadcasting system related to privacy issues.
CHAPTER SIX

CONTENT ANALYSIS OF THE BSA'S PRIVACY COMPLAINT DECISIONS FROM 1996 TO 2003

As mentioned in the Methodology chapter, the outcomes of the content analysis conducted in this study will be discussed according to calendar years instead of the Broadcasting Standards Authority (BSA)'s financial years (starting from July every year and ending June the following year). All the privacy complaints received and determined by the Authority within the 12-month period of every year from 1996 to 2003 were included in this analysis. The results will first be divided into eight sections for discussing the privacy issues arising from each of these calendar years, and then the outcomes will be combined together and discussed in more depth to examine the overall trend of privacy issues in the broadcasting system of this country over the last eight years.

January 1996 – December 1996

During 1996, the Authority received and determined 186 complaints in total, and among them 17 cases were privacy-related, contributing to 9.14% of that year's complaints. Nine of these complaints were directed towards radio programmes, and the other eight towards television programmes, so these two types of media were approximately equal in their shares of privacy complaints during that year.

For the radio complaints, five were upheld, three not upheld and one declined to be determined. Most of the programmes complained about were either talkback or
commentary programmes. Among the five upheld complaints, three of them came with an order of monetary compensation, with the top one being a case involving the naming of a rape victim compensated with an amount of NZ$2,500.

While looking at the five complaints that were upheld, it could be discovered that naming without consent, unauthorised disclosures of listeners’ private details and abuse of the airwaves were the three prominent targets that triggered all of them. As a matter of fact, three of these complaints (1996-004/005/006, 1996-026/027, 1996-037) even led the Authority to suggest a need for the instalment of new privacy principles, since the original five principles did not cover the situations that took place in these cases.

In Decision 1996-004/005/006, a midnight to dawn talkback host had apparently once befriended a woman who, using a false name, telephoned him and taunted him on air. In his response, the host gave out her real name and contact details on air, and also talked about her in an offensive way, which led the Authority to be of the view that the host had used his position as a broadcaster to abuse the caller, and any existing relationship between the host and the caller was regarded as irrelevant. Despite the fact that the broadcaster involved only saw this case as a personal dispute between the two parties, the Authority declined the complaint accordingly.

In Decision 1996-026/027, again the abuse of a named person by a broadcaster was addressed. A host referred to his ex-wife and nephew on air in an offensive way, and made some comments toward them with a threatening tone. In this case, a strong displeasure was expressed by the Authority about broadcasters who used the airwaves
to deal with personal matters, and the behaviour of the host was found totally unacceptable.

A similar point was also raised by the next decision dealing with privacy in that year. In Decision 1996-037, a radio commentator used his regular commentary slot to speak about his recent appearance in court when he and another person were both charged with offences. The commentator was acquitted, and he criticised the competence of the newspaper reporters for focusing on him rather than the ex gang-member who, he insisted, had attacked him. It was found by the Authority that the broadcaster, in this case, used his power to identify the other person involved in the court case, and then abused and denigrated him. That was the type of breach which the Authority regarded as being of the more serious type.

As a result of these three decisions mentioned above, an Advisory Opinion was issued on 6 May 1996, and two further principles were added to the original five privacy principles to deal with cases that involved “the disclosure of private facts to abuse, denigrate or ridicule personally an identifiable person” (Principle (iv)) and/or “the disclosure by the broadcaster, without consent, or the name and/or address and/or telephone number of an identifiable person” (Principle (v)).

As for the television complaints, four were upheld and the other four not upheld. The majority of the items complained about were parts of either news or current affairs programmes, with the major grounds of complaint being intrusive filming and disclosure of private facts. A few interesting points were raised by the Authority regarding these television complaints.
In Decision 1996-067, a viewer, who was offended by a television announcer's use of an offensive word in a joke twice, telephoned the broadcaster to register his complaint. Then, on the same show two weeks later, the announcer referred to this viewer with his real name in a denigrating way while talking about his complaint. The broadcaster's dealings with the complainant were considered by the Authority to be unsatisfactory by not abiding with the requirements set up in the Broadcasting Act 1989.

In some cases, when a person was approached by the media to contribute to the coverage of a story, the person might try to reach a mutual agreement with the media about how the story would be conveyed and what would be included from their interactions, but often there would appear to be some misunderstandings in their communications. For example, in Decision 1996-175/176, the operator of a travel company complained that an investigation by a programme invaded her privacy, among other matters, when the programme reported a discussion it had held with her, which she had believed was off-the-record. When the Authority checked with the broadcaster, there seemed to be a misunderstanding between the two parties about what was meant by an agreement not to record the conversation.

In some other cases (1996-087, 1996-115/116, 1996-170/171), it seemed like there were some significant differences between what viewers and broadcasters found acceptable and unacceptable to be shown on screen, but ultimately the decisions depended on the question of public interest.
While talking about public interest, there was a highly controversial case determined during that year. In Decision 1996-130/131/132, extracts from an interview with a psychologist to whom a 16-year-old boy had been referred were included in a current affairs item examining the events surrounding the suicide of this teenager. It was reported that the interview had been obtained by using a hidden camera. Not only did the psychologist complain about the infringement of his privacy by the use of the hidden camera, he also complained about the accuracy, fairness and balance of the full item. In its decision, the Authority made a strong point that ‘in the public interest’ was by no means the same thing as satisfying the public’s curiosity. The covert filming involved in this case was unjustified, and the broadcaster’s editing of the footage included in the item was also found to be deceptive. Both of these two methods used by the broadcaster to convey the item were considered by the Authority to be unethical, as they created an atmosphere of intrigue that contributed overwhelmingly to a damaging impression of the psychologist. A monetary compensation of NZ$1,500 was ordered in this case.

In two cases (1996-132, 1996-172), privacy complaints were lodged by people that were not related to the subjects of the complaints whose privacy was invaded. In dealing with such cases, the Authority informed the broadcasters that a privacy complaint would have to be dealt with whether or not it was made by a person directly affected in the case, and broadcasters could not simply decline those complaints lodged by an unrelated person.

While looking at the overall trend of the privacy complaints in 1996, it seems that a great proportion of these complaints received and determined during the year were
also found to be in breach of another programme standard – good taste and decency, so it might be something that broadcasters needed to be mindful of as well.

*January 1997 – December 1997*

During 1997, a total of 190 complaints were received and determined by the Authority. Among them, 19 cases were privacy-related, contributing to exactly 10% of that year's complaints. Four of these complaints were directed towards radio programmes, and the other 15 towards television programmes, so it is clear that the number of television complaints in this category had significantly outgrown those of radio during that year.

For the radio complaints, 2 were upheld, and the other 2 declined. With the 2 upheld complaints, both of them dealt with a request session of a particular radio station on two different occasions, and, in both of these cases, the broadcaster had been ordered to pay a monetary compensation to the persons involved in the complaints.

In Decision 1997-138/139, the complaint arose from a request session on radio where the request was for a named person at a named school, and she was described as a "friendless bitch" who was "hated by everyone". The student's mother brought the complaint to the Authority, and it was upheld as a breach of principle (v) – the disclosure of private facts to abuse an identifiable person. Programme standards relating to fairness and good taste were also considered to be breached. The broadcaster was ordered to pay compensation of NZ$250 to the named student as well as to pay costs of the same amount to the Crown. The Authority further advised the
radio station that broadcasters which targeted a youth audience must be aware of the audience immaturity and needed to take special care to protect both victims and perpetrators from the consequences of rash and immature acts. Due to the vulnerability of the female student who was abused in this case, the Authority considered the breach to be a serious one.

In Decision 1997-161/162, the same request session broadcast by this particular radio station was the subject of another complaint when a song request was made for two named students at a local high school, and the announcer congratulated them on their "baby". The complainant was the father of one of the students. The complaint that the broadcast was unfair was upheld, and, in addition, an order was imposed by the Authority for the broadcaster to pay costs of NZ$250 to the Crown and compensation of the same amount to the complainant's son. The Authority considered that the public disclosure of the private facts about these two students – regardless of the veracity of those facts – was offensive and objectionable to a reasonable person, and it found the broadcaster's sense of judgment to be questionable in this case. The Authority further went on to remind the broadcaster that its target audience of teenagers were capable of misusing the airwaves, as had been demonstrated in a number of previous cases, and that it should therefore ensure that adequate systems should exist to prevent such an event from recurring.

In both of these cases, the broadcast concerned was an open line programme for which, under the Radio Code, broadcasters were required to retain a tape of the broadcast for a period of 35 days. The failure to provide a tape was a factor, which the Authority considered, that would impact on the Authority's ability to determine a
complaint. That was why the broadcaster was ordered to pay costs to the Crown in these two cases mentioned above.

Moreover, in both of these cases, the broadcaster did attempt to resolve the matters between itself and the complainants. However, the action taken were considered by both the complainants and the Authority to be inappropriate or insufficient.

As for the television complaints, two were upheld, 12 not upheld and one declined to be determined. All of the complaints were directed towards the two prominent broadcasters in this country, with ten of them towards TV3 and the other five towards TVNZ. News and current affairs were again the types of programmes that received most of the complaints, with seven complaints for news programmes and five for current affairs programmes. Naming, disclosure of private facts, and intentional interference (in the nature of prying) were the major grounds of complaint that were associated with many privacy complaints towards television programmes during the year.

For the 2 complaints that were upheld, they were both made against a current affairs item which focused on one specific incident, in which a woman’s death was involved, and questioned the competence of an ambulance service. In these two cases (1997-135, 1997-136), two ambulance officers separately referred their complaints to the Authority that they had not been involved in the incident on which the item was centred, and could not be considered accountable for it in any way, but their names were revealed in the item, which might mistakenly lead people to think that they were somehow responsible for the incident. Although there was no dispute that the
broadcast, which dealt with the incident, was in the public interest, the Authority considered that public interest did not justify the broadcast of the names of these two officers, since they were not involved in the incident and naming them in the item would possibly create a negative impression of them in viewers’ minds.

Although the majority of the television complaints in that year were not upheld, it did not stop the Authority from raising some important points through its decisions on them.

In three cases (1997-043, 1997-044, 1997-054/055), when the broadcasters argued that a privacy complaint should only be brought by a person affected, or with the consent of the person, the Authority again stressed that the New Zealand Broadcasting Act was not the same as the comparable British legislation and had no qualification as to who was entitled to complain. The Authority, having already established this by its previous decisions, reminded broadcasters that it was not constrained from accepting privacy complaints from unaffected complainants, and, in terms of the Broadcasting Act, would continue to do so. Especially in Decision 1997-054/055, when a child was involved in the case, the Authority mentioned in its decision that it could understand the concerns raised in the viewer’s complaint that the child was asked to deal with some inappropriate questioning; and, although the standards were not breached, the Authority advised broadcasters to be more sensitive while dealing with cases with children involved.

In some cases (1997-032, 1997-100/101, 1997-128/129), people did not realize that when they gave their consent to being filmed or interviewed, they then waived their
right to privacy and could not later reclaim such a right if they found the items unfavourable. However, in some cases, the items ended up appearing unfavourable due to the broadcasters' unfair and unjust dealings with the complainants. In these cases, a grey area seemed to exist between privacy and fairness. Therefore, sometimes the Authority might suggest some complainants to change their ground of complaint from privacy to fairness where it seemed fit.

In Decision 1997-100/101, a complaint was made against a current affairs item which examined the activities of a named pastor. The complaint came from the pastor himself, and while the Authority did not consider that the public interest defence applied, it pointed out that the pastor himself had brought his activities into the public arena, and thus he could not claim a right to privacy. However, the programme, after some editing took place, ended up as an unbalanced feature which was unfair and unfavourable to the pastor's side of the story. Although there was no breach of privacy, the Authority did end up being of the view that the programme failed to deal justly and fairly with the complainant.

Then, in Decision 1997-128/129, it was a case that involved a phone call made to a broadcaster by a solicitor, acting for a politician. The politician had been investigated by the Serious Fraud Office for his activities prior to his election to the Parliament, and the solicitor rang a television reporter to discuss the possibility of the politician giving, for a fee, an exclusive interview. Having gone this far into the discussion, the solicitor told the reporter that he assumed the conversation to be confidential, and was assured by the reporter that it was. However, the supposedly confidential conversation ended up being featured in a news item, which included a recording of
not only the conversation up to the assurance of confidentiality but also the subsequent negotiations as to the extent of the fee. Since the solicitor took the initiative in contacting the media to disclose information, the Authority considered that he could hardly complain about privacy in such circumstances. However, in view of the explicit assurance about confidentiality, the Authority regarded the broadcast of the telephone conversation beyond that point to be unfair to the solicitor, and an order was imposed for the broadcaster to pay costs to the Crown of NZ$500.

While looking at these two cases, it can be seen that although there was no alleged infringement of privacy in such incidents, sometimes broadcasters did seem to be pushing the limits about what they could do with the information obtained, and from time to time the interest of the individuals involved might end up being jeopardised, which was of concern to the Authority.

In two other cases (1997-024, 1997-035), the question of public roles of certain groups of individuals had been brought into discussion. Decision 1997-024 involved a well-known political figure who complained that his privacy was breached when he opened his door one morning in his night attire to face a television reporter with a camera rolling. Since the complainant was a person with a high political profile, and the filming at his home took place at a time of intense public interest in his activities, the Authority decided that he could not claim that persistent media approaches amounted to a breach of his privacy, and the prying constraint in principle (iii) had not been transgressed in the circumstances present in this case. On the other hand, Decision 1997-035 dealt with a police officer who was filmed shooting an armed female robber at the scene of the crime. As police officers were supposed to be
accountable to the public in their public role, and as this particular officer was performing a police duty in a public place, the Authority did not accept that his identity should be totally concealed. However, as the use of a weapon was at the extreme edge of a police officer's duty, the Authority did remind broadcasters in its decision of their obligations about fairness and said that the item in this case involved an element of insensitivity. Broadcasters were advised to take into consideration individual police officers' rights as private citizens when dealing with similar situations in the future.

Although most of the privacy complaints received and determined in 1997 were not upheld, it appeared that quite a few of them were found to be associated with the question of fairness. Just as mentioned in one of the previous paragraphs, there seemed to be a grey area between these two programme standards when it came to complaints. Some people might lodge their complaints on the grounds of privacy and have those complaints declined, but, in fact, such complaints might possibly be upheld if they were made on the grounds of unfair treatment. This kind of cases often involved broadcasters who would push the limits about what they could do with the information obtained.

*January 1998 – December 1998*

In 1998, the Authority received and determined a total of 172 complaints, and among them 26 cases were privacy-related, contributing to 15.12% of that year's complaints. Nine of these complaints were directed towards radio programmes, and the other 17 towards television programmes. The number of the radio complaints had doubled
from that of the previous year, with the number of television complaints remaining roughly the same as 1997, with just a small increase of two cases.

For the radio complaints, three were upheld, and the other six declined. With the three upheld cases, all of them involved abuse of the airwaves by a broadcaster, and an order of monetary compensation was issued for all these three different radio stations to pay to the persons involved in the complaints.

In Decision 1998-021/022, the case involved the operator of a small radio station who made personal remarks about a rival broadcaster. On receipt of the complaint, the operator acknowledged that a serious mistake had been made and the broadcast was inappropriate, and said that a public apology on air would be broadcast by the station three times a day for seven days without any consultation with the complainant. In view of the name-calling and personal ridicule contained in the broadcast, the Authority found a clear breach of principle (iv). In the Authority’s opinion, the apology was also considered to be excessive, and such broadcasts of the apology exacerbated the breach. It was definitely not an appropriate response in the circumstances. After taking into account the extent of the breaches and the effect of the unsolicited on-air apology, the Authority concluded that a serious transgression of the Broadcasting Act had been committed in this case. Despite the broadcaster’s limited resources as a part-time hobby operation, the Authority upheld the complaints concerning both privacy and the inappropriate action taken, and the broadcaster was ordered to pay NZ$250 by way of compensation to the complainant, and another NZ$250 in costs to the Crown.
Decision 1998-023/024 was another decision dealing with a privacy complaint which was released on the same day as the previous case. In this case, an obscene phone call, recorded the previous day, was broadcast on a radio station. In the call, a woman was phoned at her place of work by a man who claimed to have seen her at work. He said that he was at home at the time of the call, thinking about her in the nude. The woman was identified by her first name. The whole phone call ended up to be a stunt introduced by the programme hosts of a breakfast show, and no attempt was made to contact her to reassure her that she had been the victim of a prank. In the Authority’s view, it was an extremely ill-conceived attempt at humour, and the broadcaster could not be excused simply because it was a stunt which went wrong. The complainant had a right not to be publicly victimised for the amusement of those programme hosts and possible listeners. The Authority also noted that although the hosts involved displayed a surprising lack of judgment, they were regarded as experienced players in the field and were likely therefore to be fully familiar with the codes of practice related to this case. The Authority found these factors to be exacerbating the breach, as did the station’s failure to contact the complainant directly to express its apologies, which led the Authority to consider that there had been a serious breach of professionalism. A penalty was considered by the Authority to be necessary, and the broadcaster was ordered to pay a monetary compensation of NZ$250 to the complainant.

A similar situation arose in Decision 1998-049 as well, but this time the complainant was a person who was well-known to the public at the time of the broadcast. The complainant was a spokesperson for a community standards lobby group which, at that time, featured in news reports. In the item concerned, an announcer at a radio
station broadcast himself leaving a sexually suggestive message on the complainant's answerphone. While determining this complaint, the Authority found privacy principles (i) and (iv) to be applicable in this case. With respect to principle (i), the Authority considered the receipt of an offensive or malicious phone call to be in itself a private fact; and it considered that to convey information about such a call without the recipient's consent was a breach of privacy, and such a breach was compounded when the substance and nature of the call was broadcast. Then, turning to principle (iv), the Authority found the broadcast of an announcer making an obscene phone call to a named person, with the clear intention of ridiculing the recipient, to be a clear breach of this principle as well. It was an occasion where the airwaves were used by the announcer to make a personal statement which the Authority found offensive and intrusive. Expressing the opinion that the complainant's status as a member of a community group was immaterial as opposed to the broadcaster's view, the Authority reached its conclusion that the broadcast of such a malicious phone call, designed to intimidate the recipient, was an unwarranted interference in the complainant's right to privacy. As the factual situation in this case had not been previously encountered by the Authority, the Authority made an important point in its decision emphasising that its privacy principles were an interpretive tool, and the Advisory Opinion made clear that the specific facts of each complaint were especially important when privacy was an issue; and in this case, the facts led to the conclusion that a breach took place. As a result, the broadcaster was ordered to pay compensation of NZ$250 to the complainant, and costs of NZ$750 to the Crown.

In looking at these three cases, it can be seen that radio stations had also started to push the limits to somehow enhance the entertainment value of their programmes,
sometimes even at the expense of taking risks to play with the boundaries of, if not to breach, such programme standards as good taste & decency, fairness, and so on.

Some of the cases might not have been upheld as privacy complaints, but they were considered to be serious breaches of fairness. In Decisions 1998-037/038 and 1998-054/055, broadcasters claimed that complainants' names were already in the public domain due to their public roles, so they should expect the publicity attached with such roles. However, when their names were associated with criminal acts as in these cases, the Authority found the broadcasters to be acting unfairly towards these complainants, whether the items were originally intended to be “light-hearted fun” or not.

In Decision 1998-132/133, a caller to the radio station used an abusive term when referring to a named winner of an on-air competition, and the station staff then made two hoax calls in a similar vein. Since the complainant had consented to the announcement of her name as winner while entering the competition, naming her in the broadcast did not constitute a breach of her privacy. However, since the calls were pre-recorded instead of live and unexpected, the Authority found the broadcaster’s judgment to be questionable when it kept defending the programme hosts’ decision to broadcast the calls and persisting with what it considered was a joke. The Authority considered that the broadcast involved a so-called joke which seriously backfired and was offensive not just to the complainant, but to all listeners. Furthermore, this was another case where no tape of the programme was provided by the broadcaster. The Authority understood that a tape was available when the complaint was lodged but was subsequently wiped. The Authority recorded that it had not been assisted by the
broadcaster's actions in not retaining the tape. It reminded the broadcaster that it was required to retain tapes in certain circumstances for a period of 35 days. It considered it surprising that the broadcaster erased a tape knowing that the matter was the subject of a complaint.

As for the television complaints, three were upheld, and the other 14 declined. Seven of these complaints were directed towards TV3, and the other ten towards TVNZ. News and current affairs were still the types of programmes that received most of the complaints, with six complaints for news programmes and seven for current affairs ones. No specific grounds of complaint stood out from the rest, as most of the privacy complaints towards television programmes during 1998 were associated with more than one ground of complaint.

For the three complaints that were upheld, two of them were made against TVNZ for the reports of a particular court trial on two different news programmes on the same evening. In Decision 1998-094/095, an item broadcast on One Network News reported on the Auckland trial of a person who had been charged with murder and several counts of sexual violation. The item referred to evidence given that day by a witness who had been raped 10 years previously, with the attached footage showing street signs and the streets where the witness had lived and was attacked, and the gang safe house where she was taken after the attack. In the report, she was described as the girlfriend of a gang member, and her first name was used. A complaint was made to the TVNZ newsroom by a family member shortly after that broadcast. However, the report was repeated unchanged during Tonight, another news programme broadcast later the same evening. The Co-ordinator of Police Media Services for the
Northern Region of New Zealand Police, on behalf of the woman, complained to the Authority that the broadcast of the items on each occasion breached the woman's privacy. In this case, the Authority had no difficulty in reaching the conclusion that the use of the woman's name in the news reports was clearly in breach of her privacy. Moreover, it decided that there were considered to be two separate broadcasts presented on separate news bulletins at different times on the same evening to probably different audiences, and thus those separate broadcasts represented two breaches of the woman's privacy. The Authority considered that the broadcaster's initial breach of the woman's privacy was a serious one and was exacerbated by its second breach the same evening. In its view, the situation called for an amount of compensation to be awarded. The woman was a victim of rape and was clearly entitled to the protection provided by the provisions of the Criminal Justice Act which TVNZ, as an experienced broadcaster, would have been aware of. Furthermore, the documents provided to the Authority disclosed the Media Control Directions of the presiding judge in the trial which had been issued some 3 days before the broadcasts, and which would have been known to the broadcaster as well. In addition, the Authority viewed seriously the fact that TVNZ breached the woman's privacy on two occasions during the same evening without, it appeared, any mechanisms in place to review its procedures, even after a complaint had been lodged by one of the woman's family members. The Authority also noted the submissions made on the woman's behalf in regard to the stress she experienced after viewing the broadcasts, and in regard to her fear of personal danger from gang reprisals. All of these factors led the Authority to order the broadcaster to pay the sum of NZ$3,000 to the woman in compensation for breaches of her privacy, and to pay costs in the sum of NZ$500 to the Crown.
The third upheld complaint (Decision 1998-158) involved a news item broadcast on 3 National News the subject of which was a prison officer who was accused of impregnating a prison inmate. The accused officer was the brother of the complainant’s partner, and he had never lived at their address. As footage of their family home was included in the item, the complainant complained to the Authority that her family’s privacy was breached, and she emphasized that her family had been caused great distress by the broadcast. When TV3’s news crew went to the complainant’s place, they were advised that the person sought did not live at the house which they had filmed. Nevertheless, the broadcaster elected to show footage of that house. In the Authority’s view, there could be no public interest or ‘right to know’ which justified showing footage of the house in circumstances where the crew had been told it was not the home of the prison officer concerned, and the breach was exacerbated by the fact that the brother was also a prison officer and shared the family surname, which might lead viewers to reach the conclusion that it was the complainant’s partner who had been accused of having a relationship with the inmate and fathering her child. In addition, the Authority noted that the filming apparently took place on private property. Whilst it understood the problem faced by the broadcaster in this case of mistaken identity, it concluded that the subsequent broadcast was an interference with the family’s privacy which in the circumstances an ordinary person would have found offensive. A monetary compensation was ordered for the broadcaster to pay the sum of NZ$500 to the complainant in compensation for the breach of the family’s privacy, and to pay costs to the Crown of the same amount.

As for the decisions of the other complaints that were not upheld, some interesting
points were raised in them as well.

For example, the privacy of children started to get more attention in one of these cases. In Decision 1998-005/006, permission was given by the paternal grandparents to film the young daughter of a murdered woman who was the subject of a documentary. Although the Authority accepted that permission was sought and given by persons who at that time apparently had the day-to-day responsibility for the child, it had misgivings as to whether that was sufficient in the circumstances of this case. The Authority was of the view that such consent could only be given by the parents or legal guardians of a child, and then only in circumstances where it was in the child’s interests to permit filming and subsequent broadcast. It was not clear in this case whether the grandparents were in fact the legal guardians of the child at the time the filming took place. Moreover, the Authority was not satisfied that the filming and subsequent broadcast were in the interests of the child. In addition, the Authority had the impression, rightly or wrongly, that perhaps the grandparents stood to gain more from filming than the child. The Authority also considered that there were other ways available to the broadcaster to convey the storyline in this case while still respecting the privacy of the child. Therefore, even though the Authority had decided to decline the privacy complaint on this occasion, it also signalled its intention to develop a principle which would deal specifically with the privacy interests of children.

For some cases, there seemed to be some communication problems between the police and the broadcasters. Apart from Decision 1998-094/095 as mentioned above, Decision 1998-068/069 is also a good example. In this case, a news item included photographs and the names of four young people who had been at the same venue as
two missing people. The photographs had been released by the police in conjunction with an investigation. The police complained to the Authority that naming the people breached their privacy, because there was a specific request in the accompanying press release that they not be identified by name. In the Authority’s view, none of the privacy principles enumerated were intended to deal with a situation such as in this case, where consent was given for the release of a visual image, but not to being named. The Authority considered that when the names were already in the public arena in the context of the inquiry, it was unrealistic for the police to expect that anonymity could be maintained when the photographs were released. The information contained in the photographs alone was sufficient to identify them positively to those who knew them, and the Authority considered that the young people must have been well aware that there was a potential for their identities to become widely known, which led it to conclude that they had implicitly consented to an invasion of their privacy by agreeing to the use of their photographs. In this case, the Authority acknowledged a difficulty in that the police could issue no more than a request to reporters in relation to disclosures such as this, and was not empowered to issue instructions, or to disclose information under constraints which could be effective other than by mutual agreement. On the other hand, how a broadcaster dealt with the police under such circumstances might not constitute a breach of broadcasting standards, but more possibly one of ethical standards.

In some complaints involving criminal cases (1998-039/040, 1998-119, 1998-120, 1998-148/149), coverage of the arrest, conviction or trial judgment was not considered to be in breach of privacy or any other standards, because the cases were of high public interest, and the information disclosed was usually matters of public
record. However, for some other complaints (1998-007/008/009, 1998-041/042), the items involved might not be found to constitute a breach of privacy, but the ways in which the items were presented could lead the Authority to reach the conclusion that they did run the risk of breaching such other programme standards as balance, fairness and partiality.

Apart from those standards mentioned in the previous paragraph, quite a few of the complaints (1998-032/033, 1998-076/077, 1998-168/169) received and determined during the year were found to be associated with standard G17 of the Television Code of Broadcasting Practice, which was related to unnecessary intrusion in the grief and distress of victims and their families or friends. Usually items alleging a breach of this particular standard would be those which involved funeral coverage and/or footage of accidents, and often they were also lodged as privacy complaints. Although the few complaints mentioned here were not upheld as a breach of either privacy or standard G17, this particular standard did stand out to be one which broadcasters should be more mindful of while dealing with victims of accidents and crimes.

What seems to be significant as a pattern of the privacy complaints in 1998 was that a large number of these complaints were associated with criminal cases, police investigation and victims of accidents/crimes. Since these were cases which usually involved sensitive issues, broadcasters should probably attend to details with more caution while dealing with similar situations in the future.

January 1999 – December 1999
In 1999, the total number of complaints received and determined by the Authority had a substantial increase, and the number of privacy complaints also increased quite significantly. In this year, the Authority received and determined a total of 243 complaints, and among them 52 cases were privacy-related, doubling the number of the previous year and contributing to 21.4% of 1999’s complaints. Ten of these complaints were directed towards radio programmes, and the other 42 towards television programmes. While the number of radio complaints remained roughly the same, the number of television complaints substantially outgrew that of the preceding year.

For the radio complaints, four were upheld, and the other six declined. All of the programmes complained about were categorised as either entertainment or talkback, and the four upheld complaints were all towards entertainment programmes. Disclosure of private facts was the ground of complaint that most of the cases in this year were associated with.

In Decision 1999-003, in the context of a discussion about the re-appointment of the All Black coach, the programme host reported that he had overheard a conversation between the coach and his wife in a public place and made some speculations according to it. The Authority considered that the conversation was a private one, a fact which was known to the host as he admitted that he had avoided being seen in order to eavesdrop on the conversation. While the Authority acknowledged that the remarks might well have been interesting to the public, it did not agree that it was in the public interest to report a snippet of an overheard conversation and to speculate on
its meaning. In some circumstances, there appeared to be an overlap between ethics and privacy, and the Authority found that that was the case on this occasion. It regarded the broadcast as an ethical lapse, the result of which was an invasion of the coach’s privacy.

Then, in Decision 1999-024/025, a radio station announcer, claiming he was doing a survey on STDs, telephoned a woman and asked a number of personal and intimate questions, and the call was broadcast live. The complainant considered the call to be a serious invasion of her privacy as she was never told that the caller was from a radio station, or that it was being broadcast live. While looking at the broadcaster’s response to the complainant, the Authority found it deficient on a number of counts. First, the Authority was disturbed by the failure of the station to retain a tape of the broadcast and its excuse that the air check equipment failed shortly prior to the broadcast. Next, the Authority considered the station’s offer as its response to the complainant to be totally inappropriate, which, in its view, demonstrated that the broadcaster had failed to recognise the seriousness of the breach of broadcasting standards, and the harm caused to the complainant. In addition, the Authority also viewed with some concern the station’s apparent misapprehension that the breach was solely due to the announcer’s failure to advise that he was from a radio station when he made the call. The Authority emphasised that that was but one factor in the breach, which was exacerbated by the subject matter of the call – the fact that the complainant identified herself and her place of work when she answered the phone, and that the call was broadcast live without her knowledge or permission. It was not sufficient, as the station seemed to suggest, for announcers simply to ensure that they identified themselves as being from a radio station when they made unsolicited calls
for broadcast. Those were all matters that broadcasters should have already clearly understood. A monetary compensation was ordered for the broadcaster to pay to the complainant the sum of NZ$1,000 for the breach of her privacy. The broadcaster was further ordered to pay the sum of NZ$750 by way of costs to the complainant and the sum of NZ$1,000 by way of costs to the Crown.

In Decision 1999-062/063, the private facts about a woman were disclosed on-air by her former husband in two broadcasts while entering a competition. One of the broadcasts was found to be in breach of the woman’s privacy, while the other one was not, due to insufficient identifying details included in the broadcast. When the complainant complained to the broadcaster, her formal complaint was not responded to within the statutory period of 20 working days. The Authority noted its expectation for broadcasters to have systems in place to ensure that formal complaints would be dealt with appropriately. Moreover, having upheld the complaint, the Authority also found the broadcaster’s submission on the question of penalty to be inappropriate. A monetary compensation was ordered for the broadcaster to pay compensation of NZ$250 to the complainant, and to pay costs to the Crown in the sum of the same amount as well.

Decision 1999-107/108 involved a case similar to that in Decision 1999-062/063. In this case, a birthday call to the complainant was broadcast, and the call included the comment that the complainant was to be reunited on that day with her son whom she had given up for adoption 30 years ago. In the Authority’s opinion, the broadcaster made an error of judgment in broadcasting the birthday call, and the privacy complaint was upheld. However, contrary to the previous case, the Authority
considered that the broadcaster’s actions on receipt of the complaint disclosed a genuine concern and displayed efforts to act responsibly to remedy the situation, and the actions taken by the broadcaster were found to be sufficient and appropriate. No monetary compensation was ordered.

Cases involving public figures would usually be of high interest. Decisions 1999-083 and 1999-235 were two such cases.

In Decision 1999-083, an interview, concerned with the millennium project in the Chatham Islands, became personalised towards its conclusion when the interviewer referred to the Project Manager’s past conviction for fraud. In the Authority’s view, the issue of fairness arose first by the unexpectedness of the line of questioning, and secondly by the matter being raised at the conclusion of the interview, apparently giving the interviewee little time or opportunity to respond. The Authority considered that although there was a potential for unfairness, there was also a public interest in disclosing facts about the interviewee’s past, notwithstanding the passage of time which had elapsed since his offending had occurred. Its view was that if a person in the interviewee’s position accepted a public role with a high profile, it was not unreasonable to expect that his past would be scrutinised. In agreeing to be interviewed about the millennium project, the Authority considered that the interviewee could well have expected to face questions probing into his past. The nature of his offending was such that, in the Authority’s view, it would always be relevant where he was in a position of responsibility for public funds. All of these factors led the Authority to conclude that no breach of standards occurred.
Then, in Decision 1999-235, "boy racers" were encouraged by a radio station to turn up at a named City Councillor's home address and to play their car stereos loudly to protest about the Councillor's stand on noise control. The broadcast had disclosed the Councillor's address and was considered by the complainant to have encouraged people to harass the Councillor. In the Authority's view, the disclosure on the programme of the Councillor's address on this occasion raised an issue of privacy, notwithstanding that the address was available from a publicly available source such as the telephone book. It was an issue, in its opinion, because the disclosure was made for the express purpose of encouraging a public protest outside a private address. While determining whether a breach occurred, the Authority took account of possible mitigating factors, including the prompt action taken by the broadcaster in cancelling the planned protest, the apology given to and accepted by the Councillor, and the fact that, as he was a public figure who had taken a strong stance on a contentious issue, he could probably expect to receive some opposition to his plan. Overall, the Authority concluded that while a potential breach might have occurred, it was unable, due to these extenuating circumstances, to conclude that the Councillor's privacy was in fact breached, and thus the complaint was not upheld.

With cases like these, despite the fact that public figures should expect to receive more public attention than ordinary people, it was found that broadcasters should still try to deal with them with as much sensitivity as possible.

As for the television complaints received and determined in 1999, 18 were upheld, and the other 24 declined. Amongst them, 19 were directed towards TV3 and the other 23 towards TVNZ. News, current affairs and information were the three types
of programmes that received most of the complaints, with 12 complaints for each of these three categories, while the remaining six were all documentary programmes. Intrusive filming and disclosure of private facts to abuse, denigrate or ridicule personally an identifiable person were the major grounds of complaint associated with a great proportion of privacy complaints towards television programmes along the year.

The year 1999 was a year in which the Authority had received and determined a large number of significant privacy complaints involving children. These complaints were distributed amongst 4 particular cases (1999-087/088/089, 1999-093-101, 1999-159/160, 1999-170), and were upheld in 3 of these cases (with only 1999-170 being declined). The privacy of children had been briefly mentioned here and there in some of the cases during previous years, but it was never given as much weight as it should deserve in terms of discussion of the issues involved. However, all that changed in 1999. These few cases caused the Authority to realise the significance of the interest of children in cases involving privacy issues and how vulnerable children could be while facing intense media attention. As a result, an Advisory Opinion was issued in the year to deal with this particular concern, and the Authority clearly put the responsibilities on broadcasters instead of parents to protect the best interests of children in media coverage.

In Decision 1999-087/088/089, an item on Holmes examined the situation of a woman and her eight-year-old son who was described as suffering from Attention Deficit Disorder Syndrome (ADDS). Footage of the child, exhibiting what were said to be some behavioural problems associated with the syndrome, was shown on the
programme. The filming of his severe behavioural episodes took place both in his own home and in his doctor’s surgery, and the footage included images of the child being forcibly restrained while these disturbing episodes occurred. While looking at the footage featured, it was apparent that the child had made it very clear that he did not want to be filmed, which led the Authority to have an impression that the very presence of the film crew and the camera exacerbated the episodes being filmed. The episodes filmed were patently traumatic for both the boy and the other family members present. The boy’s humiliation was made worse by his mother’s comments about her extremely negative feelings towards him. In the Authority’s view, public exhibition of this behavioural disorder and the filmed reaction of others to it, involved private material, publication of which was capable of being highly offensive or objective to the reasonable. The Authority also observed at the outset that there were other ways in which the family’s predicament could have been dealt with on the programme without identifying the boy to all the viewers. The Authority further expressed its concern that the programme makers seemed to have failed to identify that the child’s own best interests might have been different to his mother’s interests in pursuing the programme, and it found the mother’s consent to the filming problematic. In this case, the boy was of an age when he could express his feelings about whether or not he wanted to participate in the programme, and plainly he did not want to. In the Authority’s view, the programme seemed to be designed more to meet the mother’s needs than the boy’s own. Since it was the child’s best interests which should be the paramount factor to be taken into consideration, the Authority found that the mother’s consent did not suffice to justify the broadcaster’s intrusion on the child’s privacy in this case. Moreover, it was also not convinced by the broadcaster’s submission that the item placed an issue of genuine public concern in
the public domain. It was apparent that the broadcaster was seeking to justify its broadcast of the child's behaviour on public interest grounds. However, the Authority observed that, just as mentioned above, this public interest factor could and should have been addressed in other ways. In its conclusion, the Authority strongly reminded broadcasters that the interests of parents or legal guardians might not be identical to those of the child. Furthermore, as emphasised by the broadcaster and complainants involved in this case, there was clearly a need to strengthen the broadcasting codes in relation to the privacy of children and young people. The broadcaster was ordered to broadcast a summary of the decision, and to pay the maximum amount of NZ$5,000 by way of costs to the Crown.

Decision 1999-093–101 was another significant case relating to privacy of children, which attracted a total of 8 privacy complaints. In this case, the results of a paternity test were revealed live during the broadcast of one episode of You be the Judge. The child, who was 6 years old, was present in the studio when it was revealed that his mother’s former husband was his father. In the Authority’s view, it was offensive to disclose facts relating to the private matter of the events surrounding the child’s birth in the broadcast, and the child was considered to be unfairly treated in this case. There was no public interest whatsoever in the broadcast. On this occasion, once again the validity of the consent given by the parents was found to be problematic for the Authority. The Authority did not consider that the child’s appearance in the programme was in his best interests, even if the parents genuinely believed that it was. In its opinion, it should be the broadcaster's responsibility to ensure that where there were competing rights, both parties were independently advised. In this case, it was apparent that minimal thought had been given to the possible repercussions the
disclosure would have on the child. The broadcaster, the Authority believed, failed to recognise the possibility that the child’s self identity and self-worth could be seriously compromised by the public disclosure of such offensive personal facts about him. Apart from privacy, the broadcast was found to be in breach of standards G2 (good taste and decency) and G4 (dealing justly and fairly) of the Television Code of Broadcasting Practice as well. In its conclusion, the Authority acknowledged the desirability of developing a Code of Practice relating specifically to children, and it advised its intention to consult relevant parties and to draft such a Code. The broadcaster was ordered to broadcast a summary of the decision, and to pay costs to the Crown in the amount of NZ$3,500.

In Decision 1999-170, the case involved the re-capture of an escaped prisoner being dealt with in a news item. The convicted murderer was re-captured after six years on the run, and the item included an interview with his father and ten-year-old son. The mother of the child did not give her consent to the interview, and she advised that she would have strongly objected had she been asked. The broadcaster said that it believed that the child spent considerable time with his grandfather who, in the matter of giving consent, was in a position “analogous to that of a school teacher” who might consent to filming of children in their charge, and it insisted that both the grandfather and the child had consented fully to the interview. In the Authority’s view, when the broadcast revealed the child’s identity and disclosed that he was the son of a convicted murderer, the disclosure of such private facts would be likely to be considered to be highly offensive and objectionable to a reasonable person, given the child’s age and circumstances in this case. The connection between the child and his father, which was unknown to the public before the broadcast, could draw unwelcome
and unwarranted attention to the child, and, accordingly, the Authority found this to have been a serious breach on the part of the broadcaster. The Authority was not persuaded that the child’s own consent to filming was an answer to the privacy breach in this case. While taking the child’s age into consideration, the Authority was not convinced that his consent was given with a full appreciation of the potential consequences of filming, and thus it was unsafe for the broadcaster to rely on that consent in the circumstances. Furthermore, the Authority also did not accept that the case was analogous to one in which a school teacher might consent to the filming of a pupil. That was an approach that the Authority cautioned against, because it would not normally consider a teacher’s consent to be sufficient to justify the filming of a pupil where highly offensive and objectionable private facts were likely to be disclosed. Having upheld the complaint, the Authority ordered the broadcaster to pay the sum of NZ$500 by way of costs to the mother of the child.

As a result of some of these decisions involving children, the Authority consulted with interested parties, and, after such consultations, it concluded that notwithstanding consent by the child or someone on the child’s behalf, broadcasters must be satisfied that the filming of a child, or his or her participation in a programme, was in the child’s best interests. An Advisory Opinion was issued on 20 September 1999, and the following was added to the original Principle (vii):

Children’s vulnerability must be a prime concern to broadcasters. When consent is given by the child, or by a parent or someone in loco parentis, broadcasters shall satisfy themselves that the broadcast is in the best interests of the child.
Apart from these cases involving children, important privacy issues were also dealt with by decisions on some other privacy complaints during the year.

For example, Decision 1999-125-137 was another controversial case which triggered four privacy complaints along with nine other complaints on programme standards such as balance, fairness and accuracy. Amongst the four privacy complaints, two were upheld with monetary compensation of the maximum amount (NZ$5,000) awarded to the complainants. All these complaints were lodged against a 20/20 item entitled “Sex, Lies and Videotape”, which concerned matters surrounding the dismissal of Dr Raymond White, the Director of Music at St Paul’s Cathedral, Dunedin and the subsequent walk-out by all but one of the members of the all-male Cathedral choir. The reasons for the dismissal were said to relate to the inappropriate conduct of the Director of Music in relation to young men in the choir. However, it was claimed by the report that compromising behaviour of a similar nature could equally have been attributed to other members of the Cathedral hierarchy as well. There were four people involved in this case who alleged that the item constituted a breach of their privacy.

Canon Somers-Edgar complained that his privacy was breached by the broadcast of excerpts from a private videotape featured in the programme. He observed that the broadcaster had not informed him of its possession of the tape or that it was intended to screen it. Furthermore, he contended that the tape had been selectively edited and broadcast in a way which made it appear directly relevant to the dismissal of the Director of Music, when it was totally not the case. The programme, he argued, contained an imputation that the choir was beset by homosexual predators, and that he
was amongst them. He maintained that what was broadcast in the programme could in no way be said to represent his genuinely-held personal views. The videotape was recorded at a private function for private purposes without Canon Somers-Edgar’s permission, and thus it should not be considered to be intended for broadcast, and the facts revealed on the videotapes were regarded as private facts. In the Authority’s view, the disclosure of the inebriated Canon’s behaviour at the party was highly offensive and objectionable to a reasonable person. Besides, as the filming took place at a private venue and the Canon was relentlessly pursued throughout the evening to perform for the camera, the Authority concluded that his interest in solitude or seclusion was intruded upon in a manner which was offensive to the ordinary person. Moreover, the Authority also considered that the purpose of including the videotape footage was to expose the Canon to public opprobrium which was tantamount to ridicule. The Authority further rejected the broadcaster’s argument that the Canon was a public figure, noting that he held no public office but was simply an employee of the Diocese of Dunedin. As such, he was a man who could be expected to have a minimal public profile. Normally a defence to a breach of privacy would be that the matters revealed were in the public interest, but no such public interest was found to justify the broadcast of a film made in circumstances such as those outlined in this case.

Then, for Robert Rothel, he complained that allegations of improper conduct had been made against him in the programme, but he had been given no opportunity to respond to those allegations. He also complained about the programme’s implication that he was engaged in a sexual relationship with the Dean and that as a result of this relationship he was acting as interim conductor of the Cathedral Singers. Moreover,
he was filmed and identified in the programme although he had already made it clear that he did not wish to go on camera or be identified in any way. He further advised that as a result of the broadcast of the programme, he had been obliged to leave Dunedin, despite his university commitments. He argued that no vindication through the complaints process, or in defamation, could hope to reverse the damage done to his reputation or his career. While dealing with Mr Rothel’s complaint, the Authority found that the private facts disclosed about his sexual behaviour were offensive and objectionable to the reasonable person, particularly as there was no legitimate public interest served by the disclosure in this case. As for the other aspects of his privacy complaints, the Authority considered them to be more appropriately dealt with under fairness, and Mr Rothel did end up being considered to be unfairly treated. The effects of the programme on Mr Rothel’s life as he claimed in his complaint were also taken into serious consideration by the Authority for its rulings.

As for Diccon Sim, he complained that aspects of the programme were inconsistent with his right to privacy, referring in particular to the footage broadcast of him while at worship at St Paul’s. He advised that he and other members of the Cathedral Singers group had been informed prior to the service that permission had been granted to the broadcaster to film during the service for the purpose of gaining general shots of the Cathedral and the Dean, and agreement had been expressly obtained by the Dean that no shots of individuals other than the Dean himself would be taken. That was a condition of permitting access for filming. Besides, he also objected to the programme’s contention that he was part of the alleged campaign against Dr White in his role of Diocesan Chancellor. While dealing with the matters relating to the filming permission, the Authority found that there was some ambiguity with respect to
the terms of the agreement between the Dean and the reporter regarding the filming in
the church. It accepted that the Dean’s understanding of the agreement was similar to
that of Mr Sim; however, on the other hand, the reporter involved was unequivocal in
his belief that the restrictions applied only to the filming of the morning service, and
that there were no limitations on filming at evensong. The Authority ended up
concluding that there was evidence of consent having been given for filming, although
the extent of that consent was unclear, then the next question was whether Mr Sim’s
interest in solitude or seclusion was threatened by the filming in the Cathedral. While
the Authority accepted that the filming was an unwelcome intrusion, it was unable to
conclude that it constituted a breach of Mr Sim’s privacy. This decision was reached
for two reasons. The first was that a church was a place of public worship and
members of the public were welcome to attend at any time, and members of the
congregation that day would have seen Mr Sim participating in the service as a part of
the choir; and the second reason was that as the Chancellor of the Diocese, Mr Sim
had a public role, and it was legitimate to identify him in that context. Therefore, Mr
Sim’s privacy complaint with regards to the filming was not upheld, but the fairness
of imputations made about him in that public role still remained to be scrutinized, and
he ended up being considered to be unfairly treated as well.

Dean Jonathan Kirkpatrick did also lodge a privacy complaint against the broadcaster
for the efforts made by its reporters to try to find information about his personal life
that was discreditable. He considered such a “campaign” to be invasive of his
privacy. In the broadcaster’s response to the Authority, it argued that as the Dean had
not articulated any details of the private facts disclosed, the complaint was without
basis and should be rejected. The Authority noted that the Dean, after receiving the
response from TV3, made no further comment regarding his privacy complaint, and, accordingly, it concluded that he did not wish to pursue it.

A very extensive and detailed decision was published by the Authority for this case, and thus it is reasonable to say that this case was regarded as a considerably significant one. With discussing a topic surrounding such controversial issues as homosexuality, immorality, conspiracy, and so on, and especially having these scandalous topics associated with a religious body, this particular 20/20 item was bound to attract immense attention. As well as breaching privacy, it was also found to be in breach of such programme standards as accuracy, balance, fairness, deceptive editing, and so on; and for all these breaches, the broadcaster was ordered to pay the maximum amount for all the orders of monetary compensation. This could be considered to be a way for the Authority to teach the broadcaster a lesson. Although it is good for the broadcaster to have the courage to deal with such a controversial story, it is still important for it to remember to maintain its journalistic ethics during the process, so that no unjustifiable actions would be taken resulting in unnecessary jeopardy of the interests of the people involved and the programme itself. Viewers deserve to know about the truth, but they do not need it sensationalized at the expense of others.

In Decision 1999-068-073, the relationship between a Department of Corrections employee and a former inmate, which was the subject of a later investigation by the department and resulted in the resignation of the employee, was the focus of 2 items on 20/20, and also the subject of a bulletin opener and a news item on 3 News. The father of the employee complained to the Authority that the identification of his son
represented harassment and a gross invasion of his son's privacy. He also complained to the broadcaster that the items were unbalanced in not identifying the woman, and in continuously naming and identifying his son, and were unfair and inaccurate in failing to allow his son to respond reasonably to the allegations made in the commentary. In the Authority's view, no breach of privacy occurred as the claims discussed in the items concerned the role of the employee in executing his duties as a public official, and the inquiry into, and reporting on, the matter was in the public interest. However, the Authority did find the broadcaster's use of "door-stepping" to obtain the footage of the employee to be unfair to him. The Authority emphasized that "door-stepping" was a method which should not normally be used unless every alternative legitimate way either to obtain the information sought or to ensure that a person being investigated is given the opportunity to respond had been exhausted, and it was not convinced that alternative legitimate avenues had been sought in this case.

For some cases, since there was no disclosure of private facts, the items complained about might not constitute a breach of privacy, but that does not mean that they were not intrusive. Decision 1999-056/057 was a case involving a breach of standard G17 of the Television Code of Broadcasting Practice. In this case, a documentary programme focussed on some factors which contributed to road fatalities on the Auckland-Waikato Highway. An interview with a truck driver involved in a collision, and footage of the accident scene including some photographs, were shown when examining one particular accident in which a driver and his baby daughter had been killed. Two family members of the deceased complained about the item that it was untrue in part, unfair, intrusive, distressing, and breached their family's privacy. Since the fact of the collision was publicly known, the Authority found no breach of
privacy in this case. The Authority considered that standard G17 was most pertinent to this complaint. It found that it was the graphic and yet partly incorrect description of the accident featured in the programme which most called into question the application of the standard, and that was exacerbated by the graphic footage of the baby's car seat. The Authority concluded that the steps taken by the broadcaster did threaten the standard that reasonable measures were needed for consultation, and the broadcaster's actions in attempting to locate the family were insufficient given the content of the programme. For cases like this, although broadcasters might not need to worry about privacy issues, special care should still be exercised in dealing with the people involved.

In the case discussed in the previous paragraph, some facts relating to the baby's death were wrongly reported, and that resulted in causing unnecessary distress to the family involved. Therefore, it is really important for broadcasters to do their best to make every effort to check the accuracy of the information disclosed in their programmes. In Decision 1999-103/104, concern about repeat drink/driving offences was dealt with in a news item, and the item included footage of the police dealing with drivers who had been drinking, and included a segment showing a woman struggling violently as she was put into a police car. As the incident screened had occurred six years previously, the struggling woman complained to the Authority that the item breached her privacy and it was unfair to her as she had never been convicted of any drink driving offence at any time. The broadcaster itself admitted that the item had not dealt with the woman fairly, and the Authority also found the public fact about the minor offence and conviction featured in that footage to have, in effect, become private again after all those years.
Over the years, there appears to have been more and more reality programmes broadcast on television. In some cases (1999-123, 1999-238), privacy complaints would not be upheld, as consent was granted and it could not be withdrawn when the complainants found themselves unfavourably portrayed in the programmes. Therefore, the Authority argued that it is important for people to consider carefully before giving consent to participate in the production of any television programme.

A lot of these reality series dealt with cases involving police investigation, and often the people featured in such programmes would not be portrayed in a favourable way. Thus, it is understandable that those programmes would surely attract some complaints based on such programme standards as privacy and fairness. It was hard for many of these complaints (1999-076/077, 1999-085/086, 1999-117) to get upheld as privacy complaints, because normally the incidents featured would already be matters of public record.

However, it would be wrong to conclude that all the programmes involving police investigation would be justified by the defence of public interest and public record.

In Decision 1999-201/202, a segment of Motorway Patrol showed a woman being processed in the interview room of the police station after having been arrested for driving while intoxicated. In the Authority’s view, the interview room in a police station was a private place insofar as it was generally not accessible to the public, except with the permission of the police or in the exercise of some other legitimate authority. It should be distinguished from “a public place” as contemplated by
privacy principle (iii). For one of the sequences showing the woman falling face first onto the floor with her hands still handcuffed behind her back in the interview room, the Authority considered that it disclosed an event involving a degree of humiliation and personal degradation which was substantial. It was an unnecessary disclosure which a reasonable person would have found offensive. That led the Authority to conclude that it constituted a breach of the woman's privacy, and she was also considered to be unfairly treated by the showing of that sequence.

A similar situation arose in Decision 1999-229/230. In this case, an item on Holmes examined "Operation Youtheare", a police and community initiative dealing with some problems arising from children and young people frequenting the city centre of Nelson at night. Part of the filming took place in the interview room of the police station where a number of young people were being held or questioned. A girl and her father were identifiable in the item, and the details of a private conversation between the girl and a police officer were broadcast. Again the Authority expressed its concern about filming in the interview room of a police station, and it was in no doubt that the information in the conversation was given in confidence and related to matters which could be described as very personal to the girl, which led it to conclude that the fact of this disclosure and its contents were private facts. It also concluded that the broadcaster's public broadcast of those private facts heightened the embarrassment and humiliation factor for this girl and her family to a degree which most reasonable people would find highly offensive.

For these two cases, it was in the Authority's view that the disclosures involved were not essential to the programmes, as they were irrelevant to the main thrust of the
items. Therefore, they could not be claimed to be justified by a defence of public interest.

As for some cases, public interest would still be considered to be a good defence. In Decision 1999-188, an item about the squalid living conditions of a woman and her cats was broadcast in a news item, and it included footage showing the interior of the house she lived in, which was filmed during a period when the woman was in hospital. The complainants considered that, in filming the interior of her house, the woman’s privacy had been grossly and blatantly violated by the broadcaster. The Authority did find that filming in someone else’s home without permission and in such a way that disclosed private information would likely be found offensive in ordinary circumstances. However, in the Authority’s view, reasonable people would consider that the public had an interest in knowing that elderly persons in their community might be, for whatever reasons, living in substandard conditions, and it accepted that areas of public interest advanced by the broadcaster – public health, animal welfare, and so on – were matters of legitimate concern and interest to the public. That led the Authority to conclude that there was public interest in the story which justified the broadcast of the item.

The year 1999 was really a big year for privacy complaints, with the largest number of privacy complaints received and determined by the Authority in one year throughout its operating years so far. A lot of legitimate concerns regarding privacy issues were raised in all those complaints. In previous years, normally a particular case might attract at most 2–3 complaints. However, for quite a few cases in 1999, a larger number of complaints had been lodged as compared to those previous years. In
looking at all these complaints, the privacy of children appeared to be the most significant issue of concern arising from them. Cases involving controversial issues were also given a lot of attention. These were two areas in which broadcasters might need to be more cautious while considering their responsibilities and professional ethics as the role of a medium.

January 2000 – December 2000

In the year 2000, the total number of complaints had dropped down to the normal level of the years before 1999, and the number of privacy complaints had also noticeably declined. A total of 202 complaints were received and determined by the Authority in the year, and amongst them 24 cases were privacy-related, contributing to 11.88% of that year’s complaints. Three of these complaints were directed towards radio programmes, and the other 21 towards television programmes. The number of television complaints was still found to be significantly larger than that of radio ones for that year.

For the radio complaints, one of them was upheld, one not upheld, and one declined to be determined. All of them were directed towards different types of programmes, but disclosure of private facts was found to be the common ground of complaint amongst them.

Decision 2000-048 involved an incident relating to an area of complaint which radio broadcasters had on many occasions been found to be in breach of – abuse of the airwaves. In this case, part of the complainant’s letter regarding the host’s
inappropriate use of a word to describe his show was read by the host on air, and then the host disclosed his name and referred to him in a derogatory manner. Due to the first complaint about the inappropriate use of a word, the broadcaster argued that, because the Authority was required to publish a decision “which disclosed the name of the complainant and the nature of the complaint”, then, in fullness of time, these details would enter the public domain. And so, it argued, there was no breach of the privacy principles in naming the complainant and broadcasting the content which it did. In the Authority’s view, this submission overlooked the fact that in many privacy cases, the Authority granted suppression of name so as to avoid a repeat of the publication originally complained about, and it also ignored the principle set by the Authority in a previous decision (Decision 1996-067) that the details of a complaint, at least at the enquiry stage, were not matters of public information, especially when the complaint was one of breach of privacy. As a result, the Authority concluded that the naming of the complainant and the reference to his complaint was deliberate.

As for the other two radio complaints (2000-093, 2000-099), the Authority expressed its concern in the decisions of both of them that it was not helped in its deliberations by the unsatisfactory way the complaints were dealt with by the broadcasters. In Decision 2000-093, neither the complainant nor the Authority received any response from the broadcaster which addressed the privacy complaint made by the complainant, and what was provided was merely a chronology of the events which led to the complaint, and which followed after the complaint was made. Then, in Decision 2000-099, it was found that the broadcaster did not address the complainant’s privacy complaint in its response. The Authority reminded both of these broadcasters that they were required to have in place a proper procedure for
dealing with complaints, and, in the Authority’s view, it was beyond question that a proper procedure must include responding to alleged breaches of broadcasting standards, including an allegation about a breach of privacy.

As for the television complaints, four of them were upheld, 16 not upheld, and one declined to be determined. 13 of these complaints were directed towards TV3, and the other eight towards TVNZ. News and current affairs were still the types of programmes that were most complained about, but they were also closely followed by documentary and entertainment programmes. Disclosure of private facts and intentional interference (in the nature of prying) were the two major grounds of complaint that were associated with many privacy complaints towards television programmes during the year.

Decisions 2000-106/107 and 2000-108~113 were two decisions that involved the same individual featured on two separate items of a current affairs series which dealt with the same allegations made against this individual. This particular person was Dr Morgan Fahey.

In Decision 2000-106/107, Dr Morgan Fahey, a Christchurch GP and mayoral candidate at that time, was the subject of a 20/20 item entitled A Position of Power. The item contained allegations from two unidentified women of sexual and professional misconduct, and included his strong denials. Two viewers complained that the item was unbalanced, unfair to Dr Fahey, and breached his privacy. Both complainants considered that the timing of the programme had prejudiced the imminent Christchurch mayoral elections. Voting for those elections concluded 5
days after the programme was broadcast, and Dr Fahey, a candidate for mayor, was unsuccessful in obtaining that office. The broadcast concerned in this case, and the issues dealt with, had been matters which had been accorded high prominence in the media. Much of the media attention had focussed on issues of journalistic ethics, and those were issues upon which the Authority could only comment in the context of its jurisdiction to determine complaints about broadcasting standards. The Authority noted that the media has an important role to play in a democratic society to provide the public with information. The ability to undertake and broadcast investigative journalism is found to be vital to performing this role, and it often requires a difficult assessment of competing rights and interests before broadcast. In this case, the broadcaster had to weigh the public interest in broadcasting information against the evidence it had in support of some very serious charges. Besides, it was also required to comply with its broadcasting standard obligations to be fair and to provide balance in what it broadcast. The decision to broadcast before the election would have been a difficult one for a broadcaster, and the Authority believed that the broadcaster was justified in making it on the basis of the material it had before it at the time. The Authority went on to record that it had had no difficulty in reaching its decision to decline to uphold all the complaints based on several programme standards, such as balance, fairness and of course, in this case, privacy, and that it considered that the public interest could surely be regarded as a very compelling justification for the broadcast of the item in this case.

Then, in Decision 2000-108-113, Dr Fahey, still a doctor in general practice and a Christchurch City Councillor at that time, was once again accused of sexual and professional misconduct by some other former patients in a follow-up 20/20
programme. During the item, he was confronted by a former patient and accused of sexual impropriety, and the exchange was filmed with a hidden camera when the former patient visited him at his surgery. In the Authority's view, the allegations against Dr Fahey could be considered as private facts which a reasonable person of ordinary sensibilities would regard as offensive, and the broadcast of the hidden camera footage also constituted a breach, as that filming involved an intentional interference with Dr Fahey's interest in solitude or seclusion. Nevertheless, despite having established that there was a prima facie breach of Dr Fahey's privacy, the Authority considered that the public interest on this occasion was both legitimate and strong as in the case mentioned in the previous paragraph. Dr Fahey was a well-known Christchurch identity, and serious allegations had been made about him. The Authority found that it justified the invasion of his privacy, and afforded a complete defence to the broadcaster. Once again the Authority observed that by bringing the allegations made in the programme to the public's attention, the broadcaster performed a well-established media function - a function which has a valuable public service element. As the programme was presented with due care and diligence, the Authority concluded that broadcasting standards were not threatened in this case, despite the challenging nature of the material used and the method by which some of that material was obtained.

Intrusive filming had always been considered to be a grey area in which broadcasters were often found to be unclear about the boundaries. Therefore, this could be regarded as a landmark case in providing some markers to broadcasters for dealing with programmes involving intrusive filming. In determining this case, the Authority had had recourse to a variety of relevant references, including the BBC Producers'
Guidelines 1993 and the British Broadcasting Standards Commission's Code on Fairness and Privacy. It observed that the BBC Producers' Guidelines sanctioned the use of information obtained in this fashion only where prima facie evidence existed of crime or anti-social behaviour by those recorded. The Authority did not consider itself in any way bound by those guidelines, but recorded that this test was satisfied, and this reinforced its decision in relation to the public interest in the item. As to whether the information could have been obtained any other way, the Authority was satisfied that it was reasonable for the broadcaster to conclude that it could not.

The intrusive filming in Decision 2000-108-113 was justified by a legitimate and strong public interest, but intentional interferences such as that would not be considered to be acceptable in all cases. In Decision 2000-139, an interview with the Minister of Maori Affairs designate, Parekura Horomia, was broadcast on Holmes. In an addendum to the interview, viewers heard a recording of comments made by Mr Horomia during a filming break about his distrust of the media. In this case, the Authority did not find the private facts disclosed in the recording to be offensive and objectionable, and it also did not consider that the broadcaster was using such facts to abuse, denigrate or ridicule Mr Horomia. However, on this occasion, the Authority concluded that the broadcast did intentionally interfere with Mr Horomia's privacy. In the Authority's view, there was insufficient public interest to justify such interference, and any consent given to the interview could not be considered to extend to consent to the broadcast of the private comments about the media.

There were quite a number of privacy complaints involving public figures in 2000. Apart from Dr Fahey and Mr Horomia, Hon Reverend Graeme Lee was another
public figure who was thrust into the media spotlight involuntarily. In Decision 2000-133/134, an episode of Private Investigators, a series about the activities of private investigators in New Zealand, was broadcast, and the programme included footage of Mr Lee, a gospel minister and former Member of the Parliament, arriving for a prayer meeting at a house where a private investigator was in the process of recovering goods from its occupants. Mr Lee maintained that, not only was the broadcast a breach of his privacy, the manner in which he was featured was outrageous, scurrilous, and very damaging to his credibility and character. He also contended that he had not consented to the filming or to the use of the footage. Since the filming involved could not be considered to be a sufficiently offensive interference with Mr Lee’s interest in solitude or seclusion and there were no highly offensive or objectionable private facts disclosed in the programme, the Authority found no breach of privacy in this case. However, as Mr Lee was not involved in the wrongdoing which gave rise to the presence of the cameras, his chance arrival was unfairly exploited by the broadcast, and this exploitation was exacerbated by the advance on-air promotion of the item, which referred to a “run-in” with a former politician, and also identified Mr Lee. By making Mr Lee the central character in the story without his explicit consent, he was considered to be unfairly treated by the broadcast.

While talking about fairness, there was another case in the year which showed that sometimes broadcasters could be found to be acting unfairly in their dealings with the general public as well. In Decision 2000-103, an episode of Motorway Patrol showed footage of a motorist driving without a seatbelt who was stopped by a police officer on a motorway, and it was found that there appeared to be an outstanding warrant for her arrest. The driver complained to the Authority that her privacy was breached.
because private facts about her had been revealed without her permission. In fact, she noted, there had been no outstanding warrant. The matter had been resolved at the time of her initial arrest, and she had been granted police diversion, which ensured that the offender would have no record and information relating to the offence would not be on the public record. On the other hand, the broadcaster advised that the complainant had consented to the broadcast and that therefore she had no basis for claiming a breach of privacy. In the Authority’s view, the complainant appeared to be under a misapprehension about the nature of her consent. Apparently she considered that she could either rescind her written consent, or could qualify it some time later. As broadcasting standards issues of privacy and fairness overlapped on some occasions, the Authority suggested to the complainant that she might wish to lodge a formal complaint with the broadcaster complaining that she had not been dealt with fairly in the item, and the Authority understood that she did take that action.

The police diversion scheme was also mentioned in two other cases that the Authority dealt with in 2000. In Decisions 2000-178 and 2000-179, two different programmes on two different broadcasters showed footage of employees stealing from their workplaces, and complaints were then lodged with the police diversion scheme as their defence. However, the Authority considered that being granted the police diversion did not mean the preservation of anonymity in the media. In the Authority’s view, the fact that the people had been accepted for the police diversion scheme was sufficient evidence that they had admitted to stealing, and the facts about their stealing remained in the public arena whether or not their names were suppressed in court.

In some cases, a piece of footage could be regarded as no breach of privacy when
featured in one genre of programme, but not in another genre. In Decision 2000-141/142/143, footage of a car accident was shown during two news items about bad weather and related problems faced by drivers in the Queenstown area, and then more detailed footage was also screened during an episode of Ice As. When dealing with the news items, the Authority found that the broadcaster went very close to breaching the complainant’s privacy. The Authority took the view that filming conducted at accident scenes must be conducted with sensitivity and care, and, in this case, when the complainant requested that filming cease, the continued filming intentionally interfered with her interest in solitude and seclusion. However, the Authority considered that the broadcaster was justified in drawing attention to the issue of road safety in the news items. On the contrary, the Ice As item differed from the news items in that an extended version of the footage was broadcast, and it was shown in the context of a segment of a comedy show, where those featured were ridiculed for their behaviour. The item disclosed much more than the brief shot of the injury to the complainant’s head shown in the news items. Moreover, she appeared shocked and traumatised, and in particular the extended footage revealed the extent of the bleeding from her head wound. In the Authority’s view, the broadcast became even more intrusive because of the detail shown and because filming continued well after she had been seen to request that it cease. Furthermore, unlike the news items, the Ice As item could not be justified by any public interest in road safety.

For some cases (2000-072, 2000-081), public interest did appear to provide a legitimate defence for the broadcasts, as the items might be dealing with some topical matters or issues of concern. However, for some other cases, there was just no such reason to justify the items. In Decision 2000-132, a documentary about debtors and
debt recovery workers was the subject of an Inside New Zealand programme, and a debt recovery worker was seen outside the home of a couple with a number of children, who were said to have a debt of NZ$1,600. Footage was shown of family members filmed through a fence, and the item also featured a recording of the conversation between the couple and the debt recovery worker. The complainant and her husband were approached prior to the filming to obtain permission to be filmed, and they expressly withheld permission and made it clear that they had no wish to be shown on television. In the Authority’s view, this request was entirely reasonable, and it therefore found that the footage filmed and recorded of them within the confines of their own property violated their privacy. Besides, it considered that it was a private matter between the family and the debt collection agency and there was no public interest in the disclosure of such private facts. It also considered that the offensiveness was exacerbated by the fact that the couple had expressly declined to participate in the programme, as mentioned above. An order was made for the broadcaster to pay the sum of NZ$500 by way of compensation to the complainant.

There were also two further cases involving children in the year which are worth mentioning. In Decision 2000-043, an item about the “Screwdriver Gang” being sought by police was broadcast, and footage was shown of two pre-school children whose father was a member of the gang. Once again, as both the Authority and the broadcaster reserved, notwithstanding that consent had been given by the children’s mother for them to be filmed, the broadcast was not in the best interest of the children. As their father was alleged to have been involved in a number of serious crimes, these two children were particularly vulnerable, and there was no overriding public interest for their presence in the item. Then, in Decision 2000-165, a report describing the
circumstances surrounding the death of a child who had been killed by his mother’s partner was the subject of some news items. The items recounted that the child had been physically abused for much of his life, and one of the items included pictures of the dead boy’s limbs and torso which showed some of the injuries he had received. Hon Tariana Turia complained to the Authority that the footage showing the injuries sustained by the child was “a tragic invasion into the individual privacy of his young soul, and culturally insensitive”. Since a deceased person could not claim a legal right to privacy, the privacy complaint was declined. However, the Authority did acknowledge that, for Maori, responses to dying and the deceased are determined by customs and traditions of the whanau, hapu and iwi, and viewing the body of a deceased person is subject to particular protocols in keeping with the sacred nature of death in Maori life. The Authority accepted that the broadcast of pictures showing the extent of the injuries to the child’s body was not consistent with the respect which would normally be accorded a Maori person in death. In its conclusion, the Authority recommended that broadcasters should consider seeking independent and relevant Maori cultural advice when dealing with significantly important matters relating to Maori in the future. This was the first time that Authority had mentioned cultural issues in its decisions on privacy complaints over the years.

For the year 2000, intentional interference seemed to be the most significant factor associated with many important cases received and determined by the Authority during the year. Whether it was found to be justified, as in the Morgan Fahey’s case, or unnecessarily intrusive, as in Parekura Horomia’s case, it appeared to be a risky step for broadcasters to take in obtaining their material and presenting such material in their programmes. Therefore, it is very important that broadcasters should always
remember to deal with the matters involved with due care and diligence wherever it is necessary for them to take such a step.

January 2001 – December 2001

In 2001, the total number of complaints received and determined by the Authority had bounced back to the level of 1999, but the number of privacy complaints had continued to go down. The Authority received and determined a total of 237 complaints, and amongst them only 12 cases were privacy-related, which was half of the number of the previous year’s and contributed to 5.06% of the complaints in the year 2001. The numbers of privacy complaints directed towards radio and television broadcasters were roughly the same, with five of these complaints directed towards radio programmes, and the other seven towards television programmes.

For the radio complaints, one was upheld, two not upheld, and the other two declined to be determined. Disclosure of private facts and abuse of the airwaves were two grounds of complaint associated with most of them.

In Decision 2001-028, again a cultural issue was dealt with by the Authority. In this case, a news item on a radio station reported that a 20-year-old Tongan man, the son of an official in a named Church, had died as a result of suicide and that a service was being held for him the next day. The complainant, the victim’s brother, complained to the Authority that the broadcast breached his family’s privacy by naming his father. He also pointed out that at the time of the broadcast, the Coroner had not completed a report on the death. According to the complainant, death by suicide could be regarded
as a terrible crime in Tongan custom, and the cause of death in this case was not suicide. He noted that his father was a very senior person in the church and was, in Tongan custom, treated with the highest respect. He was well known in the Tongan community throughout New Zealand and especially in Auckland, where the broadcast occurred. In his position, the complainant considered, it was appalling that the incorrect information had been broadcast. On the other hand, the broadcaster tried to argue that the father’s high status in the church justified the broadcast in the “public interest”. However, in the circumstances in this case, the Authority did not accept that the public interest outweighed the highly offensive and objectionable nature of the information disclosed. An order was made for the broadcaster to pay the sum of NZ$500 by way of compensation to the complainant.

The inadequacies of broadcasters were again addressed by the Authority in three of these five complaints. In Decision 2001-024/025, following a work-related dispute, an announcer at a radio station allegedly made disparaging comments about the complainant, a former voluntary worker at the station, on air on one occasion, and allegedly breached her privacy on air on another. As the complaints were primarily about a work-related dispute rather than broadcasting standards, the Authority did not consider itself the appropriate forum for the resolution of this dispute, and thus declined to determine the case. However, the Authority did note with concern that the broadcaster was unable to provide tapes of the broadcasts to which the complaints related, and that was inconsistent with the requirement in Principle 8 of the Radio Code of Broadcasting Practice, which stated:

For a period of 35 days after broadcast, broadcasters are required to be able to
provide a copy of the tapes of all open line and talk back programmes, and all outside broadcast news and current affairs coverage. For the same period, broadcasters are also required to retain, or be able to obtain, a tape or script of all news or current affairs items.

Apart from Decision 2001-024/025, Decision 2001-094/095 was another case in 2001 where the Authority found the broadcaster’s tape retention to be inadequate, and it again reminded the broadcaster of its obligations under Principle 8.

A question of broadcasting ethics was raised in Decision 2001-104. In this case, an announcer from a radio station set out on what he called the “bonk patrol” during a breakfast session. He visited a woman who complained that her sleep was disturbed because of the frequent sounds of love-making in the flat upstairs. The announcer then woke up the man upstairs and asked him about such matters. The questions and answers were broadcast live on air. Since the complainant was not identifiable in the item, the Authority did not accept that his privacy was breached. However, it did consider that the ethics of the broadcast to be questionable. Had the complainant been identified, the Authority would regard the broadcast as a serious breach of privacy principle relating to offensive intrusion.

As for the television complaints, two were upheld, four not upheld, and the other one declined to be determined. One of these complaints was directed towards TV3, and the other six towards TVNZ. News and current affairs were again the most complained about types of programmes. Disclosure of private facts and use of such disclosure to abuse, denigrate or ridicule personally an identifiable person were the
grounds of complaint associated with many of them.

Decision 2001-214/215 involved two privacy complaints lodged by a particular individual against two news items broadcast by the same broadcaster. In this case, the court trial of a person accused of murder was covered by TVNZ. An item on One News showed the accused pleading not guilty, and then the same footage was used in another item reporting the jury’s guilty verdict. On each occasion, the complainant was shown standing behind the dock, about a meter away from the accused. In his complaint to the Authority, the complainant advised that he was in Court in response to a jury summons, and he pointed to the guidelines for television coverage of criminal trials which prohibited coverage of members of the jury or members of the public. He said that the coverage suggested that he was involved in some way with the accused. While a breach of the Guidelines for Extended Media Coverage of Court proceedings had certainly occurred, the broadcaster did not believe that this meant that it was not a breach of the Authority’s privacy principles. It stressed that what were breached were guidelines which had no statutory basis, and maintained that the remedy for a breach of such Guidelines was the right of the judge to terminate television coverage at any time, which should be a matter of enforcement for the trial judge instead of the Authority. None of the seven privacy principles enumerated by the Authority so far matched the specific facts of the complaints in this case. However, the Authority had already stated in its Advisory Opinions before that these principles were not necessarily the only privacy principles that the Authority would apply, and they might well require elaboration and refinement when applied to a complaint. The Authority acknowledged the broadcaster’s argument that a breach of the Guidelines relating to Court Proceedings did not automatically translate into a
breach of the privacy standard as laid down in the Broadcasting Act. In the Authority’s view, the existence of the Guidelines, however, indicated that the right to freedom of expression was not absolute. Furthermore, the Authority accepted that a breach of the Guidelines might well offer some assistance when deciding if there had been a breach of privacy under the Broadcasting Act or not. The Authority then sought advice from the Senior Judicial Communications Adviser in the Office of the Chief Justice who explained that the Guidelines were intended to provide privacy to members of the public when television covered court proceedings. The Authority further noted that a courtroom, while usually open to the public during a trial, could not be described as a “public place” in the accepted sense of the term. In this case, it considered that the complainant's proximity to the accused, his physical distinctiveness and the threats of violence which meant that extra security was provided for the trial of the accused. Due to the acknowledged potential for violence arising from the trial, the Authority accepted that the complainant and his family felt themselves under some degree of threat from those who might have assumed from the television coverage that he was involved with the accused. The Authority did not consider the camera position or the design of the courtroom to be relevant as the complainant, as with other members of the public, could have been pixellated by the broadcaster. As a result, the privacy complaints were upheld, and the broadcaster was ordered to pay the sum of NZ$500 by way of costs to the complainant.

For consumer advocacy programmes such as Fair Go and Target which dealt with services provided to the general consumers, it was very easy for complaints on programme standards such as privacy and fairness to be lodged against them by service providers. Decisions 2001-040/041 and 2001-059/060 were two such cases.
These two cases were directed towards two different episodes of the Fair Go programme, and no breach of privacy was found in either of them. However, both of them were considered to be in breach of standard G4 (fairness) of the Television Code of Broadcasting Practice. In Decision 2001-040/041, the reason provided by the complainant for his side of the story regarding the unsatisfactory service discussed in the item was, the Authority considered, not given adequate weight. In the Authority’s view, it was essential that the person being investigated was also given a “fair go”, and, therefore, the complainant was found to be unfairly treated by the broadcast. Then, in Decision 2001-059/060, unsatisfactory and costly computer repairs provided by a company were under scrutiny, and the computer owner was equipped with a secret microphone when she approached the complainant’s home. The Authority was unanimously concerned about the practice, whereby a protagonist in a consumer advocacy programme, who was not a journalist, was “miked up”. It concluded that, although there was no breach of privacy involved, the “miking up” of the protagonist and the recording of the conversation were considered to be unfair to the complainant.

From time to time not only fairness seemed to overlap with privacy, but some other programme standards could be found to overlap with it as well. In Decision 2001-001, a skit on a snowboarding programme featured footage of graffiti seen on a playground structure, and the presenter read out some of the sexually explicit graffiti, which included the first names of several people. The Authority acknowledged that the graffiti in itself might have invaded the privacy of those named, but it was unable to find that broadcasting the graffiti disclosed any “private facts” in contravention of the privacy principles, as graffiti is public by its very nature. Any facts which might have been private became public, however intrusively, once they became the subject
of the graffiti in a public place. Nevertheless, the Authority found the broadcaster to be in breach of standard G2 (good taste and decency) of the Television Code of Broadcasting Practice by broadcasting the graffiti. Not only was the graffiti offensive, but, in the Authority’s view, it was highly offensive to broadcast the named people’s names. The Authority found that it was in extremely bad taste to take the names of real people and make them public to an audience which might not have known about them.

Decision 2001-018 was another case involving a deceased person. In this case, a documentary endeavoured to identify the root causes of child abuse and violence in the Maori community, and archival footage of the late Mr Tapua Heperi and his family, taken more than thirty years ago, was used towards the end of it to illustrate the rural lifestyle many Maori were said to enjoy formerly. Mr Heperi’s family complained to both the Authority and the broadcaster that use of the archival footage was unfair, and had breached the privacy of their father and their family. They said that permission to use the footage had not been sought, and its use in a documentary about child abuse had made them “guilty of abuse by association”. Once again the Authority pointed out that a deceased person could not claim a legal right to privacy, so Mr Heperi’s privacy was not considered to be breached. As for his family members, the Authority was not satisfied that the identification threshold had been reached; and, even if they were identified, it considered that the item did not disclose any facts about the family which could be considered highly offensive or objectionable. However, the Authority did find that this item raised an issue of broadcasting ethics. In this regard, the Authority drew broadcasters’ attention to the United Kingdom Broadcasting Standards Commission’s Code on Fairness and
Privacy, which required broadcasters to be particularly careful when using previously recorded material out of context. This Code required broadcasters to take special care when using material originally recorded for one purpose in a later or different programme, so as not to “create material unfairness or unwarrantably infringe privacy”. From an ethical point of view, the Authority considered that the broadcaster did not adequately consider the potential ramifications for the Heperi family when it chose to use this particular archival footage. It noted the complainant’s comments about a follow-up film being made relatively recently, and suggested some effort be made, where at all possible, in the future to at least inform participants in that archival footage that such material was to be used in a different context. As a result, the Authority was giving consideration to issuing an Advisory Opinion to this effect.

For some cases, the Authority might be found to be unable to determine the complaints due to some sensitive issues involved in the cases. Cases of this character were considerably rare, but Decision 2001-090/091 was one such case. In this case, the Authority had carefully considered the matters raised in the material provided to it by both the complainant and the broadcaster. The Authority decided not to determine the complaints in this case for the following reasons. First, the matters raised in the complaints were highly sensitive and personal. Second, the lengthy correspondence provided by the parties raised questions of fact which the Authority was not satisfied could be resolved, even with the benefit of a hearing. Moreover, if it determined the complaints, the Authority was required to give public notice of its decision in this case, which in turn was required to include the Authority’s reasons for its decision. Given the likelihood of public disclosure of information highly sensitive to the complainant following issue of its decision, the process of determining the
complaints, in the Authority’s view, would have potential to compound the harm which gave rise to the initial complaints.

In the year 2001, radio broadcasters were still, from time to time, found to be breaching broadcasting standards with regard to two grounds – inappropriate abusive use of airwaves and their inadequacy in tape retention, so these might be the areas that they needed to be more mindful of in terms of their programme presentation. As for television broadcasters, the case involving the coverage of a court trial proceeding should shed more light onto their understanding of the boundaries that they should be working within while dealing with the reporting of such court cases. For some television programmes which might normally attract privacy complaints, apart from keeping themselves from breaching the privacy standard, they should also be more watchful with the handling of some other programme standards, such as fairness, good taste and decency. Such programme standards were often found to be associated with privacy cases.

January 2002 – December 2002

There was a slight decrease in the total number of complaints received and determined by the Authority in the year 2002, and the Authority dealt with a total of 214 complaints during this particular year. Amongst them, 36 complaints were found to be privacy-related, contributing to 16.82% of the total complaints. That might appear to be a significant increase, tripling the number of privacy complaints in the previous year, but, in fact, this sudden growth was caused by a particular case in which a single complainant brought a massive number of complaints before the Authority for its
determination. Therefore, the increase was actually not as significant as it might seem to be. 22 of the privacy complaints were directed towards radio programmes, and the other 14 towards television programmes. This appeared to be a rare occasion for radio complaints to surpass that of television complaints by such a big difference in their numbers, but, again, that was due to that one particular case mentioned above.

For the radio complaints, three of them were upheld, 18 not upheld and one declined to be determined. Nearly all of them were lodged against entertainment programmes, with the exception of one which was against a talkback programme. A majority of them involved the two common grounds of complaint, which were abuse of the airwaves and disclosure of private facts to abuse, denigrate or ridicule personally an identifiable person.

Decision 2002-128~143 was that particular case with the massive number of complaints attached to it. As stated in the Appendix of the Authority’s annual report for the 2002-2003 financial year, all of these 16 complaints were determined under the same nature of “breach of privacy, unfair, encouraged denigration”. Amongst them, 3 were upheld as a breach of the fairness standard for some aspects of 3 of the broadcasts involved, but none of them was upheld as a breach of privacy. In this case, along with allegations on some other programme standards, a woman complained to the Authority that eight morning broadcasts on The Rock breached her privacy, and the broadcaster had used the airwaves to ridicule and denigrate her by allowing the announcer and some listeners to make some derogatory comments and remarks about her on air simply because she had been successful in having the bulk of her complaints against the broadcaster upheld on a previous occasion. The complainant
said that although she had not been named in the broadcasts complained about, she had been named numerous times on air in the past, and, by now, she should be considered to be more than identifiable to the station’s listeners. The broadcaster responded to the Authority that the complainant’s complaints were “frivolous, vexatious or trivial”, and that the Authority should decline to determine them on such grounds. It said that none of the items complained about remotely amounted to a breach of the complainant’s privacy. As a preliminary procedural matter, the Authority was required to consider the broadcaster’s request that it decline to determine the complaints on the basis that they were vexatious. The broadcaster argued that the complaints were vexatious for a number of reasons, including the fact the complainant had made “well in excess of 100” complaints to the broadcaster. The Authority’s jurisdiction as stated in the Broadcasting Act allowed it to decline to determine the complaints if they were really found to be “frivolous, vexatious, or trivial”. The issue was not whether the complaint was made vexatiously, but whether it was a vexatious complaint. Both the number of complaints made by the complainant, and the fact that she might have been the only person to have complained about a particular broadcast, were, in the Authority’s view, irrelevant. The Authority considered that it would usually have to be satisfied that a complaint had been brought in the knowledge that there was no reasonable prospect of it being upheld, before it would exercise its discretion not to determine it. In this case, the Authority did not find this high threshold to be met in relation to any of these complaints. In the Authority’s opinion, the complaints were legitimately made on the basis that the complainant considered that broadcasting standards relating to fairness and privacy had been breached. However, as the complainant was considered to be unidentifiable in the items, none of the items was found to be in breach of her privacy.
Although these complaints were not upheld as privacy complaints in such circumstances, here the Authority made an important point that broadcasters could not avoid dealing with some complaints simply because they felt troubled by the complainants. If such complaints were found to be legitimately made, they would still be obliged to deal with them properly.

As briefly mentioned above, abuse of the airwaves continued to be associated with many radio complaints during the year, and sometimes broadcasters could be found to be going a step too far in using the airwaves to advance their own interest. In Decision 2002-077-080, a message asking anyone who knew the whereabouts of a man to contact the broadcaster was broadcast at various times on four different radio stations operated by the broadcaster. The man complained to the broadcaster that a “missing person” report had distressed him and his family and had breached his privacy and was unfair to him. The complainant believed that the message was broadcast in order to locate him, as the broadcaster incorrectly assumed that he owed money to the broadcaster. In response, the broadcaster maintained, first, that the complainant was not referred to as a missing person, and, second, that he had given a personal guarantee for his former company’s cheques. The complainant responded to the broadcaster by arguing that he was no longer an officer of that company, and he strongly denied that he had given any personal guarantees. The Authority did not consider that the broadcast was a “missing person” message. However, since the purpose for the broadcaster to seek to contact the complainant was found to be for retrieving an unpaid debt, the majority of the Authority considered that the broadcaster used its position unjustifiably for private purposes, and it was concluded that the intrusion into the complainant’s interest in seclusion caused by the broadcasts
was offensive to the ordinary person. The majority of the Authority believed that there was an essential difference between a private radio broadcaster using its frequencies to broadcast a large number of messages requesting information as to the whereabouts of a certain named individual and regular public notice advertisements in the print media placed by parties other than a newspaper, with the former being a less common practice.

Besides abuse of the airwaves, radio programmes continued to have another common problem – inadequate tape retention – in 2002 as well. In 2002-093, in a talkback programme, allegations were said to be made by a caller from a named city that a principal of a high school was a lesbian and that two teachers had been “having it off in a gym”. A complaint was lodged with regards to programme standards such as the observance of good taste and decency, the maintenance of law and order, privacy, balance, fairness and accuracy. The broadcaster declined to accept the complaint as it argued that it had not been lodged, as required by the Broadcasting Act 1989, within 20 working days of the broadcast. In response, the complainant maintained that the complaint was filed within the requisite time frame. The Authority ended up finding that the complaint about the broadcast was lodged within the required time. The Authority had made considerable efforts to gather information in order to be able to rule on the content of the broadcast. Those efforts, it concluded, had been unsuccessful. The Authority noted that the matter should have been capable of easy resolution had a tape recording of the broadcast been made and provided to the Authority. However, once again the broadcaster was found to be unable to provide the Authority with a tape of the broadcast complained about. The broadcaster’s failure to provide the Authority with a tape of the item complained about on this
occasion was not an isolated incident. The Authority had recorded its concern in earlier decisions when its determination had been compromised by the lack of a tape. In this case, the Authority decided that, in the absence of a tape, it was unable to determine the complaint. This was the first privacy case for which the Authority decided to decline to determine due to the absence of a tape, and the broadcaster was once again warned about the possible promulgation of a new rule relating to the retention of tapes.

Decisions 2002-039 and 2002-144/145 were two cases involving radio competitions, but the circumstances involved in the complaints lodged relating to them and their accompanying results were considerably different from each other. In Decision 2002-039, the results of a “spot the difference” competition were broadcast, and the complainant’s incorrect answers and her name, city of residence and email address were read out on air during the broadcast. The complainant complained to the Authority that her privacy had been breached by the broadcast, and it had caused her humiliation and distress. In the Authority’s view, unless there was evidence to the contrary, it was implicit that a person who entered a radio competition was consenting to the publication of the details disclosed on the entry form. In this instance, the complainant volunteered her email address to the broadcaster when she entered the competition, and the Authority was satisfied that the broadcaster did not broadcast identifying details with the intention of ridiculing her. Accordingly, in the Authority’s opinion, the broadcaster did not infringe her privacy when it broadcast her name, her city of residence and email address on air. Then, in Decision 2002-144/145, another complainant’s work place details were broadcast when he entered a radio competition, after he had specifically stated that he did not want his work place disclosed on air. In
this case, the Authority considered that there was a clear breach of the complainant’s privacy, because it seemed apparent that the identification of the complainant along with such details disclosed in the broadcast was without his consent, and most importantly no public interest defence was applicable in these circumstances. Finally, in this decision, the Authority once again expressed its concern that the broadcaster did not provide a tape of the broadcast complained about. The Authority agreed with the complainant’s comments that the absence of tape “must be a severe impediment to the Authority’s work”. The broadcaster was again reminded of its obligations to keep tapes and to ensure that it had in place a proper procedure for dealing with complaints under the Broadcasting Act.

Decision 2002-176/177 was another case where there existed an overlap between privacy and fairness. In this case, the International Laugh Festival was discussed on a radio station, and a Pacific Island comedian, who was not included in the televised Gala part of the Festival, was interviewed. The interviewee named the complainant as the producer of the Festival, and among a number of critical comments, raised the possibility that she was racist. As the broadcast complained about involved opinion, not the disclosure of private facts, the Authority concluded that the broadcast did not breach the privacy standard. However, the Authority had no hesitation in concluding that the broadcast, with the interviewer encouraging and leading the interviewee to make such critical comments, was unfair to the complainant.

As for the television complaints, four of them were upheld, and the other ten declined. Three of these complaints were directed towards TV3, and the other 11 towards TVNZ. Current affairs remained the type of programme that received the biggest
number of the complaints, being closely followed by news and information programmes. Apart from disclosure of private facts which was associated with most of the television complaints in the year, intrusive filming was found to be another significant ground of complaint that was referred to in many of these complaints.

Decision 2002-067~070 was a rare case in which the broadcaster was ordered to pay the maximum amount of compensation to the people whose privacy was breached by its programme, so it would be reasonable to say that it must have dealt with some matters that were considered by the Authority to be significant. In this case, an item broadcast on Holmes reported on sensitive information about two women which had been found on a second-hand computer hard drive that used to be owned by a counsellor to whom the women had been referred by the Accident Compensation Corporation (ACC). The computer files contained detailed information about sexual abuse claims made by the women. Extracts from the files were shown on screen, and excerpts from the interviews with the two women were also included in the broadcast. The techniques used to disguise the identity of the women had been flawed, and as a result of identifying the women, such highly offensive and objectionable facts were revealed about them, when they “were in effect named without their consent”. The Authority agreed that their privacy was breached, in that the broadcaster revealed extremely sensitive private facts, facts which the Authority considered highly offensive and objectionable to a reasonable viewer of ordinary sensibilities. Moreover, the Authority noted that there were other issues raised in the complaints which related to the ethics of the broadcast, and these issues have been the subject of debate in the news media. They related to matters such as whether it was necessary to track down and inform the women of the information leak, whether it was necessary
to broadcast interviews with the women and the extent to which this re-victimised
them, and the adequacy of the consent given by the women to the interviews. In the
Authority’s opinion, it was totally unnecessary to address these matters, as the
broadcaster conceded. The Authority noted that the social objective of regulating
broadcasting standards should be to guard against broadcasters behaving unfairly,
offensively, or otherwise excessively. With all the circumstances involved taken into
consideration, the Authority concluded that the broadcaster had seriously crossed the
line in this case; and, as a result, the women were unfairly treated, and they suffered a
serious violation of their privacy. The broadcaster was ordered to broadcast an
approved statement explaining why the complaint was upheld, to pay each of the two
women the sum of NZ$5,000 as compensation for breaches of their privacy, and to
pay the sum of NZ$2,500 by way of costs to the Crown.

Normally when broadcasters reported on stories involving victims of sexual crimes,
there could easily be found a breach of privacy. However, it is not necessarily the
case for every incident. Specific facts regarding each individual case still need to be
taken into account for consideration. Decisions 2002-016/017 and 2002-018/019
were two decisions that dealt with a particular complainant’s complaints towards two
broadcasters on the same matters. In this case, the complainant, a New Zealand
woman, was the victim of a rape and other serious violent offences in the United
States. Twenty years after the offences, an alleged offender was arrested because of
DNA evidence. A clip from the press conference in the United States announcing the
arrest was shown in the news items on two broadcasters, and a police officer at the
conference held up a photograph of the victim taken at the time of the offences. In the
Authority’s view, the showing of the photograph would hardly be considered to
enable viewers to identify the complainant. Then, the Authority also took the complainant’s concern about the unnecessary distress which the item caused to her and her family into consideration. When determining whether the intrusion was unnecessary or necessary, the Authority considered, first, the public interest justification for the report, and secondly in this case, the fact that the item did not dwell on the injuries in a gratuitous way. Taking these matters into account, the Authority concluded that the intrusion was neither unnecessary nor gratuitous. The care taken in presenting the item showed concern on the broadcaster’s part to broadcast the item in a way which was not sensational.

When looking at these two cases involving sensitive sexual issues, as mentioned in the previous two paragraphs, it is important to note that some differences between the cases could be seen in the ways broadcasters chose to deal with the coverage of such stories, and such differences could really make a difference in how the items were perceived with regards to broadcasting standards.

The number of privacy cases involving children seems to have considerably decreased within these few years, but they were never without significance whenever they emerged. In Decision 2002-032, an item on 20/20 entitled “Paradise Lost” was broadcast, and the item considered the image of Fiji as a place of poverty and child prostitution, raised by allegations arising from the murder of Red Cross director John Scott and his partner. ECPAT, an organisation which campaigned to end child prostitution, pornography and trafficking, complained to the Authority that the programme had invaded the privacy of the children who were featured in the item. In its response to the privacy complaint, the broadcaster submitted that the Authority did
not have jurisdiction over the privacy of individuals outside New Zealand. It also submitted that there had been no privacy breach as no evidence had been brought to show that the children or their families felt that there had been any breach, and that there had been no public disclosure of the material as the people concerned were not in New Zealand. The Authority did not accept such propositions from the broadcaster. It considered that the proper interpretation of the phrase “the privacy of the individual” in the Broadcasting Act was not limited to those in New Zealand. If information was broadcast in New Zealand about an identifiable individual, then the Authority’s jurisdiction would be invoked. The Authority found that the item broadcast highly offensive and objectionable facts about the children featured, and it did not agree with the broadcaster that those facts were not publicly disclosed. The Authority considered that there was a public interest in the subject matter of the item (the development of a child sex trade in a neighbouring Pacific country which many New Zealanders visited). However, it considered that the public interest did not apply to excuse the broadcast of private facts about the identifiable individuals in this case. Furthermore, when the broadcaster maintained that ECPAT had no connection with the individuals whose privacy it alleged had been breached and thus the privacy complaint should not be upheld, the Authority once again reminded the broadcaster that there was no requirement in the Broadcasting Act that those who make privacy complaints needed to have any connection with the individuals whose privacy they considered to have been breached, and this point had already been noted in several previous decisions. Then, as a related argument, the broadcaster said that ECPAT had not brought evidence to show how the individuals or their families felt about apparent breaches of privacy. To this point, the Authority responded that its practice of determining complaints on the papers did not allow for evidence to be adduced.
When it considered complaints that allege a breach of privacy, the Authority considered the broadcast and the arguments of the parties against the objective standards enumerated in the Authority’s privacy principles. According to these submissions from the broadcaster in this case, it seemed possible that some broadcasters might have a misinterpretation of some parts of their responsibilities and the role of the Authority under the Broadcasting Act 1989, and such a misinterpretation might lead them to misjudge their actions in their coverage of some stories. In this case, a serious breach was found on the privacy and fairness standards, and the broadcaster was ordered to broadcast an approved statement explaining why the complaint was upheld, and to pay the sum of NZ$463.50 by way of costs to the complainant.

There were two cases in 2002 that involved a consent issue, and there seems to be communication problems between the people and broadcasters involved in both of them.

In Decision 2002-020, an episode of Weddings: Happily Ever After? was broadcast, and the programme reported on the state of the relationships of some of the couples who had appeared on previous episodes of Weddings. One of the couples complained to the Authority that the programme had breached standards relating to privacy. They maintained that they had not consented to the inclusion of information about them or their baby daughter in the programme. In its response to the complaint, the broadcaster submitted that the couple had provided written consent in relation to the use of the original footage from Weddings which had been repeated in the programme, and had provided the new information freely. Furthermore, it did not
consider that it had breached any privacy principles and, in addition, maintained that the family had consented to any invasion of their privacy. The Authority found no doubt that consent to the broadcast had been given. Nevertheless, the Authority observed that the consent that was required by the production company was a matter of concern as it appeared to be unfair in its wide-reaching and long-ranging application. The Authority noted that this was a matter which it intended to consider in its forthcoming research into privacy and informed consent.

Then, in Decision 2002-193-196, a couple was shown making the final bid in the auction for a house during an episode of the reality series Location, Location, Location, and the bid was unsuccessful as it failed to reach the reserve. They claimed that they had approached the programme director and believed that they had reached an agreement that they would not be included in any broadcast. In response to the complaints, the broadcaster maintained that the couple had not approached the director until after the bidding concluded and their request not to be filmed negotiating a possible purchase had been respected. As the filming on this occasion did not involve intentional interference (in the nature of prying) with the couple's interest in solitude or seclusion, the Authority did not uphold the privacy complaints. However, the Authority did find that there was an irreconcilable conflict of facts as to the particulars of the request not to film, which it declined to determine.

Decision 2002-005/006 was a minor case, but it made an interesting point. In this case, a disagreement about the control of ice skating on Lake Ida between the Lake Ida Sports Association and the surrounding landowners was covered in a news item, which included footage of a trespass notice. The company which owned the land
filmed in the footage, through its solicitors, complained to both the Authority and the broadcaster that the news crew, accompanied by a representative from the Sports Association, had entered the land without consent, and by doing so, the complainant argued, the broadcaster showed disrespect for the principles of law and had breached the complainant’s privacy. In the Authority’s view, people only, rather than legal persons, are eligible to make a privacy complaint. As the privacy complaint on this occasion was made by a company, the Authority found that the company did not have a right to privacy under the Broadcasting Act 1989, and thus it declined to uphold the privacy complaint.

In the year 2002, the privacy cases in the radio complaints appeared to be reinforcing the impression that abuse of the airwaves and the radio broadcaster’s inadequacies to carry out their obligations in certain aspects of their complaints procedure were two problematic areas which they really had to be more attentive to. As for the television complaints, consent issues, misinterpretation of the Broadcasting Act and dealings of sensitive issues seemed to be some areas that broadcasters needed to be more attentive to.

January 2003 – December 2003

In the year 2003, the total number of complaints received and determined by the Authority had continued to decline, and a total of 187 complaints ended up being dealt with during the year. Among them, ten cases were privacy-related, contributing to 5.35% of the year’s complaints. For these ten privacy complaints, one of them was directed towards a radio programme, and the other nine towards television
programmes. That was the lowest number of privacy complaints received and determined by the Authority in a year since 1996.

As mentioned in the previous paragraph, there was only 1 radio complaint in 2003. It was not an upheld case, but the Authority surely did raise some important points in its determination. In this case, “Cleaning Out Your Closet” was the name of a competition run by a radio station in which callers spoke about something they wanted to get off their chest. A woman caller said that she had discovered that the man she was “sleeping” with was her half-brother, but she had not told him. She then made a telephone call to her half-brother advising him of their relationship. That telephone conversation was recorded by the radio station, and, approximately half an hour later after technically disguising the man’s voice, it was broadcast. Once again the Authority recorded its regret that it had not been able to listen to a tape of the broadcast complained about. In the past, it had frequently found that it had been unable to determine a complaint about a radio broadcast in the absence of a tape as the tone of the broadcast was often critical to the complaint and the Authority’s finding. Fortunately, the tone of the broadcast was not central to these complaints, and the Authority had been able to complete its task. However, it still needed to warn the broadcaster about its failure to retain the tape. Moreover, the Authority noted that the complainant made every reasonable effort to lodge her complaint within the 20 working day period allowed in the Broadcasting Act, and she advised that she found it difficult to ascertain an address for the broadcaster to which to send her formal complaint, which led her to question whether the process was designed to discourage complainants. This brought the Authority to further express its concern with regards to the inadequacies of the process put in place by the broadcaster for receiving
complaints about broadcasts. In this case, the broadcast was not a spontaneous, open line call-in. Rather, the broadcaster had 30 minutes from after the call until the broadcast to reflect and exercise judgment. The Authority did not question the right of a broadcaster to discuss incest. However, on this occasion, the topic was not discussed in an informed manner as a matter of freedom of expression. Instead, calls were broadcast for the entertainment of listeners in response to a radio contest. The Authority concluded that the decision to broadcast the inherently intimate discussion, after having had some 30 minutes to reflect on contents of the call and the possible impacts upon the participants, indicated an insufficient appreciation by the broadcaster of the standards which it was required to maintain. Although the privacy complaints were not upheld, the broadcaster was found to be in breach of good taste and decency. As more and more radio programmes start to deal with controversial and sensational topics, such as that mentioned in this case, this particular case could be regarded as a reminder for broadcasters to exercise their judgment with more appreciation of the broadcasting standards.

As for the television complaints, two of them were upheld, six not upheld, and one declined to be determined. Two of these complaints were directed towards TV3, and the other seven towards TVNZ. Current affairs and entertainment programmes were found to be most complained about, and news programmes were just slightly behind in its number. During the past few years, there appeared to be a trend for entertainment programmes to be associated with privacy complaints on more and more occasions, and that might be due to the ever increasing number of reality programmes featured on television. Disclosure of private facts and intentional interference (in the nature of prying) were considered to be the most common grounds
of complaint, and that seems to be an expected and reasonable outcome given that such grounds of complaint were usually associated with reality programmes.

For some cases, it was dangerous for broadcasters to superficially make their own assumptions about how viewers would perceive certain information when such information dealt with some sensitive issues without seriously taking the consequences that their programmes might inflict on the people involved into consideration, and Decision 2003-075 was one such case in which a broadcaster was found to make such a mistake. In this case, issues about the mental health system in New Zealand were addressed in a current affairs programme, and the complainant was a mental health campaigner and agreed to participate so long as there was no reference to her family. In a voice-over, however, she was introduced as the “mother of a schizophrenic”. The complainant complained that the reference to the family was contrary to an express agreement, and, accordingly, it breached both her privacy and that of her son, and was unfair. The broadcaster argued that it found it difficult to accept that the private fact revealed in the programme that the complainant’s son had a mental illness was a highly offensive or objectionable fact. Unfair it certainly was, but the broadcaster considered that it should not be regarded as a breach of privacy in an environment where many people were working towards reducing the stigma that is attached to mental illnesses. The Authority noted that it was aware of the media campaign which aimed to reduce the prejudice attached to mental illness. However, in the absence of evidence that attitudes had changed, it considered that the broadcaster had over-estimated the campaign’s impact. Accordingly, it concluded that the disclosure of private facts in this case was highly offensive and objectionable to a reasonable person of ordinary sensibilities, and thus the privacy complaints were
upheld. The broadcaster was ordered to pay to the complainant the sum of NZ$1,500 by way of compensation for breach of her privacy, and the sum of NZ$750 by way of a contribution towards her expenses.

Cases involving children continued to be found in the year 2003, but the outcomes of their determination were necessarily found against the broadcasters. In Decision 2003-070, coverage of a famous rally driver's funeral service was broadcast on Holmes, and the item included the tribute made by his eight-year-old son. A viewer complained that the item breached the child's privacy, and he found the broadcaster's extensive coverage of his tribute to his father and its related national and international media exposure to be irresponsible. Then, in Decision 2003-107, an item on 20/20 entitled "In Harm's Way" was broadcast, and the item examined the actions of the Department of Child, Youth and Family Services (CYFS), focussing on four families that the Department had been involved with. Some footage of the children involved had been featured in the item. In both of these children cases, the Authority considered that the broadcasters had been acting responsibly, and the best interests of the children had truly been taken into serious consideration while deciding to broadcast such stories. As children would always be considered to be vulnerable when it comes to media coverage, this could be regarded as a good sign that the broadcasters had realised more about their responsibilities in their roles for the protection of children; and if they could continue to do so, there would probably be much fewer privacy issues relating to children that would emerge in the future.

Throughout the years, public interest had been a popular reason (or excuse) raised for the coverage of many stories, and the year 2003 was no exception.
In Decision 2003-122/123, events following an air crash near Christchurch in which eight people died and two survived were dealt with in a news item. The item referred to one of the two survivors, and included an edited answerphone message recorded from his home phone. In the message, the survivor's wife advised that he was home from hospital and doing well, and she thanked callers for their love and concern. The couple complained directly to the Authority that the broadcast breached their privacy. Pointing to the stress that they had been under in the week after the accident, they explained that the answerphone message also advised the media that they were not giving interviews, and they also objected to the inclusion of a photograph of their home in the item. In the Authority's view, there was, and remained, considerable media interest in the air crash and subsequent events, and the media interest in the survivors' conditions was to be expected. While acknowledging the interest, it was not surprising that the complainants found the media interest at the time to be very unpleasant and highly intrusive. The Authority accepted that, while the message on the answerphone appeared primarily directed at friends and acquaintances, it was also in part directly addressed to the media. Moreover, the Authority noted that it contained information which the media would find relevant and wish to use in the public interest. The Authority acknowledged that the complainants might not have intended the answerphone message to be public, but considered that the message was in the nature of a public statement which anyone could access. As part of the message was directed specifically at the media, it was not unreasonable to expect that the media could access and make use of that message. In this instance, a breach of the privacy standard essentially required the disclosure of highly offensive private facts or intrusion in the nature of prying. The facts disclosed were private, until they were
released by the complainants, and, in addition, they could not be regarded as highly offensive. Therefore, using the information obtained from the answerphone message which was intended for all callers did not, in the Authority’s opinion, amount to intrusion. As for the use in the item of a photograph of the complainant’s home, the Authority considered that the fleeting footage of the house taken from a distance did not suggest intrusion which could amount to prying in breach of the privacy standard.

Then, in Decision 2003-017, the repossessing of a boat on which money was owing for the outboard motor was shown in a segment on Private Investigators. The boat was taken from what appeared to be the front lawn of the complainants’ home. Because one of the complainants at times adopted an aggressive tone, the police were called to ensure that the incident did not become violent. All of these were filmed, and the footage was shown in the programme. The owners of the boat complained through their solicitors to the Authority that the broadcast breached their privacy. They considered that the portrayal of the event which occurred some 17 months previously, and 12 months after the boat and motor had been fully paid off, was shameful and humiliating. In response, the broadcaster advised that viewers would have been likely to have some sympathy for the complainants given the officious and unreasonable actions of the private investigators. It also pointed out that the events had taken place on and near a public street, and so it recommended that the complaint not be upheld. In the Authority’s view, the facts disclosed in this case were highly offensive and objectionable to a reasonable person, particularly as this was a private matter between the complainants and the repossession agents, and there was no public interest in the disclosure. With regards to the filming, while acknowledging that one of the complainants was aware of the filming, the couple were adamant that they were
not aware the events were being filmed for a television company. They claimed that they were led to believe the purpose of the filming was for security or evidential purposes, and the Authority accepted their assurances in view, first, of the specific content of the comments to the camera made by one of the complainants, and, second, as the camera equipment was unlikely to have been labelled with a broadcaster's logo. Accordingly, the Authority concluded, the couple did not consent to the invasion of their privacy.

Over the years, the term "public place" was found to be used to justify intentional interference in numerous occasions. In this case, the broadcaster also argued as a defence to the complaint that as the camera operator was standing on a public footpath, in front of the complainants' home, the filming took place in a public place, and did not involve any intentional intrusion. In the Authority's view, the position of the camera operator was irrelevant. The events filmed did not take place in a public place – a boat was being repossessed from a private property. As a result, the privacy complaint was upheld, and the broadcaster was ordered to broadcast an approved statement explaining why the complaint was upheld, along with the order to pay the sum of NZ$750 to each of the two complainants.

Apart from the privacy issues relating to those few privacy cases discussed in the previous few paragraphs, a consent issue was also found in one of the television cases in the year 2003. In Decision 2003-011/012, the rescue of a young woman who had fallen down a cliff was shown in an episode of Choppers which was a series following the activities of a helicopter rescue service. The woman rescued complained to the Authority that the item breached her privacy, claiming that she and her friends had
asked the camera operator to stop filming, and that later she had declined to consent to the broadcast of the item. The complainant recalled that although she had been semi-conscious at the time of the rescue, she had told the camera operator that she did not want to be filmed. Two of her friends, she added, had explicitly told the camera operator to stop filming. However, he had continued to film and, she said, he had told her friends that it would be necessary to obtain a signed release form before any of the material would be screened. Then, while she was staying in hospital, she had received a consent form from the production company which she had refused to sign. On her release from hospital, the complainant said that she had telephoned the production company and told the person in charge that she did not consent and did not want to participate. In response, the broadcaster denied that there was any request not to film. Moreover, it stated, the filming had occurred in a public place. The broadcaster carried on noting that it had taken an opportunity to view the field tape from which extracts of the rescue were broadcast, and to hear the sound track of the conversations which went on at the rescue site, and it maintained that the material did not contain the complainant’s request not to be filmed. Furthermore, it noted, there was no record that the complainant’s friends had told the camera operator to stop filming. As the broadcaster had referred to the tape in its response, the Authority sought a copy of the field tape. In response to that request, the broadcaster stated that such tapes would not be released voluntarily, noting that they held strongly to the view that field tapes were akin to a reporter’s notebook, and that to acquire them in the context of a complaint enquiry risked the Authority becoming involved in a broadcaster’s editorial independence. The Authority found the broadcaster’s response to its request for a copy of the field tape on the facts of this case to be questionable. In its view, pursuant to the principles of natural justice, when a broadcaster relied on the contents of a field
tape to explain its response to an aspect of a complaint, then the Authority expected that the broadcaster would provide a copy of the field tape, on request, to support its contention. Then, the Authority accepted the broadcaster’s explanation that the audio of the field tape did not contain the request made by the complainant and her friends. However, in the Authority’s view, that did not mean that the request was not made, either when the camera was not filming, or outside the range of the camera’s audio recorder. Due to the conflicting accounts concerning the request not to film which were made to the camera operator by the complainant and her friends, and the later discussion between the parties about the consent form, the Authority was unable to resolve the privacy complaint, and thus it declined to determine it. As for the fairness standard, the majority of the Authority considered that the item did not constitute such a breach, because an element of public interest and information justified its broadcast. Nevertheless, the Authority had some concern that the broadcast went ahead despite the complainant’s refusal to sign the consent form. In the Authority’s opinion, it seemed illogical to raise a participant’s expectations by inviting them to sign a consent form and then to ignore the response when the participant refused to sign, so the broadcast of the item in this situation, the Authority considered, reflected adversely on the programme maker’s integrity.

A lot of significant privacy issues have been raised in the privacy complaints received and determined by the Authority throughout the years since 1996. In the year 2003, there were no totally fresh issues dealt with in the complaints. However, through the decisions on these few complaints, it can be seen that some new aspects worth examining are still to be seen for some privacy issues that were already found to be significant in the cases of the previous years. There still appears to be new problems
emerging from time to time to be dealt with for issues such as consent, intentional interference, public interest, abuse of the airwaves, and much more to come.

All the privacy complaints that were received and determined by the Authority in the 8-year period between January 1996 to December 2003 have been examined in this study. Complaints have only been discussed in more detail when there was a significant point to be addressed. As a result, only those complaints involved in cases with significant issues associated with them from each year appeared in the discussion, and thus some of the other complaints might seem to have been omitted in the text, but, in fact, they were still regarded as indispensable material for this study.

As previously mentioned, a number of significant privacy issues were raised in the content analysis carried out in this study. As for their implications for the broadcasters in this country, they will be discussed more specifically in the concluding chapter of this study.
CONCLUSION

As stated at the beginning of this thesis, this study set out to determine the current parameters of privacy for New Zealand broadcasters and their implications for journalistic practice in this country. The author also attempted to explore the origins of the Broadcasting Standards Authority (BSA)'s privacy principles in order to achieve a deeper understanding of the evolution of such privacy principles.

Through a face-to-face interview with Michael Stace and some email correspondence with two other current staff and member of the Authority, some new insights have been gained on the historical background of the Authority’s privacy principles, and these have already been addressed in Chapter Four of this thesis.

As mentioned at the end of the previous chapter, several significant privacy issues have been raised from the content analysis conducted on the Authority’s privacy complaint decisions from the 8-year period between 1996 and 2003. Through the Authority’s determination in those privacy complaint decisions, some parameters could be drawn regarding privacy issues for both radio and television broadcasters in this country.

For radio broadcasters, the two main areas of concern were evidently abuse of the airwaves and some broadcasters’ unsatisfactory maintenance of the complaints procedure. Inappropriate responses of some broadcasters to the Authority’s upholding of a privacy complaint also constituted a problem from time to time.
Abuse of the Airwaves

This is a major area in radio for which the Authority had been motivated to stretch the application of its privacy principles. In early 1996, a few radio complaints involving the hosts' use of the airwaves to abuse the listeners caused the Authority to realise that the original five privacy principles available at that time did not cover the situations that took place in those cases, and thus prompted it to re-examine its principles. As a result, an Advisory Opinion was issued, and two further principles were added to the original five. Since these two further principles were enumerated, broadcasters have been provided with a clearer picture of the boundaries that they are not supposed to cross when it comes to disclosing certain information on air. They are now prevented from disclosing private facts to abuse, denigrate or ridicule personally an identifiable person, and from disclosing private details of an identifiable person without consent. For the programme hosts, it is still considerably easier for them to regulate themselves as to what they say live on air, but it is relatively hard to control what some listeners will say over the phone. So, since many of these phone calls are pre-recorded, it is important for broadcasters to exercise their best judgment in filtering them.

After these new principles were applied to the Authority's determination of privacy complaints over these eight years, it has been found that the level of offensiveness is also relevant when it comes to the disclosure of private facts. If the content of the private facts disclosed is not regarded as highly offensive or objectionable to a reasonable person, a broadcaster might not be considered to be in breach of privacy. Sometimes things like the tones adopted by hosts in their items are also considered to
be important factors that the Authority will take into consideration in its determination. That brings us to another problem often found in some radio broadcasters which will be addressed shortly.

*Unsatisfactory Maintenance of Complaints Procedure*

In numerous radio cases over the years, some broadcasters were again and again warned for their unsatisfactory maintenance of complaints procedure. In many cases, the Authority expressed its concern about the broadcasters’ failure to retain a tape of the broadcast involved in the complaint, and such an inadequacy had, from time to time, jeopardised the Authority’s ability to determine the complaints. The author does realise that this problem is not restricted to privacy complaints. However, just as mentioned earlier, things like the tones adopted by hosts will help the Authority to determine whether the hosts have been abusive on air or not in privacy cases. Some broadcasters were also warned about the inadequacies of the process they had put in place for receiving complaints about broadcasts. As a result, some legitimately-lodged complaints had not been justly dealt with. For these problems, it seems that some radio broadcasters, who are usually small radio stations, really need to put more effort into restoring their complaints procedure, especially the retention of tapes. Or else, just as the Authority had stated in one of its decisions (Decision 2002-093), a new rule relating to the retention of tapes might possibly be promulgated. After that, if the situation still remains unchanged, broadcasters might need to worry about even more rules being made for the maintenance of their complaints procedure.

*Inappropriate Response upon the Authority’s Upholding of a Privacy Complaint*
In quite a number of radio cases over the years, it was found that, upon the Authority’s upholding of a privacy complaint, sometimes the broadcasters did decide to respond to the complainants with some acts of remedy/compensation. However, often those actions were considered to be inappropriate. Again the author notices that this problem is not exclusive to privacy complaints. However, it seems to worsen the problems in some privacy cases. For example, from time to time, the broadcasters might decide to broadcast an apology to the named individuals for a breach of their privacy, but such a broadcast might end up exacerbating the breach by repeating the same act of privacy invasion over and over again, as the Authority noted in some of its decisions. Therefore, it would be wiser for these broadcasters to consider carefully the consequences of the actions they want to take in response to the upheld complaints, or to consult with the Authority first for its recommendations if the same complaints have been referred to the Authority as well.

Besides such issues discussed above, radio broadcasters were also found to have been pushing the limits of programme standards such as good taste and decency. From time to time, individuals’ privacy had been jeopardised from the pulling of a stunt to enhance the entertainment value of a programme. The Authority considered such behaviour to be totally unacceptable, so it might be something that radio broadcasters have to be more mindful of in the future.

As for television programmes, the protection of children, intentional interference (in the nature of prying), public interest, consent, filming in public places, broadcasting ethics and overlaps with other programme standards were the significant areas in
which the Authority has extensively dealt with the issues involved in its determination of privacy complaints over the years. Apart from these areas, the level of offensiveness also appeared to be another factor which the Authority seemed to bring up frequently in its determination of privacy cases. Since news and current affairs programmes have been found to be most complained about when it comes to privacy issues, these parameters for the local broadcasters could be useful in providing some guidelines for journalistic practice in this country as well.

*The Protection of Children*

This is an area in which the Authority has significantly refined the application of its privacy principles. Since 1999, a large number of privacy complaints involving children have been lodged, and, through them, the Authority was brought to realise that changes had to be made to protect the interests of children. Before 1999, the privacy of children was never regarded as a matter of significant concern in the media, and, accordingly, it was never given as much weight as it deserved in terms of discussion of the issues involved. It used to be that a child could be filmed or interviewed for the coverage of a story as long as consent was obtained from the child, or from a parent or someone in loco parentis. However, these privacy cases since 1999 prompted the Authority to shift the responsibilities for protecting the best interests of children in media coverage from parents to broadcasters, because it is apparent that broadcasters should appreciate the vulnerability of children when it comes to facing intense media attention. Broadcasters will always be more informed than parents about the potential effects of media coverage on children because of their knowledge and experience in the field of media production. Now, a parental
permission is no longer considered to be sufficient for filming or interviewing children, and it is up to broadcasters to make their best judgments with the best interests of the children involved taken into consideration. Likewise, when covering stories involving children, and in their dealings with children, journalists should always try never to exploit them.

*Intentional Interference*

Whether it is intrusive filming or secret recording, this is always a risky and a tricky tool for journalists to use when covering a story. When a broadcaster chooses to feature the footage or recording so obtained in their programmes, the programmes are open to complaints. Intentional interference (in the nature of prying) used to be a grey area in which the Authority had found it difficult to define the boundaries. However, in its determination of the Morgan Fahey case (Decision 2000-108~113) in the year 2000, the Authority made a significant point after having recourse to a variety of relevant references, which included the BBC Producers' Guidelines 1993 and the British Broadcasting Standards Commission's Code on Fairness and Privacy. It was observed that the BBC Producers' Guidelines sanctioned the use of information obtained in this fashion only where prima facie evidence existed of a crime or antisocial behaviour by those recorded. Although the Authority did not consider itself in any way bound by those guidelines, it recorded that this test was satisfied, and this reinforced its decision in relation to the public interest in the item. Therefore, it is important for broadcasters and journalists to ensure that there be a strong and legitimate public interest in those stories to justify their use of covert filming or recording. Covert filming or recording should only be done when all the other ways
to obtain the information have been exhausted.

*Public Interest*

Public interest appears to be the most common reason/excuse used by broadcasters in defence of their programmes, when such programmes are accused of being in breach of the privacy standard. Therefore, it is very important for broadcasters and journalists to ensure that their public interest defence is truly justifiable before they decide to take an action which might possibly involve a breach of someone else’s privacy. For some cases over the years, the Authority ended up finding that the stories were not of public interest, but were only interesting to the public instead. It is crucial for broadcasters and journalists to know the differences between reporting a story in the public interest and reporting it to keep the public interested. On the other hand, it is also important to note that how journalists perceive the meaning of public interest might differ from how the Authority views it. This will always remain a contestable area open to interpretation.

*Consent*

For the last couple of years, an increasing number of cases have been found to be associated with the matter of consent. In some cases determined by the Authority over the years, the people involved appeared to be under a misapprehension about the nature of their consent. In some other cases, the Authority found the consent acquired by the broadcasters to be a matter of concern as such consent appeared to be unfair to the people involved in its wide-reaching and long-ranging application. Furthermore,
as for some other cases in which mere agreement existed between the broadcasters and the people involved, irreconcilable conflicts of facts regarding the agreement reached for the coverage of the story were found, and the Authority occasionally found itself caught in that situation which made it unable to determine the cases. All of this illustrates that consent is still a considerably flawed area to which both the Authority and broadcasters ought to be more attentive. In fact, in one of its decisions (Decision 2002-020), the Authority had already noted its intention to consider this issue in its forthcoming research into privacy and informed consent.

*Filming in Public Places*

On numerous occasions over the years, broadcasters used the term “public place” in the privacy principle (iii) to justify their intrusive filming of people. Sometimes they might interpret it too literally, and claim that they could film someone in their private property as long as the camera was located in a public place. However, in one of its recent decisions (Decision 2003-017), the Authority clearly made the point that the position of the camera is irrelevant, and if the events filmed do not occur in a public place, it should not be considered as a justifiable filming. Nevertheless, many of the issues involved in such intrusive filming remain to be scrutinised, and it is another flawed area in which the Authority and broadcasters should formulate some further detailed instructions to eliminate the potential confusion that might be caused by the ambiguity of the current situation. By doing so, journalists could also be provided with a clearer set of guidelines regarding this matter.

*Broadcasting Ethics*
In some cases, broadcasters might not be considered to be in breach of any broadcasting standards, but the Authority might raise a point of broadcasting ethics instead. It is critical for broadcasters and journalists to exercise their best judgments in deciding how far they should go for the reporting of a story, especially when sensitive issues are involved. Some stories are of high news value, but they might not serve a public interest strong enough to justify invading the privacy of the people involved. If, after all, such intrusion is still considered to be necessary, it is important for broadcasters and journalists to remind themselves to deal with those people fairly and justly without unnecessarily jeopardising their interests. Public interest certainly does not need to be served in a sensationalised way.

*Overlaps with other Programme Standards*

This remains a grey area for the Authority, broadcasters, journalists and complainants. In many complaints received and determined by the Authority over the years, the privacy complaints were considered to be overlapping with some other programme standards such as fairness, good taste and decency, unnecessary intrusion into private grief, and so on. Sometimes the Authority might even recommend the complainant to lodge another formal complaint under such programme standards, especially for fairness. Therefore, it is crucial that, when they deal with cases involving privacy issues, broadcasters and journalists not only focus on eliminating privacy-related concerns, but also beware of issues relating to some other programme standards that might be involved as well.
Level of Offensiveness

As briefly mentioned above in the paragraph about abusive radio, for matters such as identification and disclosure of private facts that take place in a programme, the level of offensiveness is considered to be a critical factor in determining whether such matters are found to cause a breach of privacy or not. The Authority always uses “whether (whatever behaviour) is considered to be highly offensive or objectionable to a reasonable person or not” as a standard to determine the cases. However, such a standard really appears to be a bit vague, because the threshold of offensiveness is not an unchanging matter. What ordinary viewers used to find offensive just a few years ago might not be now considered to be as offensive as it was. That is an evident fact supported by an increasing number of those reality programmes in the contemporary broadcasting media. In this area, the Authority should provide a more comprehensive definition of this phrase which is used in the privacy principles, so that broadcasters and journalists will have a more solid standard to measure their practices against.

Apart from the privacy issues mentioned above, special care should also be devoted to cases involving court proceedings, the police, victims of crime and cultural issues as well. These are some areas where more communication could contribute to more understanding of the issues involved and to fewer problems being encountered. Broadcasters and journalists should also avoid any further misinterpretation of the Broadcasting Act and the Authority’s territory of responsibilities. If there is any doubt about the broadcasting act or the Authority’s role, they should try to consult with the Authority first, so that they can avoid any unnecessary disagreement when it comes to determining cases in the future.
This study argues that the Authority has a profound influence in setting the parameters of privacy for broadcasters and journalistic practice in this country, more so than any other previous broadcasting body. While going through the privacy issues discussed above, it seems evidently so. With regards to all these privacy issues, it has been found that the Authority has set the parameters for New Zealand broadcasters more precisely and explicitly than ever before. However, as discussed above, some areas still remain flawed, and they could certainly benefit from having more specific guidelines further developed.

There will always be a tension between the Authority and broadcasters. The Authority produces an ever evolving case body of decisions and laws, and it has observed that 'to find a broadcaster in breach of its nominated standards would be to interpret the Broadcasting Act 1989 in such a way as to place too great a limit on the broadcaster's statutory freedom of expression in section 14 of the NZ Bill of Rights Act 1990' (this has been stated at the end of every decision since 2002). Sometimes, when broadcasters were found to be in breach of programme standards, they were not deliberate in doing so. They were just not clear about the implications of the Authority's standards and principles. Since broadcasting standards such as privacy will always be a contestable area in which the issues involved will keep evolving from time to time, the Authority will definitely never cease facing challenges of new privacy issues in the future, as broadcasters will surely carry on making their attempts to test the limits.

Through this study, the author hopes that a better understanding can be fostered for
the privacy issues in New Zealand’s broadcasting media. This study is in no way the final word. Nevertheless, the author still wishes to make some recommendations for the Authority and broadcasters based on the discussion of the privacy issues in this concluding chapter. Suggestions will be made for future refinements in similar research, and some related topics that should be worth further exploration will also be proposed at the end of this study. They are as followings:

**Recommendations for the Authority and Broadcasters**

- For radio broadcasters, they should all devise a more proper complaint procedure to deal with receiving and determining complaints, especially in respect to tape retention.
- For the Authority and television broadcasters, a more comprehensive set of guidelines should be developed in the areas of intrusive filming/recording, especially regarding the execution of such practices in public places.
- For consent issues relating to privacy, the Authority should keep conducting research on such issues in order to provide some clearer markers for broadcasters and journalists. As for broadcasters, they should try to develop a better way to communicate with individuals about the consent or agreement involved, so that any misapprehension can be avoided.
- The Authority should attempt to come up with a clearer definition of the phrase “highly offensive or objectionable to a reasonable person”, so that any confusion can be avoided in the future.

**Suggestions for Future Research**
➢ For related studies on the Authority in the future, if the timeframe and resources allow, it would be more desirable to include all the complaints since the establishment of the Authority.

➢ This study is more focused on the content analysis conducted on the Authority’s privacy complaint decisions, so it might appear to be looking at the privacy issues more from the Authority’s perspective. If some researchers are interested in conducting similar research, they could try doing it differently by adopting the broadcasters’ perspective, and interviews could be conducted with broadcasters to explore a perspective from the industry’s side.

➢ For researchers interested in this area, consent issues relating to privacy, threshold of offensiveness, the interpretation of public interest, overlaps between privacy and other programme standards and the impact of the technological advancements on covert filming/recording are some areas that would be worth further exploration.
APPENDIX 1

INTERVIEW WITH MICHAEL STACE

Face-to-face Interview with Michael Stace (Former Complaints Manager of the Broadcasting Standards Authority (BSA))

Venue: Broadcasting Standards Authority’s office, Wellington
Date: 11/02/2004 (Wednesday)
Time: 11 a.m. – 12 noon

(MS = Michael Stace, CK = Chiew Kung Wong, the author of this thesis)

CK: Shall we start?

MS: Is the recorder ready?

CK: Yap.

MS: I wasn’t with the Authority when they have their early complaints… Mrs. McAllister… and the one from Ranginui Walker… where the Authority had to devise… where the Authority had to work up its approach to privacy, remember that actually at that time who was responsible for it was Joanne Morris… her early work based on the American book which the Authority used to develop its early approach to privacy complaints… Prosser and Keeton on Torts… and that became something that we found to be most useful… so that is what we used… and authorised in using it as a theory… we didn’t have many privacy complaints in 1991… but the recall we did have is that… (searching for a while) here we are… No. 19/92… that was the one about the fellow who was driving home and it was the subject of
that candid phone call... I was responsible for preparing that decision... and that was the first time I really had the time to come to terms with what the Authority is really all about... and so I put together that decision... and then after having worked on that decision... and reading what the Authority had prepared... it became obvious to me that there were actually some principles that had already risen which we hadn't thought to be principles... but having achieved that decision... there were apparently some principles relating back to Prosser and Keeton... and so we discussed with the Authority and decided okay... there's nothing particularly formal about that... let's have an Advisory Opinion... and that's when I prepared the Advisory Opinion... which was... have to check the date for that now...

CK: So... what was the major case that brought along the concerns about privacy?

MS: The first one was the Mrs. McAllister and funeral of that person in Christchurch...

CK: So... that's an intrusion into grief...

MS: And there is more... there's filming the funeral from over the boundary... and that led to a later intrusion into his parents' grief... that's a private funeral... the person who had died... the person who he killed was actually the son of a famous cricketer... we actually saw him in a recent Sunday newspapers... he's a pitcher... a cricketer who's going over the uphill... overweight, into alcohol and things like that... anyway... it was a son of a famous cricketer who was killed by a skinhead, wasn't it? And so it was with a high degree of public interest... and TVNZ and other broadcasters wanted to get there... and we did have a complaint from the boy's mother...
Mrs. McAllister... that it was an intrusion into their grief... that was certainly an important decision... and the other important early decision... I suppose... was that one involving Ranginui Walker... where people were told to go to his house and help yourselves... that was another 1990 decision... from the big pile of the decisions that I had worked on... the one I actually recalled was the one about the candid phone call... no. 19/92... and upon that... I drafted the decision... (after searching for a while) yes, that was just something that the Authority was working on that complaint... to develop those principles... and it wasn't as though they have thought about it... it's like... how do we deal with this complaint? And they realised from previous decisions... that's where they have their first principles...

CK: *Is that available on the Internet?*

MS: No... I will copy for you if you like... I think there's also that first decision from 1990, right? I will copy for you in a short while... what was causing the need to apply the principles was just the need to deal with a complaint... these principles have arisen from the early decisions... and from those decisions... they devised the first five privacy principles...

CK: *So before that, there was not much concern on privacy?*

MS: Before that it would of course go back to the McAllister case... I might just go and copy that as well... in case you haven't seen it...

CK: *I did some research from early 1960s... and from the annual reports of those broadcasting bodies in charge... there is not much mentioned about privacy... so has privacy become a major concern since 1989?*

MS: Because the Broadcasting Act 1989 did specifically mention about
privacy... I don’t know much about the things before 1990... that’s actually very early on when the Authority first dealt with privacy complaints... that’s in 1990... the first decision is decision no. 5 which is the McAllister... which’s about Christchurch... and decision no. 6 is about Ranginui Walker, which is another privacy complaint... I’ll give you copies of those later... those two decisions I wasn’t here for... but they were indication of that we’re right about where we were going... and at that time... the media had been privatised... (searching for a while) here... see... the concept of privacy... Joanne Morris did it... she has looked at the law for example in the Tucker case... this is the Authority’s early legal thinking... about privacy... and this is where the Authority turned those legal thoughts into its principles... those were the three important early decisions... just as I said... the principles arose just because the Authority had to deal with privacy complaints... so those are the background papers... the decisions themselves...

CK: *In 1996, there was the addition of two further privacy principles...*

MS: That’s in 1999... no, you are right... 1996... the Authority realised that they were having some difficulties with some complaints... I guess... they are radio complaints... there’s one here... one with Derek Archer... who had been very abusive in response to calls and especially to his wife... this one is again something new... the broadcasters were not expected to ridicule people... we don’t expect to hear that on Radio New Zealand, or any remaining commercial stations... but this small radio station... that was what Pirate FM was... with a jerky Derek Archer... he didn’t care what he said... and he said pretty nasty things about people... the Authority realised
that they had never dealt with broadcasters who ridiculed people or named people unjustifiably... and so to deal with those concerns... is that also the time we had that complaint from Radio Pacific in Auckland? Once again, in that, the announcer had a relationship with a woman... who would call the man late... although she was under some strict instructions not to call him... and he would be abusive towards her... so those were the concerns that there were broadcasters who would be personally abusive which is not strictly in the sense of privacy as the Authority had developed its principles... but it did involve naming a person or identify the person... it’s more about abuse... the early decisions were more concerned about revealing facts and intrusion... the Authority hadn’t dealt with complaints with any broadcaster who was personally abusive... so that’s why the Authority added those two principles to the standard in 1996...

CK:  So... was that a problem arising from pirate radio?

MS:  That was an important part... but it was also the style I guess... the style of the broadcasters... which hadn’t happened before... they will be much more personal and aggressive towards callers... or to individually name people... if there’s continuing to have that style... it’s probably important to have privacy principles to induce broadcasters not to be abusive towards callers... which would be a breach of privacy...

CK:  And in 1999... the Authority added something about children...

MS:  Yeah... in 1999... you have those You Be the Judge’s... and that child with ADDS who was shown on Holmes... One of the You Be the Judge’s... I think it’s a very clear breach of the child’s privacy... because it was revealed in the show that a man was in fact the child’s father... and it was
presented in a way like the child had won an Oscar award... extremely humiliating to the child... and the broadcaster came back and said that... look, the parents consented... and the Authority realised that parental consent might not be sufficient to deal with the privacy of children... the broadcasters should convince themselves that the disclosure of a child’s name was in the child’s best interests... and another case where the broadcaster made a mistake and realised it made a mistake... was a case involving street kids... and that case didn’t come to the Authority... ‘coz the broadcaster themselves realised that it was not in the best interests of the children... because parental motives might not necessarily involve the best interests of the children... that cropped out even more in the case with the child with ADDS... where the mother had difficulties in getting a certain service to respond to her complaints... they wouldn’t come and help her... so she felt... if I show everybody what I have to put up with... I’ll get some sympathy... and that involved using her child as a... guinea pig... that caused her child considerable humiliation... and that’s not for the kid... you can’t trust parents... there are some cases in which you just can’t trust parents to act in the best interests of the child... and therefore laid the obligation with the broadcasters to ensure themselves that the broadcasts were in the child’s best interests... there was an Advisory Opinion in 1999... (searching for a while) the Authority... I guess... doesn’t look for work about privacy... as it resolved years of complaints... it’s whoever keeps in the back of his mind should be... something happened here which we think in a more general sense... and there was this suggestion... that they should have a privacy code instead of an advisory opinion... and the
Authority had had some thoughts... in mid-90s... there was an amendment to the Broadcasting Act in the year 2000 so that the Authority can now develop privacy code... it hasn’t done so...

CK: *Will there be any change to privacy principles in the recent future?*

MS: I don’t anticipate any changes... in the near future... the privacy principles seem to be working... I guess... there is that decision... the ECPAT decision... (after searching for a while) this is the decision... about the Authority upholding a privacy complaint about child prostitution in Fiji... the Authority reached the decision that the broadcast breached the children’s privacy... the broadcaster appealed the decision... saying that these children in Fiji didn’t have any privacy in New Zealand... and that led to a High Court decision...

CK: *There haven’t been many privacy complaints that went to the High Court, right?*

MS: This is one of the two New Zealand had...

CK: *When I tried to find the cases that went to the High Court, I only found one... which I think is 1994...*

MS: 1994... Mrs. S... Mrs. S and her case... that went to the High Court... and New Zealand Law Reports 1995 vol. 1 page 720... and that was the incest case... so those two were the cases that went to the High Court and the Authority’s privacy principles had been considered...

CK: *I can see that for privacy complaints, the complaints procedure is quite different from other standards’ complaints... like going directly to BSA... compensation up to NZ$5,000... why is there a difference?*

MS: Well... purely my own opinions... in my opinions... the Authority’s
principles in looking over broadcasting standards... it’s acting in the public interest... it’s not really concerned about who is worried about some programme might be in bad taste or who is worried about some programme might be imbalanced... however, it’s different in privacy complaints... in privacy complaints... you are dealing with individuals who feel that a particular programme has intruded upon them all over the nation about them... and it’s a totally different type of complaints... that’s why I think the Authority allows privacy complaints to come directly to it... because the complainants will be personally involved with the complaints... and for the compensation... it’s an indication that the individual has been badly dealt with by the broadcaster... whereas the Authority upholds a complaint about use of language... it could make an order against the broadcaster... there’s no point in saying that everybody in the country gets NZ$5 because the broadcaster did that... but with privacy complaints... they deal with individuals who are personally involved in those cases...

CK: *When I went through the complaint decisions, I encountered some cases that look like privacy cases, but they are not under privacy... like there are complaints under G17 of the Television Code of Broadcasting Practice... and also I encountered one about privacy waiver... someone applied for a privacy waiver and got denied... that sort of things... I am not quite sure how to categorise them... because when I do my content analysis... I will need to determine whether to include them or not...*

MS: Well... it’s difficult... because we got privacy complaints directly to us... we will say to them that we are entitled to accept those complaints... however... if they want to lodge a complaint under any other standards...
they will have to go to the broadcaster... and they may then refer the complaints to the Authority... sometimes complainants don’t bother... sometimes they go to the broadcaster for fairness and then they are referred to us... we are only able to deal with those complaints on the table... if people don’t raise an issue... we can’t deal with that issue... and there are complaints which deliberately choose not to complain about privacy... and there is also a fine line between what is fair/unfair and what is in breach of privacy... dead people have no sense of privacy, so you can’t complain about a programme breaching the privacy of someone dead... the programme might be unfair to them or their family... those kinds of issues pop up... the Authority explains to the complainants the choices... and it depends on the complainants to choose what they are going to do... what they choose to do is what the Authority deals with...

CK: The Victims Support Group claims that intrusion into private grief is also a breach of privacy, but that is not included in the privacy principles, so how can that be categorised into?

MS: Yeah... well... I can think of privacy complaints that have involved intrusion into grief... and I can think of fairness complaints about intrusion into grief as well... that’s a very difficult area to categorise... it depends on which aspects of the broadcast they are complaining about... was it because it was unfair... or was it because there was a breach of privacy? It’s the complainant’s choice... if they choose to go down one path... we can’t tell them they should go down one way or the other...

CK: Will privacy complaints go to broadcasters instead of the Authority?

MS: Yes, it depends on the complainants... I will give you an example
recently... I got a phone call from a person who owns a house in Rotorua... she said that TV1 has just filmed the house... and she felt that it was a breach of her privacy... and asked what she could do about it... and I said to her it could be considered as a breach of privacy and it might be regarded as unfair... or she could complain to the broadcaster that the filming was a breach of her privacy and also unfair to her... and she did complain to the broadcaster and she was happy with the broadcaster’s response... so that was my advice to her... if you have to go to the broadcaster for fairness, why don’t you go to it for privacy as well?

CK: *So... they can bring privacy cases to the broadcasters?*

MS: Yes... you have a choice... you can bring your privacy complaint directly to the BSA, or you can bring it to the broadcaster...

CK: *So... the penalty or compensation will depend on the broadcaster, right?*

MS: No... the outcome is totally the same, except that it is a longer process... if you complain to the BSA about a programme... we will write to the broadcasters and ask if they have anything to say with regards to the complaints... the broadcasters will then make their comments on the complaints and express their opinions on whether they should or should not be upheld... and then the comments will be brought back to the complainants and ask them if they have any final comment... it is a very simple process... and the Authority will then determine the complaints... but if there is a standard issue other than privacy... there is a five-step process which is much longer... as opposed to the three-step process for privacy cases... the five-step process is essential for standard complaints, so unless your complaint is confined to privacy... you might just need to go
through the five-step process...

CK: Since the study recorded in your book which was published in 1998, are there any significant changes concerning privacy issues? What are the major concerns now?

MS: Well... the major concern now is consent. Not only with children, but with adults as well... because of the increasing reality the broadcasters bring up in their programmes... there are two sorts of reality programmes... there is the staying situation... like Survivor... or staying in a big house... when they consent to go into this particular place... when the other sort of reality programmes are those police chase ones... in which the broadcasters just sit in the police car... those are the kind that just have people going around in their regular occupation and a camera following them... and for the police... they might question some people on the streets... and the question arises... do the broadcasters need consent from those people to film them and feature them in their programmes? Is consent needed for their participation? I guess the most significant case will be that case with a girl rescued by a helicopter in West Auckland... and there’s a television crew following the helicopter rescue team around... when the rescue team saved the girl and got her down to a hospital, she said that she had told the film crew not to film... and she was told that consent will be obtained before the broadcast... and then when she got better, they asked her to sign the consent form, and she said no... and the broadcast went on anyway... there are also some other cases... like one involving a wedding... the couple consented to the original programme... but when a follow-up programme is prepared, their situation has changed, and they don’t want to participate in it... but the
broadcaster then said that the consent implied that the footage can be used whenever the broadcaster wants to... and there were cases involving drunken drivers... were those drivers in a conscious state to sign the consent forms? So there are some situations when people sign the consent, but they might not know what it's about... and they might end up being featured in programmes for irresponsible drivers, or something else just because the footage is good... or use it again and again for some other reasons... Sometimes when people sign a consent form, they are just not fully aware of the consequences... And for a politician or some other public figures... do they have any right to privacy at all? For example, if people are filmed in a strip club, if they deny to sign the consent, then can the footage be shown? And what if there is a public figure like a MP in it... does he deserve less right to privacy than everybody else? Broadcasters might say there is public interest... there are just many cases that the Authority has to deal with them on case by case basis... so consent is the issue... and how informed must consent be for the Authority to accept that the person has signed a consent form?

CK:  
So... is there any regulation set up for dealing with consent?

MS:  
It's case by case basis... all depends on the circumstances involved... there are actually two issues here... there's the consent issue... and also that do public figures have less right to privacy than ordinary people? It's another issue that needs to be dealt on case by case basis...

CK:  
For broadcasters, they have their own codes of practice, so do those codes of practice have any control over journalistic practice?

MS:  
The Authority is not concerned about whether the journalists comply or do
not comply with the broadcasters’ internal protocols. They might be different to the standards of the Authority. When they say it is okay to do something, it doesn’t mean that they won’t breach the Authority’s standards... the Authority is still considering whether to have a code of broadcasting practice for privacy or to remain using the privacy principles... the Authority is still researching into that...

CK: *Is the Privacy Act relevant to the Authority?*

MS: We have very little to do with the Privacy Act... under the Privacy Act, the news media are excluded for gathering news... for privacy issues in the news media, people come to us...

CK: *For the Authority’s rulings, are the broadcasters always bound by them?*

MS: They can appeal... just like in the ECPAT case... they appealed to the High Court... I guess the overall guiding rule is the public interest... public interest is always the bottom line... broadcasters can broadcast anything as long as there is a strong public interest... public interest is always no. 1...

CK: *For all the complaints that go to the broadcasters, will they be processed by the Authority as well?*

MS: It’s up to the complainants... if they complain to the broadcasters, and the broadcasters respond to the complainants... it is up to the complainants to decide whether they want to take it to the Authority or not...

CK: *So... there might be cases where privacy complaints stopped with the broadcasters, right?*

MS: Yes... broadcasters told us that there will be 2/3 of all the complaints stopped with them... but we don’t know what proportion of that was contributed to privacy complaints... broadcasters are sensitive about
privacy... they don’t deliberately breach people’s privacy... sometimes they make mistakes... sometimes they deliberately do so because they believe it is in the public interest...

CK: *Was there any connection between the broadcasters and the deregulation which brought about a free market in the media with regards to their actions?*

MS: Yes... but at the same time the broadcasters know that they have to be seen as being responsible... if they seem to be acting irresponsibly, people won’t watch them... people will go to the other channels... so it is a free market... they have to show that they are responsible broadcasters in order to get the audiences... it is okay for small broadcasters like Pirate FM... because they are aiming for a small market anyway...

CK: *Was there any privacy decision that was not published?*

MS: No... the Authority is required to publish all the decisions... but in some cases, names of the complainants or certain details might not be disclosed...

CK: *Okay... I think that’s about it... thank you.*

MS: You’re welcome... if you have any further questions, feel free to email me and ask about them...

CK: *Okay... I will... thank you for your time.*
# APPENDIX 2

## CODING SCHEDULE FOR CONTENT ANALYSIS

*Coding Schedule for the Content Analysis of the Broadcasting Standards Authority (BSA)'s privacy complaint decisions from January 1996 – December 2003*

<table>
<thead>
<tr>
<th>Field</th>
<th>Format</th>
</tr>
</thead>
<tbody>
<tr>
<td>Decision Number:</td>
<td>( ) ( ) ( ) ( ) - ( ) ( ) ( )</td>
</tr>
<tr>
<td>Type of Medium:</td>
<td>( )</td>
</tr>
<tr>
<td>Type of Programme:</td>
<td>( )</td>
</tr>
<tr>
<td>Age of Subject:</td>
<td>( )</td>
</tr>
<tr>
<td>Identity of Subject:</td>
<td>( )</td>
</tr>
<tr>
<td>Ground(s) of Complaint:</td>
<td>( ) / ( ) / ( ) / ( ) - 4 significant grounds at most</td>
</tr>
<tr>
<td>Decision of Broadcaster:</td>
<td>( )</td>
</tr>
<tr>
<td>Decision of BSA:</td>
<td>( )</td>
</tr>
</tbody>
</table>

Basic Information of Decision (Case description, privacy principle(s) involved, etc.):

Penalty/Order (if any):

Special Remarks (if any – e.g. concerns, warnings, interesting points raised, intentions for future research, overlaps with other programme standards, etc.):
APPENDIX 3
CODING MANUAL FOR CONTENT ANALYSIS

Coding Manual for the Content Analysis of the Broadcasting Standards Authority (BSA)’s privacy complaint decisions from January 1996 – December 2003

➢ Type of Medium
1 = Radio
2 = Television

➢ Type of Programme
1 = News
2 = Current Affairs
3 = Documentary
4 = Information
5 = Entertainment
6 = Talkback (Only Applicable to Radio Programmes)
7 = Commentary (Only Applicable to Radio Programmes)
8 = Others
9 = Not Specified

➢ Age of Subject
1 = Adult
2 = Child
3 = Adult & Child
4 = Not Specified

➢ Identity of Subject

1 = Private
2 = Public
3 = Not Specified

➢ Ground of Complaint

1 = Naming
2 = Identification
3 = Disclosure of Private Fact(s)
4 = Disclosure of Public Fact(s) that has Become Private Again
5 = Disclosure of Private Fact(s) to Abuse/Denigrate/Ridicule
6 = Disclosure of Private Detail(s) without Authorisation
7 = Intentional Interference (Filming/Recording)
8 = Trespass
9 = Consent
10 = Insufficient/Inappropriate Action of Broadcaster’s Response
11 = Others
12 = Not Specified

➢ Decision of Broadcaster

1 = Declined
2 = Upheld
3 = Upheld with Action for Compensation
4  =  Not Determined

➢ Decision of BSA

1  =  Declined

2  =  Upheld

3  =  Upheld with Penalty/Order

4  =  Not Determined
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1 Although the Authority's 2003-2004 annual report has not been published by the completion date of this thesis, the Authority did provide the author with a copy of the appendix pages of that annual report in advance.
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