Broadcasting Standards in New Zealand.

The Broadcasting Standards Authority: Policy, Action, and Repercussions.

A thesis submitted in fulfilment of the requirements for the Degree of Master of Arts in Journalism in the University of Canterbury by Sara L. Clemens

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The staff and members of the Broadcasting Standards Authority were unceasing in their generosity with time and research materials. I am also extremely grateful for the efforts of numerous people involved in broadcasting who gave their time for interviews, or helped to locate information.

"....and now," cried Max, "Let the wild rumpus start."
Abstract.

Public service broadcasting aims to serve the public good rather than private gain. Advocates believe that the work of broadcasting should be regarded as a public service for a social purpose. To achieve this purpose it should fulfil a number of ideals: cater for all sections of the community, service all geographic regions of a nation regardless of cost, be independent from political or commercial interests, educate, inform, entertain and improve the public it serves.

The public service model was used as an ideal, to examine the performance of the Broadcasting Standards Authority in its first five years. It was found that for the Authority to be equitable and efficient requires: independence from political and broadcast industry influences, adequate funding, revision of the complaints system to improve public accessibility, and members with expert and specialised knowledge. Furthermore, there needs to be recognition of the principle that programmes should be assessed on individual merit, to increase the accountability of the Authority’s decisions to the public.

The Broadcasting Standards Authority was instituted to retain public service broadcasting obligations in a deregulated environment. If the above issues are not addressed, then the credibility of the Authority’s function as a public forum for the consideration and discussion of broadcasting standards must come into question.
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Introduction.

There is a pressing need for the popular and explicit celebration of principles that underlie the public broadcasting system if past progress is to be consolidated let alone built on. In this, no more or less than in other fields of public endeavour, the voice of the people may not be the voice of God, but it is the best substitute available.


*Politics and Broadcasting: Before and Beyond the NZBC.*

The above comment illustrates Gregory’s belief that the purpose of public service broadcasting (PSB) is to provide citizens with access to an independent forum for the discussion of public issues. The principles of balance and quality, a dedication to the public’s interest, indeed a concept of PSB “whose raison d’etre is to serve society as a whole”; these are Gregory’s justifications for public broadcasting systems.

Gregory examined PSB in New Zealand during the last years of domination by the public corporation structures which existed from 1962 onwards. He focused on the political development of the public broadcasting system, maintaining that broadcasting in this country was shaped by political interest, as opposed to any principled commitment or belief. Gregory’s research provides a useful foundation for this study, as it maintains similar basic underlying beliefs in the democratic value of PSB, and provides one of the few political analysis of the broadcasting environment in New Zealand to date.
In many ways this thesis, while focusing on the administrative systems relating to standards, takes up where Gregory left off. The examination of PSB in New Zealand is continued, by exploring the institution and performance of the Broadcasting Standards Authority (BSA), in the newly deregulated broadcasting environment of the late 1980s and early 1990s. This study does not attempt to examine the moral or philosophical arguments pertaining to standards or the issue of censorship, nor does it attempt any quantitative analysis of the broadcasting product. There is considerable scope for these issues and perspectives to be developed in future research.

This thesis applies accepted theories of PSB to the New Zealand context, to argue that the equity and efficiency of the Broadcasting Standards Authority relies on political independence, adequate funding, the appointment of members with expert knowledge and practice, and increased public awareness and accessibility. Furthermore, it is maintained that for the Authority to remain credible and relevant to the public which it represents, then it must recognise the attitudes and opinions of that public, and not focus on its own agenda.

Due to the paucity of information regarding the establishment of a codified system of standards regulation in a New Zealand context, the evolution of public broadcasting in this country is reviewed. This provides an understanding of the political, economic and cultural debates surrounding the implementation of the deregulatory policy initiatives of the Fourth Labour Government. Previous to the development of this historical frame work, PSB theory is discussed, to illustrate the tensions which exist between government and broadcasters, and outline possible failures of the system. Marketplace
models are later examined, to further illustrate pressures influencing PSB, and to examine the arguments offered by market opponents.

This theoretical framework provides a useful tool in assessing the policy developments associated with the deregulation of broadcasting in New Zealand. Following this, an examination of the BSA's performance is made, with particular focus on its role as a statutory body instituted to maintain certain PSB requirements, and the factors which influence it.

Chapter One analyses public service regulation and outlines the British Broadcast Research Unit’s principles which form the basis of PSB systems. Fundamental to the credibility and effectiveness of public broadcasting is a commitment to independence from political or commercial pressures. It is proposed that the most equitable means of monitoring compliance with broadcasting regulation is through the development of a communications agency or council, which is accountable and accessible to the public, but free from government or corporate interests.

Various theorists influence arguments examining failures of public broadcasting. Chapter One outlines research which suggests that those who control the means of cultural production in society can manipulate it to maintain social order and reproduction of a 'dominant ideology'. Furthermore, research maintains that the censorship of diverse views and opinions is often a very non-transparent effect of systems that rely on government funding and licences. This raises the question of the public interest and how the need for a pluralistic, independent, and yet accountable, broadcasting system, is best served.

Chapter Two chronicles the evolution of PSB in New Zealand, focusing on the development of standards regimes and content
regulation. Broadcasting in New Zealand developed as a reflection of successive government’s cultural and socioeconomic policies, rather than a intentional structure based on consideration of PSB philosophies. Until 1988 broadcasting was under direct political influence, indeed for 26 years until 1962 it functioned as a government department. Following this it was structured as a public corporation, subject to ministerial directives, and funding controls. This stultified the development of an independent public broadcasting system. Chapter Two illustrates that as broadcasting in New Zealand evolved, the threat to its autonomy and functions has changed from political interference, to inadequate public funding and the pressures of the commercial marketplace.

Chapter Three examines the policy and legislation surrounding the deregulation of telecommunications. It encompasses the political, economic and cultural debates, to establish the forces that influenced the BSA’s institution, and the expectations held by players in the broadcasting industry. Standards regimes which employ complaints procedures are adversarial by their very nature; the BSA perhaps moreso than most, due to its legalistic character. Its establishment came at a time in New Zealand political history that was characterised by a reduced role in the economy by the state, and a greater emphasis on the market for allocating resources. The introduction of a ‘draconian’ regulated body was considered by the broadcasting industry, to be a overly restrictive measure, in an otherwise deregulated system.

This chapter also examines the theoretical framework of the free market arguments that pertain to broadcasting. This provides a useful contrast to the PSB theory, and establishes that similar pressures apply in both situations. Whether public service or
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This chapter also examines the theoretical framework of the free market arguments that pertain to broadcasting. This provides a useful contrast to the PSB theory, and establishes that similar pressures apply in both situations. Whether public service or
commercial, broadcasting relies on owner accountability, open access, and independent funding, to operate as an effective and equitable means of communication. These requirements are equally applicable to a broadcasting agency, charged with maintenance of standards and public representation. For the agency to be credible, it should be autonomous form the interests of government and the broadcasting industry, it requires adequate funding, and must be easily accessed by the public. The remaining chapters question the BSA's performance, focusing on the recognised threats to funding, independence and accessibility.

It is an acknowledged limitation of this research that the resource dependency on institutions precludes a definitive argument, as only publicly accessible materials and activity can be examined. Conclusions are based on analysis of visible resources and events, and interviews with people involved in the broadcasting industry.

Chapter Four examines the development of the Broadcasting Codes of Practice. The codes were based on past broadcasting institution's rules and internal standards, and developed to reflect current societal expectations. During the five years the Authority has existed a number of codes have been amended, and the alcohol advertising and violence codes were substantially developed. It is demonstrated that the pressure from government, lobby groups, and the broadcasting industry, influence the Authority's processes and limit its power. In many ways the BSA has a symbiotic relationship with the industry, relying on them to provide materials and comply with requests and orders. Cooperation in the development of codes necessitates functional working relationships. Thus it is demonstrated, a vicious cycle occurs. To remain credible the Authority must be viewed by the public and lobby groups as a distinct
and separate entity from broadcasters, yet the Authority requires broadcaster’s cooperation to maintain efficient complaints procedures and increase public awareness of standards matters.

A similar predicament arose for the Authority with regard to their involvement and association with government. The Ministry of Commerce monitors the BSA and reports to the Minster of Broadcasting on a quarterly basis. This tone of these reports affects funding, legislation, and political sympathy toward the Authority. Increasing demands on the BSA’s complaints function has effectively ceased all research imperatives. Thorough research is required to develop comprehensive and relevant codes. Therefore, while asserting autonomy, the Authority must also maintain close functional ties with the government. An examination of these processes illustrates the parameters of the BSA’s effectiveness.

Chapter Five continues with operational matters, focusing on the appointment of members, complaints and appeal procedures, and the relationship between the Authority’s funding and its research function. Two major issues are raised in this chapter: the political vulnerability of the Authority and the equity of the complaints procedures. It is argued that the Authority is in a position where covert political interference in the appointment process can undermine the BSA’s credibility as an independent, nonpartisan, and informed regulatory body. Furthermore, its reliance on government appropriations for funding, which are frequently inadequate, has resulted in the elimination of the Authority’s research function. This, combined with a lengthy and complicated complaints and appeals procedure, forces questions regarding the BSA’s role as the public representative in broadcasting.
The final chapter examines the cases and decisions relating to privacy and violence, to illustrate the Authority's internal policies regarding the application and interpretation of the codes of practice. The legalistic style of decision making and resultant body of precedents are considered in light of recent decisions on violence. It is argued that the current trend of basing decisions on principles established in past cases neglects to consider the individual merit of programmes in particular genres. The issues of paternalism and freedom of speech are applied to the Authority's performance, to judge its effectiveness as a public representative in the content of broadcasting.

Research Design.

Due to the lack of existing research relevant to the topic of broadcasting standards in New Zealand, I relied heavily on primary sources. With regard to broadcasting legislation, Ian McLean, former Secretary of the BCNZ, was invaluable in locating copies of original acts and regulation dating back to the NZBS years. I also consulted Planning and Development select committee reports relating to past legislation, found in the National and Parliamentary libraries. Documents found in old BCNZ files at TVNZ assisted in piecing together the history of broadcasting codes of practice.

Files at the Ministry of Commerce, concerning the implementation of deregulatory policies in the late 1980s, provided much of the background information regarding the restructuring of the BCNZ and the rationale behind the 1989 Broadcasting Act. This was supplemented with submissions to the relevant select committees, found in the Parliamentary library. These were a useful
source of information on public and industry attitudes toward the deregulation of broadcasting.

Much data was supplied by policy reports relating to broadcasting. Reports analysed included those by the Officials Coordinating Committee; the Steering Committee; the Royal Commission on Telecommunications; the National Economic Research Association; and Touche Ross consultants. These were accessed through the Canterbury University library, and were useful in establishing the principles associated with different periods of New Zealand’s broadcasting history.

Broadcasting Standards Authority research publications, decisions and annual reports were valuable sources of data in piecing together the chronological developments of the Authority. Ministry of Commerce quarterly reviews of the BSA, obtained under the Official Information Act, were also an invaluable source regarding the Government’s attitude toward the BSA, and consequent policy decisions.

Interviews conducted with current and former members of broadcast regulatory bodies and broadcasting administrations, plus key politicians and policy analysts involved in the deregulation of telecommunications, were useful not only for the content of the interviews, but for the assistance in locating materials. While recognising that interviews are subjective by their very nature, I was satisfied at the responsiveness and cooperation of those involved. For a full list of interviewees see Bibliography.
Public Service Broadcasting: A Theoretical Framework

The emphasis of this thesis is the regulation of broadcasting standards in New Zealand, with particular regard of the Broadcasting Standards Authority. An analysis of Public Service Broadcasting (PSB) regulatory frameworks is necessary, to develop an understanding of the New Zealand system, and its strengths and weaknesses. This chapter will focus on establishing a model of the ‘ideal’ public broadcasting system, which will then be used as a tool to measure the efficiency and equitability of New Zealand’s broadcasting environment.

An Introduction to Public Service Broadcasting Theory.

In essence, Public Service Broadcasting (PSB), is where the state acts as a guarantor for the quality and diversity of programmes transmitted. The ideology behind public broadcasting structures is often one of regulation and restriction, of state control and censorship of broadcasting facilities and output.

Traditionally, PSB has embraced a number of tenets. These have a certain amount of variation depending on the political, geographic, economic and cultural framework of the society which the

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2Keane outlines these weaknesses in public broadcasting as seen by market liberals ans proponents of deregulation; these include the assertion of state backed orthodox values, ignoring the interests of advertisers, raising barriers to entry, discretionary financing and arbitrary censorship, paternalism and lack of government accountability. Keane,J.(1991) The Media and Democracy,Polity Press, London. p51-58.
broadcast system is functioning in, however they provide a useful measure of the system’s success. The 1986 Peacock Report ‘On the Finance of Broadcasting’ which reviewed the British system, cites the Broadcasting Unit’s principles:

1. Geographic Universality; the right of the total population to receive transmission signals.
2. Universality of appeal; catering for all tastes and interests.
3. Universality of payment; one broadcast organisation funded directly by the main body of users.
4. Broadcasting should be distanced from all vested interests, especially those of the incumbent government.
5. Broadcasters should recognise their special relationship to the sense of a nation’s identity and community.
6. Minorities (especially disadvantaged) should receive special provision.
7. Broadcasting should be structured so as to encourage competition in good programming rather than competition for numbers.
8. The public guide-lines for broadcasting should be designed to liberate rather than restrict programme makers.3

Browne (1989) outlines the basic requirements for a broadcasting system as one that is fiscally efficient, responsible to viewers, has professional presentation, and interesting material. He

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sees the ideal broadcasting system as involving a regulatory agency which rests between the public, government, and broadcasters, open to input from all but under the primary influence of none. Gregory (1985) agrees, claiming independence from political interference, commercial dependency, or professional insularity are the essential requirements " upon which the entire philosophical justification of public broadcasting is to be founded." Smith (1973) notes that this political independence is unlikely to occur in a broadcast system where

No matter how popular his programmes the broadcaster has to obtain and retain official approval and protection if he wishes to carry on in granted by government and depends for its continual existence on periodic renewal.

Smith (1978) contends the 'problem' of managing broadcasting lies in the extreme concentration and centralisation of decision making. He asserts that the media system of a society is its central nervous system and controlling it opens up the possibility of social manipulation, the opportunity for social edification, mass political education, for encouraging the 'good' at expense of the 'bad' in a culture, or simply for gentle sustained ideological bias.

The system makes a set of national choices obligatory, it forces those in charge to operate the cultural nervous system according to some centrally enunciated rationale....A single social institution, responsible for its decisions to a Parliament or a whole society, is forced to make choices; to make decisions between good and bad, between biased information and objective, between mass viewing material and minority. It

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must arbitrate between minorities, make the best decision it can within the resources available on behalf of the vast majority.7

PSB Failures

Freedom of Information and Political Censorship

The dilemma that PSB faces is the decision as to where the controlling authority should lie, if neither the government, nor the broadcasters can safely house it. It makes good sense, if there are to be regulations, for broadcasters to be accountable to an independent body, in order to ensure that regulations are being complied with. The difficulty lies in establishing a body that, while remaining accountable and accessible to the public, can also remain free from government influence. The notion of political independence and impartiality is one of the cornerstones of PSB; Smith supports this proposition, and maintains that any kind of ‘communications council’

...are only in themselves conducive to an atmosphere of media freedom if they are themselves free, and if the other elements of broadcasting control are also open to the society.8

That broadcasting should be distanced from the government of the day is an accepted principle of PSB. But there are wider issues to consider.9. Smith (1978) details the rise of the electronic media and the mass audience, the notions of agenda-setting and cultural

8Smith,A(1978) op.cit, p.33.
9Corporate control is as much a threat to broadcasting as government control. A detailed discussion of deregulation and the debates surrounding commercialisation of the airwaves can be found in Chapter Two. The issues of freedom of information, censorship and political accountability are relevant to the theory of PSB, and will be briefly discussed here, though a full consideration of these issues is beyond the scope of this research.
imperialism, and their effect on cultural products and society. He chronicles the conflict between liberty in discussion and action, and 'the centralisation of Order', and outlines the move of journalism from partisanship to 'information brokerage' - the interpretation of coded knowledge (for example, that of politics, military or finance) for the layperson to understand. The move from a system where government censorship prevented the exposure of opinions it considered pernicious, to regulations that punished socially irresponsible material that could incite discontent, or immoral behaviour, occurred in New Zealand during the 1960s. During this period broadcasting ceased to be a government department and developed an independent news service.

Smith uses the BBC's domination of the British broadcasting environment to illustrate institutional filtering of information, and the reinforcement of a 'primary' or dominant world view. ¹⁰ The issues of balance, fairness and accuracy are of paramount concern here; free exchange of information and representation of a whole range of nationally contentious issues are not likely to occur in an institution which represents such a singly dominant ideology.

This conjecture enters an area of study which considers cultural production in industrialised or mass societies as a phenomena which can be manipulated by those in control of the means of production. Mass culture is founded in the mass production of information and its dissemination as a political or financial commodity. Critics on the Right worry about the alienation of individuals in a mass society, and the resultant breakdown of traditional bonds, hierarchies and duties in the name of an all-powerful commercial debasement of culture,

¹⁰Smith, A (1978) op.cit., p.11-43.
taste and civilisation. Critics on the Left worry about the manipulation of the masses by totalitarian politicians and rapacious capitalists alike.\textsuperscript{11}

Gitlin (1981) asserts that popular culture has certain traits (such as centralised production, vast volume of output and a high degree of pervasiveness) which facilitate its infusion into everyday life, and its ability to "embody and reproduce the dominant complex of ideology." Gitlin believes the main characteristics of this 'dominant' ideology in the Western world are:

The legitimacy of private control of production, and of the national security state; the necessity of individualism, of status hierarchy, of consumption as the core measure of achievement; and overall, as in every society, the naturalness of the social order. \textsuperscript{12}

It is the concept of social order that diversity of opinion challenges. If access to the media is made available to a wide spectrum of society, then a variety of views and perspective are more likely to become available to the mass audience than if the access is limited to the 'cultural and educated elite' of the Reithian system\textsuperscript{13}.

Broadcasting, however, cannot be understood simply as a reflection of dominant ideology, as conflicts between broadcasters and government illustrate. Examples of such conflict include Watergate and Vietnam in the United States, and the Springbok and Cavalier's


\textsuperscript{13}Lord John Reith, Director of the BBC, believed the educated and cultural elite of the upper and middle classes had a duty to use broadcasting for enlightening the general population. McDonnell,J,(1991)\textit{op.cit}, p.11-12.
rugby tours in New Zealand. Broadcasters' interests lie in maximising audiences (and therefore profit), and if the audience prefers investigative reporting to bland assurances, then the broadcaster may take an adversary role to the state. Broadcasting, therefore, cannot be understood as simply a 'tool' of the ruling class; for without adequate financing from the government, the drive for profits and ratings could lead broadcasters to ease censorship and offer programmes which are not simply reproductions of the dominant ideology and conventional formulas. This would obviously diminish the medium's function as an instrument of social control.

Financing a PSB system then, is an ideal way for a government to attain editorial and programming influence. The Peacock Report recognised that the BBC system, due to its dependence on public finance and regulation, was vulnerable to political pressure. In drawing this conclusion Samuel Brittan, a member of the Peacock Committee, remarked

In principle, Mrs Thatcher and her supporters are in favour of de-regulation, competition, and choice, but they are distrustful... of plans to allow people to listen to and watch what they like, subject only to the law of the land. They espouse the market system but dislike the libertarian value judgements which are involved in it's operation.

The committee concluded that any public intervention in broadcasting should be transparent, to finance extra production, and

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not censorious and oblique, or restricting freedom of speech and diversity of opinion.\textsuperscript{18}

A.J. Liebling is noted to have observed that freedom of the press is limited to those who own one in the market place\textsuperscript{19} This is as applicable to government control as it is corporate. The New Zealand Treasury in its submission to the 1986 Royal Commission on Broadcasting and Related Telecommunications noted that a state-funded broadcasting system creates the potential for censorship of ‘non-mainstream’ opinions, by using government control over frequencies as a lever for enforcing higher standards on broadcasters. Treasury viewed content or coverage regulation as a very non-transparent form of regulation, making it particularly undesirable from the point of view of monitoring and accountability. \textsuperscript{20}

Golding and Murdock (1986) further contend that a communications council or advisory body, formed with the intention of removing editorial power from the hands of the government, is totally inadequate if it relies on individuals appointed from an unpublished list of the ‘great and the good.’

Not only is such a list drawn from a very narrow range of social groups, there is also constant temptation for governments to exploit the selection process in a partisan way...\textsuperscript{21}

Both Schulman (1990) and Seaton (1988) recognise that monitoring broadcasting accountability is a difficult process as censorship is not often an overt process. Journalists are indoctrinated

\textsuperscript{18}McDonnell, J. (1991) \textit{op. cit.}, p.95-103.
\textsuperscript{20}New Zealand Treasury (1985) Item 8 “Regulation of Advertising and Programme Content” in the Submission to the Royal Commission of Inquiry on Broadcasting and Related Telecommunications, Government Printer, Wellington, p.5-56.
into newsroom values and ethical standards, which Seaton (1991) claims are closely associated with the 'homogeneous establishment' therefore providing a vital support for the existing social order.22 Furthermore, Schulman (1990) maintains that the values of those in charge are often so inbred that charges of unbalanced or biased reporting often seem wrongly judged.23

Sparks (1986), in agreement, asserts that much of the packaging of state dialogue by journalists takes place at the level of the unconscious or semi-conscious, and is due to the fact that those who people the media and those who people the state hold many of the same values.24 In conclusion Seaton (1991) notes that while the mass media are not 'crude agents of propaganda' the overall interpretations they provide are those which are least challenging to those with economic or political power.25

Those that pay the piper call the tune. Those that regulate the piper are also in a position to exploit the medium that they have control over. This exploitation can be covert or manifest; it results in a loss of independence, and forces broadcasting to rely on political or financial favours to remain in existence. For a PSB system to function credibly its independence must be preserved; it must be publicly and openly owned and regulated so that if serves the public good rather than private gain.

Paternalism.

Paternalist’s argue that the freedom of the media should be reduced, so that it conforms to the moral consensus of the nation or, at least, does not violate the sensibilities of reasonable people. They stress the harm that may result from licence. Some paternalists argue that certain individual rights - the right to privacy, a good reputation, a fair trial, security and property - should override freedom of expression unless an overwhelming case can be made to the contrary. Curran and Seaton (1991) illustrate this point in the following.

The British Broadcasting Standards Council argued in its 1989 code of practice: "the assumption of freedom in broadcasting still requires some expression of a responsible understanding between audience and broadcasters on how and when it is to be expressed." This implicitly goes beyond the case for limited censorship - the prohibition of communications which do manifest and unjustified harm to others - to a plea for a broader measure of control in the name of social responsibility. 26

The difficulty in determining the precise nature of freedoms that do not offend 'reasonable' sensibilities is one of definition and judgement. John Reith (later Lord Reith), Director General of the BBC, believed that the educated and cultural elite of the middle and upper classes had a duty to use broadcasting for enlightening the general population. Reith contended;

It is occasionally indicated to us [the BBC] that we are apparently setting out to give the public what we think they need - and not what they want, but few know what they want, and very few what they need.27

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One of the major criteria governing programming under Reith included keeping programming 'on the upper side of public taste and to avoid giving offence.' 28 This kind of paternalism becomes dangerous to the principle of freedom of information when it overrides the disclosure of information with a public interest justification.

This theory establishes the basic precepts of PSB, and recognises the twin threats of censorship and paternalism. Using the Broadcast Research Unit's priciples as an ideal model for broadcast regulation, an analysis will be made of New Zealand's broadcasting environment. The following chapter shall deal with the period preceding the onset of broadcasting deregulation in 1987. It will illustrate that as public service broadcasting in New Zealand evolved, the threat to its integrity and structure has changed from political interference, to inadequate public funding, and the pressures of the commercial marketplace.

The Evolution of Broadcasting Standards Controls in New Zealand.

The relationship between the broadcaster and the state has been characterised by conflicting interests; from its very inception broadcasting has been perceived by politicians as an important enough communications tool to warrant regulation. New Zealand is no exception; from the earliest days of radio politicians have felt the need to constrain the enthusiasms of broadcasters and place controls over access to transmission frequencies and programme content.

This chapter outlines the advent of broadcast communications in New Zealand and discusses the elements of Public Service Broadcasting (hereafter referred to as PSB) which are a natural corollary of the issues involved. Broadcasting in New Zealand, until recently, has been characterised by intervention, either directly by politicians or by state corporations and tribunals. The dominant model which has influenced New Zealand broadcasting is the Public Service model, popularised in the United Kingdom by the British Broadcasting Corporation (BBC) and outlined in Chapter One.

The New Zealand Context.

New Zealand's broadcasting environment followed the British model of regulation and restriction of broadcasting facilities during it's formative years. In September 1903, the first regulations over the transmission of

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broadcast messages were legislated under the New Zealand Wireless Telegraphy Act, which established the state "both as absolute authority and potential actor."2 The Telegraphy Act decreed that any citizen who wanted to establish a station for receiving or transmitting wireless signals had to first acquire government consent.3 The development of communications in New Zealand was considered necessary to unify the dispersed rural economy, promote immigration, and to alleviate the isolation many European settlers felt.4 The Liberal government recognised the potential of the broadcast medium and set up regulations with the express intention of maintaining a state monopoly5 and restricting the development of private wireless stations.6

The first content regulations appeared in the Post and Telegraph Amendment Act of 1920 and were gazetted in the Radio Telegraph Regulations for Amateur and Experimental Broadcasting Stations in January 1923. Until this time, broadcasting had remained the domain of amateur radio operators. By 1922 there were seven amateur stations broadcasting.7 It was the expansion and popularity of amateur broadcasting that prompted the government to finalise regulations shaping the nature of the broadcast arena in New Zealand. Gregory observes "It was not political self-interest that was the main motivating force behind these regulations,

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6Ibid. p.147 and Day, P (1994) op. cit. p.3.
however, but uncertainty over the possible impact of the new medium on society in general.  

Day records that E.A.Shrimpton, then Chief Telegraph Engineer at the Post and Telegraph Department, had travelled overseas during 1919 to study the expanding field of telecommunications and returned with the view of striking "a happy medium between what was practically a 'free for all' in the USA and the very reluctant, restrictive and almost impossible conditions imposed in England."  

The 1923 regulations, however, were considered by many to be draconian and contradictory to the government's original proposal, that private enterprise would develop the airwaves. These broadcasters would be aided technically by the transmission frequency regulations, which would prevent the airwaves becoming an 'etheric bedlam' if broadcasters attempted to drown out one another's signals. Contrary to the aim of broadcast freedom, the content regulations contained in the Act restricted stations from being used for "the dissemination of propaganda of a controversial nature" and broadcasts were to be restricted to

"matters of educational or entertaining character such as news, lectures, useful information, religious services, music or elocutionary entertainment and other items of general interest as approved by the Minister from time to time."  

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8 Gregory, R.J. (1985) *op cit.* p.16  
10 As was the problem in the USA during the 1920's when a relative shortage of channels convinced the government to administer them for public use. At inception radio lacked a developed system of property rights, and the wavelengths became cluttered by a 'radiophonic anarchy' as almost overnight operators were able to grab lengths like 'early miners striking for claims'. (Smith, A. (1973) *op cit.* p.56.) Broadcasters invited government allocation to avoid interference and overlapping. The American circumstance is also discussed in Keane, *op cit.*, p.61-62 and Rowan, P. (1984). *Broadcast Fairness: Doctrine, Practice, Prospects. A Reappraisal of the Fairness Doctrine and Equal Time Rule*. Longman, New York. p.13-14.  
The Minister of the Post and Telegraph Department was empowered to prohibit material 'not conducive to the public interest'.\textsuperscript{12} The ‘public interest’ qualification immediately created problems for broadcasters, due to a lack of definition of the phrase.

This degree of state intervention was in line with the Reform government's policies of the time. Broadcast regulation is generally a reflection of a government's cultural philosophies or socioeconomic policies.\textsuperscript{13} Wood notes that "in keeping with their general interventionist character, state practices were at first directed not at supplanting small operators but rather at regulating and organising them."\textsuperscript{14}

The government implemented a system which relieved it from accepting the financial responsibility of developing the broadcasting industry while allowing it to maintain administrative and editorial control. The legislation stressed throughout the notion of the 'public interest' and the government made it clear that it was for the \textit{people} that broadcasting was being shaped. License applications required British citizenship (though this was later repealed) and a reference of character from a reputable person. Misleading or false broadcast were contraband as was 'any communication of a seditious, profane, obscene, libellous, or offensive nature'.\textsuperscript{15}

Rowan (1984) discusses the concept of attaching public service obligations to a license. Choice of allocation rights must be on some basis: bid, sale, rental or the public trustee model. Rowan asserts that if the choice is the public trustee model the government may attach responsibility for broadcasters to act in the public interest. This introduces the idea that imposing government controls over the content of broadcasting may often

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not be so much a conscious policy as a logical consequence of the initial requirement that allocation be based in the public interest. Browne (1989) disagrees, maintaining that the desire to control content is usually to limit criticism of political parties and individuals exercising power, and to ensure right of reply, should criticism occur. Moral standards are imposed to reinforce socially 'desirable' forms of moral behaviour and appease the moral, and often voting, majority.\footnote{Browne, D (1989) \textit{op.cit.}, p.359-364. Discussion on freedom of speech and broadcast regulation.} Rowan concludes "But even a limited rule has unanticipated consequences and raises difficult questions of freedom of speech and press."\footnote{Rowan, F. (1984) \textit{op. cit.}, p.14.}

The issue of freedom of speech became one of the integral conflicts that characterised the development of New Zealand broadcasting. This prohibition of political controversy and independently produced news from the airwaves established a pattern of ministerial interference and government control of public information which remained well into the 1960s, and continues more subtly through to the present day.

\textit{The Radio Broadcasting Company.}

The 1923 Radio Telegraph regulations and the 1924 Post and Telegraph Amendment Act (which established a national pool of licence fee, and made broadcasters agents of the Post and Telegraph Department\footnote{This was done to protect broadcasters from a patent claim made by the Australian Wireless Association (AWA) over broadcasting equipment, and while it shifted AWA’s claim from individual stations to a consolidated fund it also put broadcasters “even more under the wing of the Post and Telegraph Department.” See Day (1994) \textit{op.cit.}, p.57.} forced broadcasters to relinquish autonomy and placed them in a close relationship with the state. In 1925, a national service, the Radio Broadcasting Company (RBC), was established as the result of public
criticism over sporadic broadcasting hours and high licence fees. The RBC was a private company, though non-commercial, drawing its income from a government levied annual receiver licence fee and an initial government grant for capital expenditure. Non-commercial amateur stations remained, but struggled to maintain financial viability in a system which did not provide or allow funding opportunities. Advertising was prohibited under the 1923 Radio Telegraph Regulations. These non-commercial stations became known as the independents or 'B' stations.

The RBC relied on the licence fee for income, and this, combined with the nature of its licensing contract with the government which provided for only a five year term, placed them in a politically vulnerable position. The Labour Party realised the Reform administration now controlled a very powerful medium, and expressed fear that broadcasting could be used by the government for political advantage. Wood (1984) describes how, as broadcasting expanded, it became clear to the previously ambivalent government that radio had the potential to reproduce the same ideological entity of the "people" that the government drew on to legitimise its actions. He surmises:

The exact character of the new media's representative function and how it related to that claimed by government was clearly problematic in the absence of a code of practice elaborated by a group of professional broadcast journalists. Hence radio's link with 'the public interest' caused it to be drawn steadily within the ambit of government responsibility.

Day (1994) discusses the difficulty of developing a news service when directives from the Post and Telegraph Secretary prohibited any information that would inflame 'political feeling' as part of the regulation

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that banned controversial material. That radio should be a medium for presenting news and information was accepted by the RBC, but a sense of fragility toward the renewal of their five-year contract meant it was in no position to push the matter with the Post and Telegraph Department.22 Under these restrictions the RBC was unable to provide news and political information and, as a consequence, public frustration mounted.23

The very regulations which the government justified as being in "the public interest" were in reality in the government's best interests. Gregory (1985) contends that the establishment of the RBC represented the Reform government's continuing concern over the expense of setting up the new entertainment medium rather than any commitment to private enterprise.24 A change in government in 1928 saw the United Party replace the Reform party and introduce the idea of a nationalised broadcasting service, run as a state department. Whereas the Reform Party had instituted broadcasting to deal with the growing numbers of listeners and to establish some type of quality control over broadcasting content, the United Party, led by Sir Joseph Ward, saw the medium much more as a political tool.25 A special Radio Broadcasting Committee was set up to consider the future of broadcasting.

The New Zealand Broadcasting Board.

By 1931 the government had changed again and the newly formed Coalition government implemented the Radio Broadcasting Committee decision that broadcasting should be modelled along BBC lines. Newspaper accounts concerning the notion of a nationalised broadcasting service were

scathing. Editorial comments included, “There has never been a more foolish example of State interference in a field positively marked for private enterprise.” (New Zealand Herald) and “...in State control of a monopolistic publicity and entertainment service there is an obvious danger to freedom of thought and expression.” (Auckland Star).\textsuperscript{26} In spite of press and public criticism, the 1931 Broadcasting Act saw the New Zealand Broadcasting Board (NZBB) created.

The NZBB was a government-appointed administrative body whose function was to carry on from the RBC, receiving the same licence fee allocation, and co-existing with the increasingly popular B stations. The Board ensured the legitimacy of the state by explicitly preventing the broadcast of any controversial topics, including all matters concerning contemporary politics. Controversial questions or speakers had to be communicated to the Board “to act with judgement.”\textsuperscript{27} Responsibility for policing the regulations was shared by the state-controlled Post and Telegraph Department.\textsuperscript{28} Gregory (1985) posits that the argument put forward by former Postmaster General J.B. Donald, that broadcasting was a public utility and should be controlled by the people, was in part a disguise for the growing partisan concern that such an influential medium should be under government control.\textsuperscript{29}

Michael Joseph Savage, the leader of the opposition Labour party, claimed the Board was armed with the authority to muzzle one the greatest means of publicity in modern times. Radio Regulations passed in 1932 allowed the sponsorship of programmes on the B stations: this was the

\textsuperscript{26}Hall J. (1980) \textit{op. cit.}, p.45.
\textsuperscript{28}McKay notes that in the cases of the B stations it was not unknown for a radio inspector to take a station off air if an item was considered controversial. While listeners found the ban insulting to their intelligence successive governments continued to enforce it. McKay, L. (1953) \textit{op. cit.}, p.116-117.
\textsuperscript{29}Gregory, R. J. (1985) \textit{op. cit.}, p.19.
result of support from the Labour Party and the public. Methodist minister and radio pioneer Colin Scrimgeour had developed a huge following for his religious sermons broadcast on 1ZB. Gregory (1985) observes that these religious sermons were often thinly disguised political comment; Scrimgeour took full advantage of the freedom of content that was permitted in religious broadcasting.30

During the Coalition’s term of office the NZBB put enormous pressure on the B stations. Licences were revoked for naming products in sponsorship announcements, financially troubled stations were bought up by the Board and used to extend their transmission service, and finally, in 1934, sponsorship was prohibited which resulted in more B stations closing. Controversial broadcasting regulations were a constant source of public frustration. Hall (1980) chronicles the Krishnamurti and Shaw visits in 1934 which resulted in criticism of the NZBB’s handling of the controversial broadcasting regulation.31 Scrimgeour gained huge popularity by flirting with the restrictions32 and became a “major catalyst in an emerging impatience with official restrictiveness.”33

The National Broadcasting Service.

Labour had a landslide victory in the 1935 election and a new broadcasting act in 1936 saw the NZBB abolished and the service placed under ministerial control as a department of the state. The National

32 Over the period preceding the 1935 election, Scrim broadcast increasingly blatant attacks on the governments handling of the B stations(particularly of the restriction of advertising) and of Labours support for the independents. Scrim’s election eve broadcast,predicted to be a statement to vote Labour, was jammed in an unprecedented move by the Postmaster-General,Adam Hamilton.For more on Scrim see Edwards, L.(1971) Scrim:Radio Rebel in Retrospect,Hodder and Stoughton. Auckland.
33 Gregory, R.J. (1985) op.cit.p.16.
Broadcasting Service (NBS) was established with the B stations as a commercial wing, a move which realised the government’s desire to have private broadcasting as part of its own service. Savage took the role of Minister of Broadcasting, an action which “reflected his own acute awareness of the political importance of radio broadcasting...”34 Professor James Shelley was appointed Director of Broadcasting, a move which The Press noted moved the focus of broadcasting from primarily technical matters to ones of culture and politics.35 Shelley’s vision of broadcasting was similar to that of Sir John Reith of the BBC, one of high artistic standards and a dedication to public service broadcasting principles. Shelley viewed broadcasting as “the great modern instrument for securing a real cohesion of the citizens of the community, based on mutual understanding and sympathetic tolerance...”36

The Broadcasting Amendment Act in 1937 created the National Commercial Broadcasting Service (NCBS) which consisted of the government-purchased B stations. A politically favourable Director was found in Colin Scrimgeour (a personal friend of Savage), an appointment which completed the transition from private development to direct government control. Lent (1971) notes;

By creating the post of Minister of Broadcasting, the New Zealand government was clearly stating that the minister’s responsibilities would go beyond technical considerations to matters of policy and planning.37

The Directors of the NBS and NCBS were in constant conflict over the purpose of broadcasting. Scrimgeour saw broadcasting as a medium of mass involvement, whereas Shelley and Savage viewed it as a unifying

34Ibid, p.17.
36From a quote by Shelley in Hall, J.(1980) op.cit, p.88.
37Lent, J. A.(1978) op.cit, p.289.
tool, and felt the medium was too important to be in the hands of anyone
but the state. After Savage's death in 1940, Scrimgeour's radio programme
"The Friendly Road" came under increased censorship, and Scrimgeour was
eventually dismissed by Prime Minister Peter Fraser for challenging the
controversial broadcasting regulations. In 1943, the two services were
combined under Shelley as a single state monopoly, the New Zealand
Broadcasting Service (NZBS).

Here broadcasting entered a period where the establishment of an
independent news service and the introduction of television consumed
broadcasting debate. News had for many years consisted of 'official' reports
prepared by firstly the Prime Minister's department, and from 1949 onward
the Tourist & Publicity Department, and usually consisted of government
handouts masquerading as news items.38 When Shelley retired in 1949 the
new administrators, William Yates, Bert Hall and John Schroeder, began
pushing for the development of a news service in a way Shelley never had.
Shelley believed that controversial political news would divide the loyalties
of the nation, this being contrary to the purpose and mission he saw for
broadcasting; to develop a national sense of unity. Consequently, at the
time of his retirement, the NBS had an extremely under-developed news
service. The new provincial 'X' stations, hybrids of the commercial and
non-commercial stations, remedied this to a degree by accelerating the
development of local news. However, a national news service, frustrated by
government self interest and newspaper antagonism, did not reach full
potential until broadcasting ceased to be a government department in
1962.39

Day (1994) contends that during the period till 1962, the standards
imposed on New Zealand broadcasting "from above on its practitioners and

op.cit,p.40-52.
recipients” stultified broadcastings development and robbed “New Zealand of the chance to use radio broadcasting to its full advantage.” He suggests the view that broadcasting is a medium for the cultural uplifting of the people, resulted in much of this period’s programming being unacceptable to the majority, and “ultimately wasteful of broadcastings resources.”

The New Zealand Broadcasting Corporation.

The 1960s were characterised by private enterprise fighting for recognition and access to broadcasting facilities. 1962 marked the end of broadcasting as a government department, and the NZBS was reinvented as a public corporation; the New Zealand Broadcasting Corporation (NZBC). The NZBC was established by the 1960 National government, and incorporated both the new television services and the existing radio services, under one central control. Gregory notes that there was a general lack of philosophical inquiry into the development of television, and that decisions were based more on party philosophies regarding the role of the state in the economy than any consideration of PSB values or beliefs.

Gregory (1985) outlines the problems of administrative leadership and autonomy which plagued the development of broadcasting during this period. The triumvirate structure of administration, instituted by Gilbert Stringer (Schroeder’s successor as Director General), in the 1962 Broadcasting Act was theoretically to safeguard broadcasters’ political independence and professional integrity. The Minster’s previous policy role was carried out by a chairperson and board, and the Minister became a channel of communication between the board and government. In practice, as Stringer

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later came to recognise, the interposition between the Director General and the Minster of a group of political appointees “guaranteed neither competence nor non-partisan administration.”43 Under the NZBS broadcasters had been self-regulating. The 1962 Act codified those requirements, but the NZBC Board remained judge and jury over standards.

**The New Zealand Broadcasting Authority.**

In 1968, the New Zealand Broadcasting Authority (NZBA) was established, partly in reaction to the attempt between 1966-1970 by Radio Hauraki to break the government monopoly on broadcasting by transmitting from a ship in the Hauraki Gulf. The “Shoestring Pirates” gained huge public support and hastened the introduction of private enterprise in broadcasting. Wood (1984) asserts

> The National government, perhaps particularly sensitive to the legitimacy problems of state monopoly in an election year [1966], chose to back the free enterprisers. It promised to transfer the power to grant broadcast warrants to a new board, since it had become clear that the NZBC would never sanction the entry of private enterprise.44

The NZBA gained control over warrant applications and both the NZBC and private enterprise had to abide by certain regulations to retain their licence. Responsibility for standards was ambiguously divided between the New Zealand Broadcasting Corporation and the Authority which was handed a statutory duty identical to that of the public corporation. This confused the position of responsibility for PSB and resulted in “double jeopardy and an odd kind of stand-off situation”45. In

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43Ibid.p.51.
essence, the NZBA took the rules the NZBC had developed and adopted them as the regulations to govern private broadcasters. The NZBC continued to field its own complaints.\textsuperscript{46} 

Gregory (1985) notes that from 1962 onwards, the Minister of Broadcasting was a prominent force in the administration of broadcasting. Ministerial responsibility subverted the concept of a politically independent public broadcasting organisation. In short, the 'public corporation' structure was a failure. Gregory argues

\begin{quote}
Generally, attempts to find a middle way between private enterprise and departmental administration, to seek an operative balance between the the imperative of public accountability on one hand and commercial enterprise and efficiency on the other, have succumbed to day to day political pressures and sclerotic bureaucratization.\textsuperscript{47}
\end{quote}

With private enterprise entering the market, the NZBC was forced to find a balance between public accountability and commercial efficiency. Added to the Minister's ability to issue policy directives was the prevailing political awareness of corporation executives, which led to a lack of boldness in managerial decisions and public affairs programming.\textsuperscript{48} Charges of censorship and political interference resulted from incidences like the Bidault affair in 1963.\textsuperscript{49} Gregory (1985) describes an atmosphere of conflict between the journalistic staff and the administrators, which permeated this period, and focused on accountability and professionalism. The journalistic staff's difficulty in knowing what PSB should be defined as, and the Board's continuing appeal for the Act's demands for balance, taste and decency, "as if

\textsuperscript{46}ibid.
\textsuperscript{47}Gregory,R.J.(1985)\textit{op.cit}, p.60.
\textsuperscript{49}Boyd-Bell outlines the corporations refusal to screen the politically sensitive interview with the anti Gaullist former Premier of France, and Chairperson of the Board Dr.Llewlyn's comments that the corporation could never be entirely free of government intervention. Boyd-Bell,R.(1985) \textit{New Zealand Television: The First 25 Years}, BCNZ Enterprises. Reed Methuen Publications, Auckland. p.88.
the operational content of these categories were prescriptively self-evident”, created frustration and misunderstandings which slowed the emergence of an independent PSB service.\textsuperscript{50}

*The Broadcasting Council.*

A new Broadcasting Act in 1973 under Labour abolished the NZBA and NZBC and established three independently operated public corporations. A Broadcasting Council provided common services and prescribed general broadcasting standards. This introduced for the first time in New Zealand the notion of total separate media control of broadcasting regulation. On April 1 1975 TV1, and Radio New Zealand (RNZ) began functioning. South Pacific Television began in June of the same year. Production became the focus as a ratings game ensued; a common pool of funding and advertising revenue introduced a “healthy degree of competition.”\textsuperscript{51}

The Broadcasting Council codified standards in a set of rules which gave broadcasters boundaries to work within.\textsuperscript{52} The 1973 legislation also allowed for a procedure for adjudication of complaints to be established. This was the first time in New Zealand’s broadcasting history that a formalised system for public complaints was established.\textsuperscript{53} Under the Council, rules were prescribed for the broadcasters. The Council defended this position in the introduction to the Rules for Radio and Television.

The Council has been well aware that it cannot legislate good broadcasting into being....The quality of broadcasting in New Zealand is very much in the hands of the broadcasters themselves: the standards they aim at, and the degree of self discipline they impose on

\textsuperscript{50}Gregory, R.J. (1985) *op.cit*, p.83.
\textsuperscript{51}Lent,J. (1978)*op.cit*, p.298.
\textsuperscript{52}Wood,B. (1984)*op.cit*, p.72.
themselves will more than any thing else dictate the standing of the end product...The rules...could be said to be the current expression of the tradition of acceptable broadcasting conduct that has gradually been built up over several decades.\textsuperscript{54}

The Council saw itself, not so much dictating standards, as formalising accepted codes of practice. These codes formed the basis of the rules developed in 1976 by the Broadcasting Rules Committee.\textsuperscript{55}

A major change in the Act was the removal of the ministerial position, although a government-appointed body (the Broadcasting Council) remained, which "could be stacked by the incoming government".\textsuperscript{56} Broadcasters agreed that they "were now relishing a creative purpose such as they had not previously experienced."\textsuperscript{57}

\textit{The Broadcasting Corporation of New Zealand.}

This system had barely established itself when it was abolished by the incoming National government, which, in 1976, re-established a single corporation, the Broadcasting Corporation of New Zealand (BCNZ). A Broadcasting Tribunal was established to issue warrants and act as a type of appeal body for complaints (complaints were dealt with in the first instance by the BCNZ head of programme standards and the board.)

Under the 1977 Broadcasting Regulations, a Broadcasting Rules Committee was established to promulgate rules to maintain broadcasting standards. This committee remained in existence from 1978 to 1988, and revised rules as was required. These rules or codes of practice were agreed to

\textsuperscript{54}Broadcasting Standards and Rules Draft Paper, 14 May 1974.
\textsuperscript{55}Examples of these codes can be found in Appendix One.
\textsuperscript{56}ibid.,p.73.
\textsuperscript{57}Gregory,R.J.(1985) op.cit.,p.91.
by the Board, Director-Generals, and Secretary of the BCNZ, and a representative of the Independent Broadcasters Association.58

As part of the trade-off for the self-regulation of rules, the 1976 Act set up a more rigourous complaints system. Ian McLean, who assisted in the Act’s drafting remarked;

Hugh Templeton [Minister of Broadcasting] figured if broadcasters were regulating themselves then part of the system required a complaints procedure for the public. Under the Council system the broadcasting industry had been judge and jury on themselves, so the Broadcasting Tribunal was given an appeal function so as to introduce a measure of accountability.59

Bruce Slane, Chairperson of the Tribunal recounts that a breach of the rules could be deemed a breach of a broadcaster’s warrant, which could place the renewal of the warrant in jeopardy. The Tribunal had the authority to renew for a lesser period if breaches were recorded. Slane comments; “Company directors didn’t like finding a major asset only licenced for a short period as it made financiers nervous.”60 This preventative policy regarding standards made self-regulation of rules more feasible.

The new corporation was required to “develop, extend and improve [broadcasting] services in the public interest” and to “ensure, so far as is practicable, that programmes on TV1 and TV2 do not wholly or partly coincide.”61 This was to alleviate the strongly competitive nature of the two channels operating under the 1973 Act: Ian Cross, chairperson of the board and chief executive from 1977-1986, felt the 1973 Adam Report concept of competitive but complementary programming between TV1 and South Pacific Television was a failure because “it is simply not possible to produce

60Bruce Slane, Interviewed 22 August 1993.
a cross between the fighting cocks of commercial competition and the love birds of complementary programming."\(^{62}\)

Extension of transmission facilities and the cost of the 1973 Act's tripartite structure (which resulted in duplicated services) incurred a $38 million debt which was remitted by the government when it set up the BCNZ. An embargo was placed on BCNZ borrowing which, combined with the licence fee freeze in the late 70's, placed a financial straitjacket on the Corporation and forced it to resort to advertising for funding. By 1980, advertising accounted for 70% of the BCNZ revenue (compared to 50% in 1975).\(^{63}\) The pressure this placed on the BCNZ's PSB function became clear as reductions in radio news services and television local drama productions ensued.\(^{64}\)

Political censorship was another threat to PSB ideals during this period. The 1976 Act reinstated the position of Minister of Broadcasting and included a clause which required the BCNZ,

> to have regard to the general policy of the Government in relation to broadcasting, and to comply with any directions given by the Minister to the Corporation by notice in writing pursuant to that policy.\(^{65}\)

Gregory (1985) notes that during this period the gap between journalists and the administration widened as news and current affairs began to part from the deference to authority that had characterised broadcasting’s development to date.\(^{66}\) Butterworth claims;

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\(^{63}\)This period is well documented by Boyd-Bell, R. (1985) \textit{ibid}, Chapter 9, Gregory, R. J. (1985) \textit{op. cit.} Part 3 especially p.91-97, and Cross, I. (1988) \textit{op. cit.}, deals with this period from the institutional point of view.

\(^{64}\)Gregory, R. J. (1985) \textit{ibid}, p.96.

\(^{65}\)1976 Broadcasting Act, Part 2, Section 20.

\(^{66}\)Gregory, R. J. (1985) \textit{op. cit.}, p.95.
That this deference was indeed a deeply ingrained aspect of the culture is evidenced by the continuous barrage of complaints from the public as well as from politicians.\textsuperscript{67}

Sir Robert Muldoon was a frequent user of the formal complaints system which the 1976 Act installed. The BCNZ Board allowed him a short cut procedure for complaints, which generally concerned alleged anti-government 'propaganda'. Cross's reluctance to defend journalists from Muldoon's attacks and his position as both chief executive and chairman of the board\textsuperscript{68}, which resulted in journalists having little representation independent of the politically-appointed board, meant that journalists had little autonomy.\textsuperscript{69} Muldoon's threats to sell off TV2 to private enterprise were seen as a tool to keep broadcast management in line. Administrative decisions not to air politically sensitive programming only increased the level of professional dissatisfaction.\textsuperscript{70} Amendment to the Broadcasting Act's clause allowing ministerial directives occured in 1982; the new section prohibited the Minster form interfering in programming or complaint decisions, and required publication of any order in the Gazette\textsuperscript{71}. This supports Gregory's (1985) observation that previously the government had involved itself in editorial matters on an informal basis, a breach of political accountability.\textsuperscript{72}

In 1980, the two television channels were integrated as Television New Zealand (TVNZ), and a new complaints procedure was established, which saw investigation regarding a standards breach dealt with by the


\textsuperscript{68}Gregory, R.J., (1985) \textit{op. cit.}, p.106. Gregory comments "once again the public broadcasting organisation's top official is appointed by, and holds office at the government's pleasure."

\textsuperscript{69}A complaint resulting from lack of care with regard to balance, fairness and accuracy (the main political grindstones) could be dealt with entirely by political appointees - no industry representatives sat on either the Board or Tribunal of appeal. Noted in Cross, I.,(1988) \textit{op. cit.}, p.52.

\textsuperscript{70}For example the Death of a Princess documentary and the David Excel interview with Prince Bernhard of the Netherlands. See Boyd-Bell, R., (1985) \textit{op. cit.}, p.177.


\textsuperscript{72}Gregory, R.,(1985) \textit{op. cit.}, p.95. He further notes that the public attacks Muldoon made on the BCNZ were due to an inability to attack the system from within.
Director-General and relevant department heads (the Broadcasting Complaints Committee), combined with an independent investigation by the BCNZ Head of Programme Standards.\textsuperscript{73}

The period 1980-1986 saw a continued decrease in the percentage of BCNZ revenue coming from the Public Broadcasting Fee, and an increasing reliance on advertising.\textsuperscript{74} In 1984, the Tribunal was directed to hold a hearing into the granting of a private television channel, perhaps on a regional basis. The imminent threat of a competing, privately-owned third channel saw the BCNZ gear up for competition by developing promotional campaigns and attempting to build viewer loyalty. The hearings were extremely litigious due to the Tribunal's administrative law responsibilities, and lengthy, due to the complexity of the initial decision over whether a third channel was economically feasible regardless of who received the licence.\textsuperscript{75}

The Royal Commission into Broadcasting and Related Telecommunications in New Zealand reported its findings in 1986.\textsuperscript{76} These stressed the benefits of PSB and made a number of suggestions regarding independence and standards. The Commission felt the Minister's power to issue directives should be removed, and that the industry Broadcasting Complaints Committee should be replaced with a Registrar to adjudicate on complaints in the first instance. It was also held that the Rules Committee's function of promulgating codes of practice should be transferred to the independent Broadcasting Tribunal.

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\textsuperscript{73} Cross, I. (1988) \textit{op. cit.}, p. 81.

\textsuperscript{74} By 1981/82 the fee accounted for 23% of BCNZ revenue and by 1987/88 it had fallen to 14%. Comrie, M. (1992) \textit{op. cit.}, p. 15.

\textsuperscript{75} The BCNZ (by this time reliant on advertising funds for 80% of its income) made an extremely strong case for maintaining the 2 channel system, on the basis that advertising pool of revenue would not sustain three major channels. Bruce Slane, Chairperson of the Tribunal. Interviewed 22 August 1993.

\textsuperscript{76} It is pertinent to note here that the Royal Commission was established by the Minister of Broadcasting Jonathon Hunt, a man of Reithian sympathies.
An addendum by member Laurie Cameron contradicted much of the original report and encouraged more market freedom, tendering of the frequency spectrum, and a split in the commercial and non-commercial wings of the BCNZ\textsuperscript{77}. This was a telling sign of things to come. In 1987 Jonathon Hunt was replaced as Minster of Broadcasting by Richard Prebble, who asked Trade & Industry Officials to prepare a report on the broadcasting sector. The Royal Commission’s calls for greater regulation were discordant with the government’s free-market approach, and this, combined with frustration over the length of the third channel hearings, had convinced the government that broadcasting regulation had become slow moving and costly.\textsuperscript{78}

The broadcasting environment in New Zealand was about to change markedly. During 26 years as a government department, and another 25 as a public corporation, the main threat to PSB ideals was political influence in editorial and operational matters. Broadcasting was seen as a tool which politicians could manipulate to further party and personal advantage. The government ownership of broadcasting during its early development, and later the establishment of a powerful ministerial position, contradicted one of the basic tenets of PSB - that the incumbent government should be distanced from broadcasting’s operational activities.

However, increasingly during broadcasting’s time as a public corporation, as political broadcasting expanded and direct control over broadcasting decreased, commercialisation and loss of public funding have been PSB’s main threats. Competition for ratings and the advertising dollar strengthened as the public broadcasting fee became an increasingly smaller


\textsuperscript{78}Richard Prebble. Interviewed 16 August 1993.
percentage of broadcaster's revenue. This commercial imperative challenges another of the Broadcast Unit's principles - that broadcasting should be structured so as to encourage competition in good programming rather than competition for numbers.

Chapter Two will outline the increasing commodification of the broadcasting product as deregulation impacts on the State broadcasters, and analyse the legislative debates surrounding the remaining PSB services, with particular regard to the development of the Broadcasting Standards Authority.
The Birth of the BSA.


Restructuring Public Broadcasting in New Zealand.

In December 1987 Deloitte Touche Ross consultants reported to the Minister of Broadcasting, Richard Prebble, on options for the economic reform of telecommunications in New Zealand. The report raised the question of broadcasting's convergence with telecommunications, and made a number of proposals regarding the deregulation of the telecommunication's industry. The principles of the report, fundamentally supporting increased competition and a reduction in state regulation, were adopted by the Labour government. On the basis of the Touche Ross report the Cabinet Policy Committee made a number of recommendations which Cabinet agreed to on the 18 April 1988. These included:

- allowing greater competition in broadcasting markets by removing legislative restrictions of an economic character,

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3Richard Prebble, Minister of Broadcasting, stated in Parliamentary Written Answers, 30 March 1988, that "The Touche Ross report was used by the government to determine whether telecommunications should be deregulated. The report recommended deregulation and that policy has been accepted by Government." New Zealand Parliamentary Debates, Vol.487. p.3365.
- permitting cable and satellite transmission technology, and pay and subscription broadcasting,
- restructuring the BCNZ along State Owned Enterprises (SOE) lines,
- allowing greater competition in the broadcasting transmission market so as to achieve the most efficient allocation of radio frequencies,
- transferring policy advice on broadcasting to the Department of Trade and Industry (D.T&I) / Ministry of Commerce (MOC) in consultation with Treasury,
- maintaining a policy of minimum public service objectives by
  a/ introducing a system of public service grants, to be bid for competitively by broadcasters, and administered through a Broadcasting Commission,
  b/ inviting the Minister of Justice to promote revision to the general law to ensure that broadcasting programmes meet public standards of decency and behaviour,
  c/ directing officials to examine the feasibility of establishing a Broadcasting Ombudsman to consider and respond to complaints on broadcasting practices.4

The Officials Coordinating Committee on the Implementation of Broadcasting Policy Reform, and the Steering Committee on the Restructuring of the Broadcasting Corporation of New Zealand along State Owned Enterprise Lines (the Rennie Report) were set up to report to the Cabinet Policy committee on the options available for implementing the proposed structures. This began the move to bring broadcasting in line with wider telecommunications deregulation.

State Sector Reform.

The Fourth Labour government came into power in 1984 and began a process of corporatisation, deregulation and privatisation of the public sector, with the aim of increasing competition and accountability in public services.\(^5\) Labour, traditionally sympathetic toward the notion of public ownership, followed a global trend toward “neo-conservatism.” This position was characterised by a reduced role in the economy by the state, and a greater emphasis on the market for allocating resources.\(^6\) Martin (1990) notes:

New Zealand’s experience seemed to show that the departmental form of organisation, subject to day to day ministerial interference and public sector management systems, was not conducive to the efficient production of goods and services.\(^7\)

Treasury proposed the private sector model, which focuses on competition as the key to product efficiency, as the appropriate method of reform in public enterprise. The State Owned Enterprises Act (SOE) in 1986 was the initial move toward a more efficient state trading environment. The SOE principal objective required every business to operate ‘successfully’ or in a commercially profitable manner. Unnecessary barriers to competition were removed so that

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\(^6\)Ibid. p.27.

commercial criteria could provide a fair assessment of managerial performance, and non-commercial functions would be separated from SOE's to provide greater transparency with regard to costs and benefits.\(^8\)

The State Sector Act in 1988 aimed to further improve economic and managerial performance by improving accountability, responsiveness and efficiency in the public service. The primary effect of the Act was "the separation, in different agencies, of responsibility for the provision of policy advice, regulatory and funding activities, and operational activity."\(^9\)

Jim Stevenson, a DT&I policy advisor, and Chairperson of the Officials Committee, suggests the main influences on the government's economic reform could be summarised as:
- The need for public sector efficiency and equitability,
- State trading organisations should be placed in neutral commercial environments and meet the same commercial standards as their private enterprise counterparts,
- State trading organisations should be competitively neutral and function under competitive principles,
- The expenditure of public funds should be transparent, and based on private sector principles,
- Commercial functions in state trading organisations should be separated from public advisory and public monetary functions,
- There should be targeted expenditure on social policy commitments.\(^10\)

\(^8\)Ibid. p.34.
\(^9\)Martin, J. (1990)op.cit. p.128.
\(^10\)Jim Stevenson. Interviewed 6 July 1993.
Telecommunications was one of the first industries to have these principles applied to it.

**Deregulation of Telecommunications.**

By 1987, the Post Office had become a SOE and Telecom was a stand alone communications corporation. Rennie (1992) notes that the existence of such entrenched monopolies as Telecom ( and TVNZ) led to the need for deregulation following corporatisation\(^{11}\). Once the administrative restructuring had occurred and a 'level playing field' was achieved by adopting policies of transparency and competitive neutrality, it was seen by the Government as necessary to introduce competition as an impetus for efficiency.\(^{12}\)

Deregulation of telecommunication would open up the spectrum to access and competition between suppliers. Rennie contends that the Government saw telecommunications as an industry and wanted "a freely competitive communications market."\(^{13}\) Technological developments led to demand for increased access to the frequency spectrum, both from multinational companies, and domestic players such as TVNZ, which was preparing for a more competitive communication environment by diversifying.\(^{14}\)

Spurgeon (1992) argues that technological determinists, who believe technological development is inevitable, are more concerned with communications capacity, than with content.

"Many technologists and policy-makers consider the most effective and efficient communications systems to be those with an enormous capacity to deal with information on a non-discriminatory basis."\textsuperscript{15}

Certainly the telecommunications industry in New Zealand saw new technology as inevitable, and most appropriately dealt with by developing domestic products at a concurrent rate.\textsuperscript{16} This necessitated the restructuring of the and the BCNZ, to cope with new competition, and development of the frequency spectrum, to facilitate access to the additional channel space created by fibre optic cables and compression technology.\textsuperscript{17} Broadcasting deregulation had become inevitable.

Having established the general policy environment from which broadcasting deregulation developed, it is necessary to discuss market theory pertaining to the restructuring of the communications industry. This will provide an understanding of the arguments surrounding the development of the legislation which deregulated broadcasting in New Zealand. A emphasis is placed on the differences and similarities of PSB and market-oriented systems, with particular regard to access, censorship and funding.

\textsuperscript{16}Wilson,H.(1991)op.cit, p.62.
\textsuperscript{17}Comrie,M.(1993)op.cit, p.3.
Free Market Arguments.

Proponents of deregulation of communications emphasise the freedom from state interference and censorship that results from commercialisation and market competition. ¹⁸ Media mogul Rupert Murdoch maintains,

market competition is the key condition of press and broadcasting freedom, understood as freedom from state interference, as the right of individuals to communicate their opinions without external restrictions. ¹⁹

Benefits of a deregulated system are said to include more consumer choice; lower prices for improved products; freedom of entry into the market; cost efficiency; and rapid technological development. ²⁰ According to the free market model of media theory the notion of a free market and free communications system is seen as an an essential component of a free and rational society. It is presumed the nearest approximation of the truth will emerge from the competitive exposure of alternative view points. ²¹ With free consumers bringing their ideas to the market, a free market of ideas should result; this is identified with private ownership of the media rather than a regulated of state-controlled system.

Deregulation is of broadcasting is held up by market liberals as the ideal solution to state intervention and censorship. The traditional argument for PSB, the scarcity of the frequency spectrum, is

¹⁸ Keane outlines the main arguments pertaining to communications’s deregulation and commercialisation of the airwaves in his first chapter, "Deregulation.”
Keane,J.(1992) op.cit, p.52-91.
  ¹⁹Ibid, p.53.
  ²⁰Ibid, p.52-91.
considered invalid in an age of technological development that has opened up new forms of transmission. The notion of the airwaves as a scarce resource misstates technical reality: the number of transmitters is limited only by economics. New Zealand’s tribunal system of warrant allocation is a perfect example of this. The tribunal limited licence numbers to the quantity that the market rather than the spectrum could sustain. This policy of economic protection for broadcaster is criticised by monetarists for creating “bureaucratic, inefficient, and costly” broadcasting institutions, which ignore consumer demands.\textsuperscript{22}

Curran and Seaton (1991) remark that the starting point of the free market approach is “that consumers are the best judges of what is in their interests.”\textsuperscript{23} By allowing audiences to select from a range of goods and services their viewing preferences, quality programming will become obvious as that which is most highly supported. This type of consumer sovereignty will result in consumer gratification, which free market supporters claim is the ultimate purpose of broadcasting. To presume that the role of the medium is to dictate standards of education or information to the public, is viewed as paternalistic.\textsuperscript{24}

\textsuperscript{24} \textit{Ibid.} p.336.
Market Failures.

Advertising

One of the basic assumptions of the market model, that PSB is based on frequency scarcity arguments, is questioned by Garnham (1990). He contends that the basis of PSB is more than a mere technological matter; while PSB has been legitimised by frequency scarcity, its justification is product quality and access to audiences, regardless of their wealth or geographic location. Garnham further asserts that PSB is a means of “ensuring that the aim of the programme producer is the satisfaction of a range of audience tastes rather than only those tastes that show the largest profit.”

This illustrates one of the major failures of the market model - its concern over profit, and subsequent reliance on advertising for revenue. Comrie explains that broadcasting differs from the newspaper business in that “while production costs are high, distribution costs are negligible.” This has the effect of creating pressure to constantly expand audience share, and a resultant exploitation of economies of scale. Comrie cites Curran (1986) regarding the principle that commercial television companies make money by selling audiences to advertisers, not by selling programmes. Therefore, an increase in audience is commensurate to a decrease in the product’s total cost.

The need to attract advertising revenue, therefore, necessitates high audience ratings. This encourages competition for numbers

27 Ibid. p.7.
rather than quality - a direct contradiction of the PSB principle of excellence in programming. Parenti (1986) notes "entertainment and news are merely instrumental to the goal of the advertiser, whose object is commercial gain." The need for high circulation figures creates a product that is designed to appeal to the common denominator; the content of the product loses importance and format becomes the paramount concern, as the struggle for ratings increases.

The development of the TVNZ product in the period preceding deregulation illustrates this trend. The company increased promotion of TV One and Channel Two as separate identities and launched a $4.2 million campaign on channel branding. TV One was promoted as the information and sports channel, while Channel Two was established as the entertainment alternative. Investing funds into format revision has been criticised as inefficient use of revenue that could be better spent on production rather than presentation.

Reliance on the advertising dollar forces broadcasters to constantly aim for the largest audience, at the risk of disadvantaging 'minority' audiences. Curran and Seaton (1991) observe that advertising funded channels have an enormous financial incentive to "concentrate on common denominator programmes which attract high ratings and a large advertising yield." Therefore, broadcasting systems based on advertising tend to narrow consumer choice by discriminating against minorities.

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31From a lecture by Joe Atkinson at the University of Canterbury Journalism Department, regarding the "Morselisation of Network News 1985-90." May 1993
Keane (1991) also examines the market liberal claim of maximised individual choice, and finds it lacking. He believes the market approach of aiming for the "heartland" of viewers and catering for mass appeal, restricts programme diversity and results in wasteful programme duplication.\textsuperscript{33} Keane contends that the under-representation of particular audiences is a fundamental flaw in the market model, especially as people all belong to a minority some of the time, and "some belong to a minority all of the time."\textsuperscript{34} The market assumption of increased choice through increased access is eroded by the reality of ratings dominated programme decision making, which rejects non-commercial opinions and viewpoints.

\textit{Access}.

Early regulation of broadcasting emerged to counter technical difficulties. In the USA during the 1920's a relative shortage of channels convinced the government to administer them for public use. At inception, radio lacked a developed system of property rights, and the wavelengths became cluttered by a 'radiophonic anarchy' as almost overnight operators were able to grab lengths like 'early miners striking for claims'.\textsuperscript{35} Broadcasters invited government allocation to avoid interference and overlapping.

These radio wars and resultant regulation provided a rationale for restrictive regimes in the United Kingdom, and other Commonwealth countries.\textsuperscript{36} Chapter Two outlines the establishment of government regulation of the airwaves in New Zealand. This system of warrants and licensing to permit broadcast transmissions

\textsuperscript{33}Keane, J. (1991) \textit{op. cit.} p.77.
\textsuperscript{34}Ibid. p.79.
\textsuperscript{35}Smith, A. (1973) \textit{op. cit.} p.56.
continued in New Zealand until the Broadcasting Tribunal was abolished in 1989. It was frequently criticised by advocates of the free market for being time consuming, costly, litigious and bureaucratic.\textsuperscript{37}

The ‘communications revolution’ of the last decade has invoked demands that the new spectrum availability, enabled by fibre optic cable and compression technology, should be fully utilised. Market liberals consider deregulation of the spectrum, allowing a multitude of channels to develop, as the most efficient means of providing diversity and choice in programming. Keane (1991) outlines Murdoch’s ideology for a competitive broadcasting environment:

Market-led media ensure competition...A privately controlled press and a multi-channel broadcasting system in the hands of a diversity of owners is a bulwark of freedom...Market-led media liberate individuals from the dominance of state-backed, orthodox values. Competition ensures freedom of entry into opinion markets for any enterprise which thinks it has something individuals might like to hear or watch.\textsuperscript{38}

Keane challenges this theory by suggesting that markets are often not contestable, because of high entry costs and strong competition from established players determined to maintain their market share\textsuperscript{39} Rowan (1984) agrees, maintaining that technological advances only advantage the audience if they occur in a pluralistic system. He contends that when entry costs or media monopolies


\textsuperscript{38}Keane, J. (1991) \textit{op. cit.} p.53.

\textsuperscript{39}Ibid. p.69.
restrict entry, diversity is reduced, a situation illustrated by the domination of broadcast networks in the USA.\textsuperscript{40}

Pearce (1980) examines these commercial television networks; American Broadcasting Company (ABC), CBS, and the National Broadcasting Company (NBC), and concludes that regardless of repeated political and economic attempts to restrict the networks power they continue to go from strength to strength. The three networks’ have successfully fought regulation of their production-distribution monopolies, programming and advertising standards, and increases in Federal Communication Commission (FCC) powers.\textsuperscript{41} This is possible as a result of the enormous political and financial influence broadcasting wields, due to politician’s need for media coverage of events of policies, and advertisers reliance on broadcasting for provision of audiences.\textsuperscript{42}

In conclusion, Easton (1990) notes that while the New Zealand Treasury believed removing government imposed barriers to entry would result in a “more competitive and diversified broadcasting”, in reality entry into the industry is confined to those with “a large sum of capital who are prepared to risk it.” He further observes that as a large number of cultural activities do not have access to this level of capital, less restrictive rules of entry will not necessarily advantage them.\textsuperscript{43}

\textit{Corporate Censorship.}

\textsuperscript{40}Rowan,F.(1984) \textit{op.cit.p.202.}
\textsuperscript{42}\textit{ibid.} p.3.
Advocates of broadcasting regulation, like Les Brown, Editor of Channels magazine, emphasise that it is a reaction to unseemly business practices. He contends:

Left to their own devices broadcasters have been known to practise deception in news programmes game shows and made for television sporting events; to discriminate against women and minorities in their broadcasts as well as in their hiring practices; to exploit the gullibility of children with violent cartoon programming and highly manipulative commercials; and to keep people off the air whose views don’t agree with their own.44

While the principle of freedom from government censorship has long been recognised in discussions on freedom of the media (the American First Amendment explicitly prohibits federal and state government from abridging the freedom of speech or of the press45) the notion of corporate censorship has more recently developed. Keane (1991) asserts that the last three decades have seen a takeover of the communications media by the corporate voice. He chronicles the increasing concentration of media capital on a global scale, with “media giants” like Robert Maxwell, Rupert Murdoch and the Berlusconi group becoming market leaders by actively pursuing the acquisition of cross-media assets.46

Dennis (1988) argues that maintaining a “truly informed and pluralistic democracy” requires “the voices of the people and groups who have genuine radical views being heard.”47 Concentration of media ownership is not conducive to this aim for a number of

46 Ibid. p.69-77.
reasons. Firstly, commercially-owned media favour corporate speech. Bagdikian (1985) reviewed the American media, and concluded that the profit motive of private enterprise meant that “media protectiveness towards corporate objectives kept subdued what would ordinarily be dramatic economic and public health issues.”

Easton (1990) supports this finding. He recalls Public Service Association (PSA) representative Tony Simpson’s cross-examination of the Treasury Assistant Secretary during the Royal Commission on Broadcasting and Related Telecommunications in 1985. Simpson quoted American journalist A.J.Liebling’s dictum, “The publisher bites the editors lip” to illustrate the dangers of corporate censorship. Easton concludes

If the primary purpose of publishing or broadcasting is the pursuit of commercial objectives, it seems likely that the bitten editor is going to be inhibited from being critical of commercial aspirations and mechanisms.

Ownership control of content occurs at a number of different levels, from blatant proprietary demands to self-censorship by journalists. Owners will generally employ editors who are aware of their views and interests; their primary source of editorial control is through appointment of departmental heads by the chairperson of the company’s Board of Directors. Hollingsworth (1986) recounts Lord Marsh’s words;

If you buy a company and if the executives that you hire and pay pursue a policy to which you are strongly opposed, you will

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49 Easton, B. (1990) op.cit, p.284.
fire them before you accept someone else using your money and organisation to do something which you disagree with.\textsuperscript{51}

Conflict of interest can occur in media conglomerates due to the owner’s non-media commercial interests. For example, Murdoch’s company News International holds shares in newspapers, magazines, book publishing, broadcasting, computers, gas, oil, ranching, printers, print and paper manufacturing and warehouse and transport corporations.\textsuperscript{52} It is unlikely reports discussing Murdoch owned oil rigs being operated outside industry safety standards would be broadcast on a Murdoch-owned television station.

Hollingsworth (1986) claims that often this is not so much a case of direct proprietal intervention as self-censorship by the journalist and editor involved. Proprietors “deny potential conflict of interest, but journalists argue that their proprietor’s divergent business investments do result in self-censorship.”\textsuperscript{53} Parenti, in agreement, notes that journalists are generally aware of owners cross-industry interests and the anticipatory response reflected in what doesn’t get broadcast or published is self-censorship.\textsuperscript{54}

A further reason corporate control of broadcasting is not conducive to the wide dissemination of information from diverse sources, is that it relies on commodification of the programming to attract advertisers. Easton (1990) notes the commercial mechanism driving broadcasting “is advertising, which purchases audience time according to size and mix.”\textsuperscript{55} Programming must be directed toward attracting marketable audiences, which can then be sold to advertisers.

\textsuperscript{52}Ibid. Appendix, p.309.
\textsuperscript{53}Ibid, p.8.
\textsuperscript{54}Parenti,M.(1986)op.cit, p.47.
\textsuperscript{55}Easton,B.(1990)op.cit, p.284.
Bagdikian (1985) analysed programming content in the United States following the introduction of advertising in the 1950s and found that previous big audience serious dramas were lightened up “in order to create a buying mood in support of the commercials.”\(^{56}\) A broadcast industry whose primary purpose is to attract high ratings and appropriately blended audiences is going to have very little interest in minority or radical opinions. Keane (1991) supports this finding, and adds, “Advertising encourages a general shift away from diversity of coverage towards the packaging of ‘product lines’ into light entertainment.”\(^{57}\) and concludes “Advertising tends to edge out from the public domain...non-commercial and non-market forms of life.\(^{58}\)

This commodification of information into marketable goods discourages the airing of views or communication which are not likely to attract ratings and therefore advertising dollars. It is generally accepted by media theorists that a pluralistic society requires a marketplace of ideas where contribution to dialogue on important issues can occur.\(^{59}\) This ‘marketplace of ideas’ can only exist in a free and unbiased communications system, which treats information equally, irrelevant of its commercial value. Rowan (1984) cites Jerome Baron in the Harvard Law Review;

Presently, the opinion vacuum is filled with the least controversial and bland ideas. Whatever is stale and accepted in the status quo is readily discussed and thereby reinforced and revitalised.\(^{60}\)

\(^{56}\)Bagdikian,B.(1985)op.cit, p.108.
\(^{57}\)Keane,J.(1991)op.cit, p.81.
\(^{58}\)Ibid.p87.
\(^{60}\)Ibid.p.164.
Rowan (1984) analyses the American communications environment and ascertains public support for a diversity of views, and the introduction of government regulation to achieve this aim. He observes that many Americans are more concerned that the media, not government, may restrict freedom of expression, because the media have the power to select the information to be transmitted to the public. This relates to Comrie’s (1992) finding that high ratings do not necessarily show support for the current broadcast system, as broadcasters claim, as ratings “tend to measure least disliked alternatives and there is no way of measuring intensity of programme enjoyment.”

The media’s power to control information flow is one of the strongest debates for a representative regulatory body in an otherwise deregulated broadcasting environment. The dominance of corporate opinion and the commodification of information can result in diverse or minority views being censored from the ‘marketplace of ideas’. Advocates of a truly deregulated system of broadcasting would not take issue with these forms of censorship, or with unequal access to broadcast facilities, claiming in defence that market mechanisms are the key instruments of broadcasting freedom.

This market theory has illustrated that a broadcasting system, whether it be public service or commercial, relies on open access,

61Comrie, M.(1992)op. cit, p.7. Easton reasserts this point, attacking Treasury’s ‘net social benefit’ theory (wherby high ratings equal high benefits) by illustrating non-watchers or default watchers (who could find nothing else to view) have no way to express their dislike. The intensity of this dissatisfaction could conceivably rate a program as a net social cost. Easton, B.(1990)op. cit, p.283-4.
owner accountability and independent funding, to operate as an effective and equitable means of communication. When broadcasting operates from a position where it is vulnerable to political or corporate pressures, its integrity as a public forum must be questioned. Having established PSB and market theory and recognised that content, access, and funding are areas at risk of political or commercial exploitation, the *re-regulation* of New Zealand’s broadcasting system will be examined, with particular emphasis on the institution of the Broadcasting Standards Authority.

**Broadcasting Legislation.**

*The Steering Report and BCNZ Restructuring Bill.*

In May 1988, following Minster of Broadcasting, Richard Prebble’s announcements regarding broadcasting policy reform, a Steering Committee was established to develop a plan for restructuring the BCNZ based on SOE principles. The BCNZ was configured as a single corporation structure in 1987, “ready to put its two channels against the new single private channel.”\(^{62}\) However, Rennie (1992) notes that the corporation retained a mixed set of obligations. These included:

- provision of broadcasting policy to government, enforcing programme standards and complaint procedures on its own stations, and receiving and spending the ‘public broadcasting fee.’\(^{63}\)

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\(^{63}\)ibid.
The Steering committee sought to separate these functions in different bodies. The policy advice role was transferred to the Ministry of Commerce, and standards and licence fee matters were embodied in new authorities by the Officials. The engineering and transmission functions moved to a new company, Broadcast Communications Ltd (BCL). The newly created broadcasting companies, Radio New Zealand (RNZ) and Television New Zealand (TVNZ) took joint ownership of BCL.\(^4\)

Wilson (1992) asserts that the Steering committee relied heavily upon advice from London-based consultants Booz Allen, regarding international telecommunication developments. She further notes that the consultants were strongly technologically determinist (influenced by technolgical capacity rather than semantics) in interpreting developments. “Satellite delivery of overseas channels was assumed to be inevitable.”\(^5\)

An examination of the Parliamentary debates surrounding the BCNZ Restructuring Bill is pertinent here, to help understand the issues surrounding the BCNZ’s demise. The Restructuring Bill was introduced to Parliament on 20 September, 1988. Richard Prebble stated that, in conjunction with a forthcoming bill, it had the “twin objectives of introducing more competition and flexibility into the New Zealand broadcasting industry while ensuring that the basic social objectives in broadcasting continue to be met.”\(^6\) Prebble maintained that these reforms would result in significant

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\(^5\)Ibid. p.5.

improvements in the productivity, cost-effectiveness, output, and quality of State broadcasting.\textsuperscript{67}

Opposition concerns ranged from the new SOE’s political independence, to the content of the impending bills to deal with the frequency spectrum, standards regime and public broadcasting fee. Remuera MP Douglas Graham suggested that as the Minister of Broadcasting was the sole shareholder, Prebble would be responsible for appointing the directors of the SOEs, who, in turn would be responsible for the broadcasting station. Graham felt this created a direct link between the minister and the organisation responsible for broadcasting, which could result in a political influence over programming.\textsuperscript{68}

Section 20 of the 1982 Broadcasting Amendment Act restricted the Minister of Broadcasting giving directives to the BCNZ regarding programming, news and current affairs presentation, complaints, or “Functions, duties, powers, rights, and authorities conferred on the Corporation...”.\textsuperscript{69} This section was to be repealed on the appointed day of BCNZ restructuring, and no provision was made in the new bill to replace it. This issue, combined with the minister’s position as sole shareholder of the new SOEs was raised by Mr Graham who felt a “residual right” was invested in the minister “to enter into the running of stations in a much closer way than he was permitted statutorily in the past.”\textsuperscript{70}

A further concern regarding political independence of the two SOEs arose at the second reading of the bill. The Planning and

\textsuperscript{67}Ibid.
\textsuperscript{68}Ibid. p.6768.
\textsuperscript{69}1982 Broadcasting Amendment Act, Government Printer, Wellington. Section 20.
Development Select Committee had amended the bill to include a clause which, in the event of a dispute between the Minster and the new corporation, would protect the SOE from any ministerial involvement in programming and editorial matters. This risk having been alleviated, Mr Graham went on to suggest the possibility of directors of the SOEs being vulnerable to political influence by reason of the fact that they were political appointees. This, he felt, could introduce the risk of dismissal for reasons connected with programming or editorial matters.\textsuperscript{71}

The Hon. Jonathon Hunt during the third reading of the bill, recognised this risk and assured members that there would be a distinction in the final bill regarding the board appointees. “There has to be provision for the removal for commercial incompetence of members of boards of SOEs...However, I take the point that there is a need to distinguish between commercial incompetence and programming matters.” Programming autonomy free of political pressure had been attained.

At the first reading of the BCNZ Restructuring Bill the Hon. Warren Cooper, MP for Otago, raised the issue of the handling of complaints during the period December 1, 1988, when the Tribunal was to be abolished, and 1 April, 1989, when the Broadcasting Standards Authority (BSA) would begin to function. The original legislation directed TVNZ and RNZ to deal with all complaints themselves, so “for a time the complaints will be heard by the people who are the subject of the complaint.”\textsuperscript{72} Cooper expressed concern at the type of programming and advertising that would be permitted by

stations to maintain their revenue income in a more competitive environment. Cooper believed that increased competition, combined with the fact that TVNZ and RNZ would field their own complaints during such a significant period of upheaval, gave the public little protection from broadcasters, or sources of redress. The Planning and Development Committee recognised this problem and made transitional arrangements for the hearing of complaints in that period, and to ensure no complaint made to the Broadcasting Tribunal would be lost.

A continuing criticism of the bill, which remained until its enactment in three parts on the 24 November, 1988, was the ambiguity expressed regarding the following bills which would establish the BSA and the Broadcasting Commission (later referred to as as New Zealand on Air or NZOA). The fate of non-commercial broadcasting, whose aims seemed incompatible with the SOE principles of the publicly owned channels, was uncertain. Claims by the government that ‘later’ measures would accomplish PSB aims were considered insufficient evidence by the opposition members.

The details outlined in the Officials Coordinating Committee Report, that the NZOA would be responsible for administering grants that broadcasters would bid for competitively, suggested licence fee money could go to “objects that are less than desirable.” Richard Gerard, MP for Rangiora, maintained “This [system] does not give

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73 Ibid. p.6772.
75 These concerns were repeatedly expressed by opposition members during the BCNZ Restructuring Bill debates and the Broadcasting Bill debates. See New Zealand Parliamentary Debates. VR.Ward, Government Printers, Wellington. Volumes.484, 487, 492, 493, 494, 495, 497, 498.
non-commercial broadcasting the certainty it needs...Licence fee money should go straight and simply to non-commercial broadcasting...Public broadcasting will have to become more commercial in order to survive as the dollar will become more important than programming." This concern was also applied to standards, as it was envisioned the drive for ratings and "rampant commercialism" could result in a "lowering of standards or increased stereotyping".\(^77\)

The Officials Report.

The social policy objectives announced by Richard Prebble in April 1988 were considered by a committee comprising representatives of the DT&I and Treasury, who were charged with examining various matters of implementation, including the feasibility of establishing a Broadcasting Ombudsman to deal with standards matters, and legislation proposals to amend the Broadcasting Act.\(^78\)

Previously, the Broadcasting Tribunal had dealt with standards and complaints, but with the advent of deregulation and the introduction of competitive players in a market environment, a more regulated and enforceable system of standards was thought to be required. The Broadcasting Tribunal was a multi-purpose bureaucracy which journalist Shane Cave observed

\[...\text{got bogged down in a vast range of other roles, such as issuing licences. Fitting in consumer complaints and keeping}\]


broadcasters straight came a poor second for the over-stretched Tribunal so that decisions on complaints took 18 months or more to be processed.\textsuperscript{79}

The Tribunal's inefficiency was primarily due to lengthy legal cases regarding the protection of broadcaster's market share.\textsuperscript{80} In the increasingly competitive broadcasting environment the need for a new standards regime with the sole function of dealing with complaints was considered necessary, not only to encourage morals and values in broadcasting, but as a safeguard against aggregation of ownership resulting in restricted programme diversity and lack of editorial independence.\textsuperscript{81}

Originally, the statutory frame-work for the standards administration involved a general law and broadcasting ombudsman combined with industry self-regulation. The Officials felt a criminally enforced law for the media was impracticable. This conclusion was primarily due to the lengthiness of court hearings, though there was a political desire not to create unnecessary public concern over what deregulation could unleash.\textsuperscript{82} Jim Stevenson, Committee chair, recounts;

Part of the acceptability of the whole broadcasting reform relied on the credibility of the standards regime. The original idea of a self-regulatory body needed strengthening to remain credible in the minds of the public. We recognised that free to air broadcasting was a unique medium in the sense that, for all practicable purposes, there is no way the public can discipline what comes into their living rooms. Therefore a credible authority with order making powers over all broadcasters had to be established.\textsuperscript{83}

\textsuperscript{80} Jonathon Hunt, Interviewed 16 August 1993.
\textsuperscript{82} Jim Stevenson, Interviewed 6 July 1993.
\textsuperscript{83} ibid
However, the Officials maintained that primary responsibility for standards lay with broadcasters, so the first and foremost line of response regarding complaints would rest with them. Self-regulation within the broadcasting industry was considered the most effective and least costly way of ensuring broadcasters adopted appropriate standards of behaviour. An association could promulgate codes of practice and promote public concerns in the industry, working with the authority to encourage a high degree of participation and adherence by stations. The authority (named the BSA) would be involved in the complaint process only if the complainant was dissatisfied with the broadcaster’s response. With regard to codes of practice, the authority would have jurisdiction over the standards outlined in the 1976 Broadcasting Act, and in consultation with broadcasters, would formulate new codes to cover ‘evolving standards.’

Jim Stevenson recalls that the Officials were aware of the difficulties the BCNZ and Tribunal had faced, because of political involvement in operational matters and lack of funding. Their primary concern was that the Authority’s autonomy from government would be maintained, except for a very transparent mechanism where policies were stated and could be seen by the public. Stevenson:

We believed that to achieve this the Authority needed to employ its own staff and be funded by a parliamentary appropriation. The idea was to have the industry remaining responsible for standards; self-regulation was the fundamental principle, but to have the Authority to ensure this system was

84 Ibid.
85 Officials Report (1988) op. cit., p.34.
86 Ibid.
accountable. The Authority would be a facilitator in the codes area, able to step in when there was public dissatisfaction or industry reluctance.\(^{87}\)

Broadcasting, especially that using visuals, is an extremely powerful medium due to its immediacy and availability. Cocker (1989) observes that anticipating the potential audience at any given time is difficult, which increases the need for strictly enforced minimum standards of behaviour. The state formation of an authority to assist in this aim assumed the public wanted a moral watchdog to protect them in their roles as viewers and consumers. A competitive broadcasting marketplace was expected to result in the pushing or bending of standards as the demand for revenue in the broadcasting business necessitated the drive to find programming which would attract audiences, and so ensure the survival of a station.\(^{88}\)

The 1976 Broadcasting Act includes as minimum standards, the observance of standards of good taste and decency; the maintenance of law and order; and respect for the individual.\(^{89}\) The Officials regarded clause 24. (1), which required objective and impartial news gathering and presentation, inappropriate for a more diverse media environment. It was suggested that the retention of this clause could inhibit freedom of speech by restricting editors from adopting a point of view.\(^{90}\) The civil liability provision in the Act, which meant broadcasters could not be prosecuted for failing to comply with the statute, was retained to maintain the integrity and authority of the new quango as an institution outside the ordinary courts.\(^{91}\)

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\(^{87}\)Jim Stevenson, Interviewed, 6 July 1993.
\(^{89}\)1976 Broadcasting Act, op.cit, Section 24.
\(^{90}\)Officials Report.(1988) op.cit, p.33.
\(^{91}\)Ibid.
The BSA was afforded the power to receive complaints about serious or repeated breaches of the statutory standards of the Act, and any approved codes of practice. The areas which the Officials felt the codes should cover were:

2. Standards for the portrayal of violence.
3. Fair and accurate programming and procedures for correcting factual errors and redressing unfairness.
4. Safeguards against the portrayal of persons in programmes in a manner that encourages denigration of discrimination against sections of the community on account of sex, race, age, occupational status, or as a consequence of legitimate expression of cultural, religious or political beliefs.
5. Presentation of appropriate warnings in respect of programme which have been classified as suitable only for particular audiences.\(^{92}\)

Sanctions which could be imposed for failing to adhere to the codes of practice or statute provisions included ordering a broadcaster to cease broadcasting for a period of up to 24 hours; directing a broadcaster to broadcast an approved statement at such times as requested by the Authority; ordering compensation to an individual for unjust or unfair treatment or in respect of an invasion of privacy; and redirecting complaints back to the broadcaster for reconsideration under Authority guidelines.\(^{93}\)

The Bill for the allocation of the radio frequency spectrum had not been introduced to parliament when the Officials report was released, and even up to the final reading of the Broadcasting Bill it was uncertain what the provisions in the spectrum bill would be

\(^{92}\)ibid. p.34.
\(^{93}\)ibid. p.39.
regarding the voiding of breaching of broadcasting contracts. The
Officials gave the Authority the power to void a broadcaster’s radio
frequency contract if an Authority order was not observed.94 During
the Parliamentary debates this regulatory measure caused considerable
contention, and was finally removed, an action which will be
discussed later in this chapter.

The BSA was afforded the power to award costs provided no
costs be made against a complainant unless the complaint was
frivolous or vexatious. The Officials omitted any right of appeal in
order to “maintain the principle of a separate and non-court based
regime for broadcasting and to promote the authority of the
Authority.”95 This left the the BSA wielding an unprecedented
amount of power as the final vehicle for complaints and standards
procedures in an deregulated broadcasting environment where “the
notion of public interest ceases to be a real issue.”96 The Authority,
consisting of a chairperson with no less than seven year’s experience
as a barrister/solicitor in the High Court, and two people with
relevant media or standards experience, would decide the level of
moral integrity and social values acceptable for New Zealand viewers
and listeners. This type of paternalistic approach to broadcasting is
one of the market liberal’s strongest arguments against state regulated
media.97

Reaching a balance between market freedom and state
protection was a main feature in the development of the BSA and its
functions. With the introduction of TV3 and Sky network television,
and the projected increases in radio stations once the frequency

94 ibid. p38.
95 ibid. p.39.
97 Keane, J. (1991) op. cit, p.56.
spectrum bidding had been legislated\textsuperscript{98}, the number of broadcasters competing for a limited amount of advertising revenue would increase dramatically. To secure that revenue through ratings meant creating a product that was strange or unique, or pushed the limits of viewer's experience.

The ferocity of competition in a deregulated market will affect the product. A changed producer and product demands a different rationale for decision-making on complaints procedures. The parliamentary debates surrounding the introduction of the 1988 Broadcasting Bill expose the diversity of opinion as to what that rational should be.

\textit{The Broadcasting Bill.}

The Broadcasting Bill was introduced to Parliament on December 13, 1988 and embodied the policies suggested by the Officials in the August Report. Opposition to the BSA was wide ranging, including competing claims that it was draconian and ineffectual. MP for Remuera, Douglas Graham claimed the Authority was "merely reactive". As broadcasters had no civil liability to comply with Section four of the Act (which covered the responsibility of broadcasters for programme standards) it was not enforceable, which resulted in the BSA being a "useless quango." He further argued the revocation of a radio spectrum licence, for breaching standard requirements, was a

\textsuperscript{98}The National Economic Research Associates were commissioned to produce a report regarding the most efficient means of allocating the radio frequency spectrum. A competitive system of tradeable property rights was recommended, whereby pieces of the spectrum would be auctioned off to the highest bidder. National Economic Research Associates (1988) \textit{Report on the Frequency Spectrum Allocation in New Zealand}, London. Wilson notes that the report was adopted before it was published. Wilson (1992) \textit{op.cit}, p.20.
severe penalty considering the expense of establishing a station. A preferable alternative was giving the BSA the right to initiate inquiry and where necessary impose a moderate penalty.\textsuperscript{99}

Margaret Austin, MP for Yaldhurst, responded, defending the BSA’s position by emphasising the programme standards specified in Section four would have statutory jurisdiction, therefore broadcasters would be legally required to fulfil them. Austin used the frequency spectrum legislation as an illustration of another enforceable measure to ensure stations complied, as if they were found in breach of the codes of practice, the BSA had provision to take them off air.\textsuperscript{100}

This measure was one of the most contentious of the regulation debates. The revocation of a licence for not observing an Authority decision was regarded as “far in excess of what would traditionally be accepted as punitive powers for an Authority”\textsuperscript{101}, especially as there was no right of appeal. Parliament was unaware if the bill for the radio frequency spectrum allocation would include the necessity of a minimum requirement for standards for eligibility to purchase a frequency allotment. Richard Gerard, MP for Rangiora, suggested the “complicated and regulated provisions to deal with complaints” were “because the government knows that any hoon of cowboy will be able to get a broadcasting licence when the bill in relation to allocation frequencies finally comes in.”\textsuperscript{102}

As the frequency allocation did proceed on purely commercial terms the need for a body to protect the public, and punish gross misconduct of standards, can be viewed as less onerous than if both regulations were in place. The Broadcasting Tribunal had the power

\textsuperscript{99}New Zealand Parliamentary Debates. op.cit, Vol.495, p.8831.
\textsuperscript{100}Ibid. p.8834.
\textsuperscript{102}New Zealand Parliamentary Debates, op.cit. Vol.498 10499.
to withdraw broadcasting warrants but a less efficient standards regime.\textsuperscript{103} The Broadcasting Bill was redistributing the powers to make the industry more accessible to enter, while retaining a dedication to the social, educational, and cultural needs of the population. Keane (1991) argues that in a totally commercialised broadcasting system "individuals are treated as market-led consumers, not as active citizens with rights and obligations."\textsuperscript{104} The Broadcasting Bill reflected the government's recognition of the special character and significance of broadcasting, and the need for representation in the legislation of the public interest, beyond purely commercial considerations.\textsuperscript{105}

The report of the Planning and Development Select Committee on the 4 May, 1989, amended the Act, by requiring that procedures for making complaints are publicised by broadcasters. Broadcasters must also notify complainants that review of any decision is available through the BSA. These measures were included on the advice of the Broadcasting Tribunal, to make the BSA procedures more 'user friendly' to the public.\textsuperscript{106}

An intermediate penalty of banning broadcasters from advertising for 24 hours (rather than removing them from the air) was included in the Act to recognise the commercial nature of the industry, and the financial debt that could be incurred by requirement to cease all transmission.\textsuperscript{107} In 1989 Graeme Wilson, Managing

\textsuperscript{103} Cave, S. (1989) \textit{op. cit.}, p.29.
\textsuperscript{104} Keane, J. (1991) \textit{op. cit.}, p.89.
Director of TVNZ, claimed suspending commercials for 24 hours was tantamount to a $500,000 fine. TV3's then executive director of news and current affairs, Marcia Russell, questioned broadcasting "always being singled out as something that needs controlling, while magazines and newspapers get none of that."\(^{108}\)

Broadcaster dissatisfaction with the bill was widespread. Written submissions to the Planning and Development Committee are particularly revealing with respect to the issues that arose. Under the title "A Record of Effective Self-Regulation" TVNZ declared;

...the success of the company is ultimately determined by success in satisfying the New Zealand audience, and in that regard 'consumer feedback' through comments or complaints about our standards and quality of service are extremely important.\(^{109}\)

Generally broadcasters felt the history of few complaints going to the Tribunal (an average of 30 a year during 1986-1990) confirmed their current systems as adequate. Radio New Zealand asserted this throughout its submission "We wish to reinforce our belief in self-regulation as the appropriate model", "to have the Authority develop codes is inconsistent with self-regulation."\(^{110}\) Of particular concern, was the possibility of double jeopardy occurring if a case was taken before more than one statutory body or the courts, and the lack of appeal rights allowed @ broadcasters.

In the second reading Jonathon Hunt, Minister of Broadcasting, agreed the extent of the BSA's powers warranted a right of appeal in the High Court, and moved an amendment at the committee stage

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\(^{109}\)TVNZ Submission to the Planning and Development Select Committee on the Broadcasting Bill, (1988)

\(^{110}\)Radio New Zealand Submission to the Planning and Development Select Committee on the Broadcasting Bill, (1988)
that was implemented in the final Act.\textsuperscript{111} The BSA was also granted commission of enquiry powers in relation to its function of hearing complaints, which enables it to actively seek evidence and require witnesses to appear before it. However the power to issue advisory opinions on matters relating to professional conduct was removed, to be dealt with through industry self regulation.\textsuperscript{112} The concern which broadcasters and the Tribunal held regarding the possibility of double jeopardy, or “fishing expeditions by persons contemplating defamation proceedings”, was not considered during parliamentary debates, and the final legislation, enacted on 16 May, 1989, did not include any provisions to restrict complainants seeking further redress.\textsuperscript{113}

Public submissions to the Planning and Development Committee also influenced the bill. The depth of feeling about liquor advertising resulted in clause 19.(20) which dealt with the development of a code in relation to “restrictions on the promotion of liquor”.\textsuperscript{114} Four hundred and twenty five submissions were made regarding violence on television, which influenced the depth of detail in the resultant code of practice.\textsuperscript{115}

The role of the BSA remains a topic of dissension between industry, political and public bodies. The BSA was afforded no legal powers to draw up codes of practice for the broadcasters to adhere to, but it had a statutory duty to encourage broadcasters to draw up their own. Mary Varnham, the coordinator of Media Women, was

\textsuperscript{111} New Zealand Parliamentary Debates, op.cit, Vol.498. p.10499.
\textsuperscript{112} Ibid.
\textsuperscript{113} Broadcasting Tribunal Submission to the Planning and Development Committee on the Broadcasting Bill. (1989) April 3.
\textsuperscript{114} Ibid., Vol.497. p.10407.
\textsuperscript{115} Planning and Development Committee on the Broadcasting Bill (1988) Summary to Cabinet.
disappointed with the final draft of the Broadcasting Act. She claims it was the government’s responsibility to ensure the codes were established as mandatory standards, and that the BSA should have been charged with drawing them up and enforcing them. She views the present system as “an appalling derogation of duty” and maintained voluntary self-regulation by broadcasters would result in “standards that suit them, not people in the community.”

*Equity and Efficiency?*

Mascarenhas suggests that application of the SOE model occurred in some areas of the economy without full consideration of the unique reasons for which the public service was originally established. Furthermore, he sees the motives of the managers of a public enterprise as different from their counterparts in the private sector, with difficulties arising due to conflicts between commercial objectives and the ‘public interest’. The programme of reform that took place applied a commercial formula to industry, that allowed little room for social objectives. Beverly Wakem notes this was the case with broadcasting, claiming the ‘elegant theory’ of the SOE structures was forced on broadcasting institutions “irrespective of whether the model was appropriate to the institution or not.”

In retrospect, both Richard Prebble and Jonathon Hunt recognise the case for retention of one entirely non-profit organisation in radio and television would have been a more appropriate system of ensuring social objectives in broadcasting were met. In 1993, Prebble

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observed "the SOE structure needs changing to make the PSB functions more important. Perhaps a charter to mandate certain public interest duties." It is interesting to note as this thesis was being written in 1995 that Labour presently had a private members bill before Parliament to achieve this aim.

The Broadcasting Standards Authority emerged out of the most radical reform of the state sector ever to occur in New Zealand. It was charged with the role of representing the public in a competitive and evolving industry, of maintaining acceptable standards, and developing, from a system of understanding, a set of codified practices. The debates surrounding the legislation illustrate the depth of industry animosity toward the Authority, and political scepticism at its chances of success. The following chapters examine the BSA's progress, and analyse its effectiveness.

The Broadcasting Standards Authority.

Part One: the Codes of Practice.

The following three chapters examine the BSA’s performance during the first five years of its existence. This chapter evaluates the development and amendments of the Broadcasting Codes of Practice. Chapter Four examines the BSA’s research function, profiles the members and staff of the authority, and assesses complaint and decision procedures to determine their efficiency and equity. It will also canvass funding issues.

Chapter Five focuses on the Violence, Liquor Advertising and Privacy Codes, and analyses the relevant cases and decisions to establish whether a clear interpretation of these codes is being communicated to broadcasters. Throughout examination of the Authority’s PSB functions, attention will be focused on commercial or political threats to its independence or statutory responsibilities.

The Codes of Practice.

The association which the Officials envisaged would promulgate codes, and represent public concerns in the broadcasting industry never eventuated. Instead, the Codes of Broadcasting Practice were drafted by a Radio Standards Committee comprising representatives of RNZ, Independent Broadcasters Association (IBA), and a Television Standards Committee, consisting of representatives from TVNZ and TV3. The codes were examined by BSA members
late July 1989 and given pro forma interim approval. The Authority was unsure whether the BCNZ Rules Committee codes, which provided the foundations of the new codes, would be comprehensive enough to maintain standards in a deregulated environment. This interim measure gave the Authority time to examine each code in detail, apply current research and societal opinions and revise the codes individually.¹

The 1989 Broadcasting Act outlines the minimum standards requirements for broadcasting. These include the observance of good taste and decency; the maintenance of law and order; the privacy of the individual; balanced coverage of controversial issues of public importance; and any approved codes of practice. The codes needed to address the protection of children, the portrayal of violence, fairness and accuracy in programming, safeguards against discrimination, restrictions on liquor promotion, and programme classification. ²

The History of the Codes.

Documents discovered by the writer in the TVNZ library facilitated establishment of the historical formation of the current codes of practice. An analysis of these documents revealed the present Broadcasting Codes of Practice are a variation of the codes which were originally formalised by the NZBC in 1962, when broadcasting ceased to be a government department. The 1989 codes are appendixed along with examples of the NZBC and NZBA rules from 1969-1970, which

¹Jain Gallaway. Interviewed 5 August 1993.
were adopted by the Broadcasting Council in 1973 and used as the basis for the Rules Committee codes in 1977.³

The NZBS had operated under a system of self-regulation, so the only public standards requirements were those in the legislation.⁴ Ian McLean recounts that the NZBC internal rules were based on the NZBS rules.⁵ These NZBS’s internal codes appear to have been derived from a variety of sources. NZBS Files at TVNZ contained the Canadian Broadcasting Corporation Codes, BBC News Guide, and Australian Broadcasting Commission News Directive, all dating back to the 1940s. The New Zealand early codes appear then, to have been based on internationally accepted standards for broadcasting, and amended to reflect the New Zealand environment.

The 1961 Broadcasting Act reasserted the basic NZBS legislation principles of balance, fairness and accuracy, and good taste and decency. However, it was the introduction of private broadcasting, and resultant formation of the NZBA, that expedited the NZBC’s internal codes being formalised as the private broadcaster’s codes of practice.⁶

The NZBA was afforded the power to make rules under section 10 of the 1968 Broadcasting Authority Act. This was the first legislation that stipulated the development of broadcasting rules to elaborate upon statutory requirements. The resultant 1969 Programme Rules for Sound Broadcasting Stations covered standards for 21 different programming genres and included an appended code of practice on violence.⁷

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³Ian McLean. Interviewed 18 August 1993
⁴Ibid.
⁵Ibid.
⁶Ibid.
The Broadcasting Council was afforded a similar duty to that of the NZBA but the 1973 Broadcasting Act also required that the Council establish a complaints system. A comment written by Peter Fabian, later head of programme standards at BCNZ, on the cover of the Broadcasting Council Rules, notes:

The attached rules are the same as for the Broadcasting Authority, which adopted the old NZBC rules. It can therefore be assumed that they extend back to the early 1960s.  

The council basically adopted the NZBA rules and applied them to the three public corporations and the private broadcasters. The 1976 Broadcasting Act abolished the Council and afforded the new corporation the power to establish a committee to promulgate rules. The committee had to include at least one representative of the IBA, and the rules it prepared applied to all stations. The 1977 Broadcasting Regulations established the Broadcasting Rules Committee and specified its membership. Essentially, the regulations created an industry body which could promulgate rules without any public input. Then Minster of Broadcasting, Hugh Templeton, regarded the more rigorous complaints system as a balance for industry self-regulation of rules.

The 1976 Act extended the rule requirements, adding regard for the maintenance of law and order, and privacy of the individual. The resultant codes covered eight programme genres, and included an appendix covering the portrayal of violence. During the 10 years the Rules Committee existed twenty four amendments were made.

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8 Peter Fabian (1976) Broadcasting Council of New Zealand Programme Codes, Attached note.
10 Ibid.
Eighteen of these dealt with the advertising rules, especially tobacco and liquor advertising. Other areas of contention were political programming, phone-in programmes and broadcasts regarding accidents and disasters.\textsuperscript{11}

\textit{The 1989 Broadcasting Codes of Practice.}

The 1989 Broadcasting Codes simplified the Broadcasting Committee Rules, covering only the necessary statutory requirements without elaboration or detail.\textsuperscript{12} This left interpretation of the codes primarily the responsibility of the broadcasters. The BSA’s interpretation of the codes would not become apparent until a reasonable body of cases had been decided upon. This degree of brevity in the codes is both supported and criticised by broadcasters. David Edmunds, Programme Standards Manager at TVNZ, favours simple codes. He explains,

I don’t actually support more specific codes as that could end up restricting broadcasters’ freedom. While we do have to second guess the Authority that is preferable to strict and complex rules which inhibit interpretation of each case on its individual merit and context.\textsuperscript{13}

Donna-Marie Kirk Sargeant, Broadcasting Standards Manager at TV3, agrees, “I don’t think the codes could be more specific. If they were tightened up it would make allowing programmes that were responsible or in context very awkward to appraise.” Kirk Sargeant

\textsuperscript{11}Fabian, P. A. Secretary, Broadcasting Rules Committee (1978-1988) Original Rules Committee Circulars, Nos.1-24.
\textsuperscript{12}Broadcasting Standards Authority (1989) Codes of Broadcasting Practice for Television, Wellington. November, Prog.1-4. The March 1989 Radio codes were slightly more extensive, including contests and telephone participation.
\textsuperscript{13}David Edmunds, interviewed 23 July 1993.
illustrated this point with the film ‘The Accused.’ ‘To cut the rape scenes would result in the impact of the movie being lost. The scenes were done in a very tasteful manner. It was not at all exploitive or glamorised. By showing the true horror of rape we can perhaps do some good.’\(^{14}\)

However, Cheryl Shepherd, Chief Appraiser at TVNZ, believes the codes are badly written. She prefers the British Standards Council (BSC) or Australian Broadcasting Authority (ABA) codes, which, are clearer and state specifically what can and can’t be screened. The classification standards encompass more information and are easier to interpret. There are sections that cover material that should never be broadcast - this is extremely important as presently that is a matter of our own judgement and it doesn’t always coincide with the BSA’s opinion.\(^{15}\)

Joanne Morris, a member of the BSA, admits that clarification of certain terms would improve the codes. She comments, “So many of the terms are vague and value-laden. They need to be explored to develop guidelines regarding the meaning of certain expressions.”\(^{16}\)

The original codes are slowly being reviewed and expanded. Three codes were initially identified by the Authority as inadequate; alcohol, violence and children’s programme standards. Alcohol advertising was by far one of the most contentious issues the Authority has dealt with. For this reason its development will be outlined in some detail, to illustrate the commercial, political and public pressure bearing on the BSA.

\(^{15}\)Cheryl Shepherd, Interviewed 23 August 1993.
\(^{16}\)Joanne Morris, Interviewed 20 July 1993.
Alcohol Advertising.

The alcohol code established by the previous standards body, the Rules Committee, "was being extended in its interpretation by some broadcasters to the extent that it made a mockery of the existing codes." In 1990/1991 the BSA commissioned overview papers concerning the history of alcohol advertising in New Zealand, the effect of alcohol advertising on consumption, overseas codes, and a summary of submissions to recent parliamentary inquiries. In February 1992, following extensive industry negotiation a new Alcohol Advertising Code was released, which permitted brand advertising, but strengthened the rules regarding incidental promotion of liquor. The rules for brand advertising, pertaining to broadcast times and conditions, were also applied to sponsorship advertising. The use of macho images and aggressive themes to promote alcohol consumption, were prohibited.

An examination of the liquor code was made in August 1992, after the new code had been operating for six months. The basic principle of whether brand advertising should be permitted was not addressed, as a major review of that issue was planned for February 1994, after the code had been functioning for two years. A discussion paper was circulated to broadcasters, advertisers and other interested parties, which set out the parameters of the review and issues which

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19 The MOC Quarterly Reports on the BSA chronicle the negotiation processes of the broadcasters, advertising industry, sporting bodies and BSA. The primary issues concerned the degree to which brand and sponsorship advertising should be permitted. Ministry of Commerce (1990) Quarterly Reviews of the Industry of Broadcasting, Broadcasting Policy Unit, Communications Division. Released under the Official Information Act by the Ministry of Commerce.
the Authority regarded as important. A small public opinion survey was also commissioned.\textsuperscript{21} The BSA was concerned that some advertisements did not meet the spirit of the code, and that broadcasters were reluctant to air no-alcohol or moderation messages as the code required. \textsuperscript{22} The public survey of 504 people revealed little public concern over alcohol advertising.

However, the BSA was concerned the new alcohol code was "confusing and difficult to understand."\textsuperscript{23} This was due primarily to its three-part structure. The review addressed this problem, and modified the sections regarding the association of drinking and driving; the saturation of sponsorship credits; contrived incidental promotions; and implied immoderate consumption. The draft review of the code received an adverse reaction from broadcasters and advertisers, who considered the BSA had made substantial changes to the code rather than amending it.\textsuperscript{24}

The revised code restricted sponsorship credits from being broadcast any time other that at the beginning and end of programmes and advertising breaks. The industry representatives argued that this affected their ability to broadcast fast action replays which are generally sponsored. The BSA had also tightened the rules pertaining to incidental promotion of liquor. The Authority was concerned about pre-arranged incidental advertising and maximised coverage of incidental advertisements at on-location events, especially sports apparel shown in interviews with sports heroes and role models of the young. Industry representatives debated this clause as they

\textsuperscript{21} Ministry of Commerce (1992)\textit{Quarterly Review of the BSA.} 31 March.
\textsuperscript{22}Ibid.
\textsuperscript{23}Broadcasting Standards Authority (1993)\textit{Annual Report.} p.11.
\textsuperscript{24}Ministry of Commerce(1992)\textit{Quarterly Review of the BSA.} December 17.
considered it contrary to the freedom of expression section in the New Zealand Bill of Rights Act.\textsuperscript{25}

The final issue in the six-month review was the rules concerning the association between consuming alcohol and driving or participating in hazardous activities. The BSA wanted the rule to refer to indirect associations, as a number of recent advertisements had associated driving and drinking indirectly.\textsuperscript{26} Advertisers were concerned that it would be difficult to rule out all indirect associations in advertisements. They gave the example of young people drinking at a beach, and claimed it was impossible to show that they wouldn’t go swimming afterwards.\textsuperscript{27}

The New Zealand Sports Assembly approached the Authority with a proposal that the Assembly co-ordinate the development of a voluntary sports code, regarding incidental advertising, to be endorsed by advertisers, broadcasters, and sporting bodies. A consensus was achieved and the new code was incorporated in the amended liquor code which became effective on 1 April 1993.\textsuperscript{28}

The Ministry of Commerce Quarterly Report on the Authority dated 31 March 1993 notes that the BSA remained concerned that the voluntary code failed to address the issue of incidental advertising carried on the practice gear of sportsplayers. The provisions of the code, with respect to casual teamwear, were considered adequate but it was noted that these are subject to strict international guide-lines in

\textsuperscript{25}Ibid.
\textsuperscript{26}See for example the BSA decision 73/92 made be Mike Bradstock over a TVNZ-Canterbury Draught advertisement, which associated fishing, driving and alcohol. The Authority upheld the complaint, which was then appealed by TVNZ, but later withdrawn. Correspondence with Michael Stace, BSA Complaints Manager, 21 March 1995.
\textsuperscript{27}Ministry of Commerce (1992)Quarterly Review of the BSA, 17 December, p.2.
\textsuperscript{28}Broadcasting Standards Authority (1993)Annual Report, p.11.
any case. The BSA felt that in failing to address practice-wear the Assembly had overlooked the key area where restraint was lacking.\textsuperscript{29} The revised code made few major changes to its predecessor. An article in the \textit{New Zealand Herald}, 29 April, 1993, noted \textquoteleft Liquor advertising, introduced on radio and television 14 months ago is to continue without major changes to the code covering how and when it is presented.\textquoteright\textsuperscript{30} The sponsorship commercials could include a brief mention of the liquor company or its brand name or logo, and could feature heroes or heroines related to the sport or activity being promoted. The liquor commercials, however, could not associate drinking with heroes or heroines of the young, excessive consumption, success, water sports, operation of a motor vehicle, or emphasise romantic situations.\textsuperscript{31} Barely four months after the revised liquor code was released the Broadcasting Amendment Act (No.2) removed responsibility for advertising from the Authority and transferred it to the Advertising Standards Authority (ASA). The MOC review of the BSA in 1991 concluded that the advertising industry had implemented a responsible and accountable system of self-regulation and could make efficient and fair decisions regarding advertising matters.\textsuperscript{32} However it was considered expedient to have the reviewed liquor code in place.

\textsuperscript{30} \textquoteleft Review upholds liquor ad code\textquoteright\ \textit{New Zealand Herald}, 29 April 1993. 
\textsuperscript{31}Ibid. 
\textsuperscript{32} Ministry of Commerce Communications Division. (1991) \textit{Review of the Broadcasting Standards Authority}, Report to the Minister of Communication. September 30. p.33. Gail Powell agrees the ASA is the appropriate body to deal with most advertising complaints, with the exception of 'social issues' advertising (for example good taste and decency issues and denigration complaints) which she contends require an \textquoteleft independent body to ensure socially responsible decisions are made\textquoteright.
to alleviate public criticism of the legislative change, therefore the amendment had to be delayed until the code review was complete.\textsuperscript{33}

The ASA incorporated the new liquor amendments into its code and the BSA maintained jurisdiction over liquor promotions or incidental advertising in programmes.\textsuperscript{34} Consequently, when the second review of the advertising code began in February 1994, the ASA conducted the review over the main advertising issues, and the BSA confined its review to the promotion of liquor in programmes, the issue of saturation of liquor promotion, and the educational messages regarding liquor use which radio and television broadcasters agreed to broadcast free of charge when brand advertising was introduced.

The liquor code review committee for the ASA included the president of the New Zealand Law Society, Judith Potter, the chairperson of the BSA, Iain Gallaway, the chairperson of the Advertising Standards Complaints Board (ASCB), Laurie Cameron, and nominees of broadcasters, the Alcohol Liquor Advisory Council (ALAC), advertisers and the Ministry of Health.\textsuperscript{35}

The committee found that there was not a strong enough case for a total ban on brand advertising, which Potter claimed "would have been potentially subject to a legal challenge under the Bill of Rights, which grants freedom of expression."\textsuperscript{36} However, the committee recommended the rules about portraying aggressive male attitudes be tightened, and advertisements not be allowed to target young people. The rules regarding sponsorship advertisements also

\textsuperscript{34}1993 Broadcasting Amendment Act (No.2) Government Printer, Wellington.
\textsuperscript{35}"Groups looking at liquor." \textit{The Press} April 1 1994.
\textsuperscript{36}"Companies find liquor codes hard to swallow." \textit{The Timaru Herald} December 22 1994.
needed tightening to avoid any sales message and to emphasise the event being promoted. Advertisers would be compelled to abide by the 'spirit' of the rules, and not just a technical compliance as in the past.\textsuperscript{37}

The BSA review strengthened the rules to ensure that incidental promotion of liquor was minimised and that any effect of saturation of liquor promotions and commercials during programmes is limited. It also added a rule forbidding ad lib comments in a programme that glamorise alcohol or appear to endorse or express amusement at immoderate consumption. A $1 million increase in the air time donated by broadcasters for moderation messages was also negotiated, taking the total to $3 million annually.\textsuperscript{38}

The Authority had found the amount of incidental advertising in some programmes "unacceptable"\textsuperscript{39} and tightened the rules accordingly. The BSA drafted a new code containing a simplified standard requiring broadcasters to minimise incidental promotions, remarking the simplification should avoid arguments about technical pints which frequently occurred with the old code. In the review the BSA concluded the existing code covered the relevant issues, but required clarification and tightening so organisations would clearly understand its intent and avoid breaches.\textsuperscript{40}

The broadcasting, advertising and sports industries were disappointed by the review. Dominion Breweries chief executive, Kevin Stratfull, noted with interest that "the review team was unable

\textsuperscript{37}"Rules tightened on liquor ads" and "Rules stop short of liquor ad ban" in the \textit{New Zealand Herald}, "Liquor companies face tighter advertising rules" \textit{Otago Daily Times}, "Some grumbles at restrictions on liquor ads" \textit{Waikato Times}, 22 December 1994

\textsuperscript{38}"Rules tightened on liquor ads" \textit{New Zealand Herald}, 22 December 1994


\textsuperscript{40}"Liquor groups may withdraw funds" \textit{Evening Post}, December 21, 1994, and "Liquor sponsorship threatened" \textit{Timaru Herald}, December 22, 1994.
to find a sufficient link between broadcast liquor advertising and the excessive consumption of liquor to justify a total ban.”\textsuperscript{41} Advertising Agencies Association executive director David Innes reasserted this point and added the the long-term decline in liquor consumption and abuse indicators was a compelling reason for maintaining the status quo.\textsuperscript{42}

Mary Stuart, head of the Sports Assembly, claimed liquor companies would abandon sports sponsorships if rules about incidental advertising were tightened any further. She contended “It would just become too unattractive to sponsors. It will be far more attractive to direct advertise or find some other way of promoting the product.”\textsuperscript{43}

However, health and public groups opposed to liquor, maintain the rules need to be enforced and strengthen. Allan Wyllie, associate director of the alcohol and public health research unit at Auckland University, believes health officials have been shouldered with the responsibility of proving alcohol ads are unsafe. To worsen matters for health officials, the ASA is controlled by the people who have the most to lose if advertising is banned. “Basically advertisers and broadcasters, all the vested interests, have been given the responsibility for the review. There’s no way they’re going to do anything to seriously damage a $30 million pay package.”\textsuperscript{44}

ALAC chief executive Ian McEwan believes the New Zealand liquor advertisements are loaded with nothing but heavy aggression and stupidity. Wyllie agrees. His units recent research concluded

\textsuperscript{41} “Liquor companies face tighter advertising rules” \textit{Otago Daily Times}, 22 December 1994.
\textsuperscript{42} Ibid.
\textsuperscript{43} “Liquor groups may withdraw funds” \textit{Evening Post}, December 21 1994.
\textsuperscript{44} “Alcohol advertising a potent brew.” \textit{The Dominion}, July 26 1994.
liquor commercials in New Zealand "constantly associate booze with macho imagery, sporting heroes and show women as inferior sex objects - all themes supposedly prohibited under the liquor advertising code."\textsuperscript{45} Wyllie quotes the statistic that for every 27 commercials the public see promoting sensible drinking or abstinence, they will watch 317 adverts advocating alcohol use. However he also admits that the line between advertising and abuse is at best blurred: factors such as education, economic status, unemployment and lack of social responsibility can have a far greater impact on alcohol abuse than a sixty second commercial. \textsuperscript{46}

A further issue which impacts on the liquor code is the introduction of the 1992 Broadcasting (Liquor Advertising) Bill by MP for Western Hutt, Joy McLaughlan. In essence the bill proposes any liquor advertisement broadcast on radio or television should contain a health message.\textsuperscript{47} The wording of the proposed messages has been criticised by industry groups, who maintain the tags are "misleading, exaggerated and too general to be educational."\textsuperscript{48} Anti-liquor groups contend that in the absence of a ban on alcohol advertising, the messages would at least be part of a strategy of educating people about the risks of drinking. The bill is presently before the commercial and marketing select committee.\textsuperscript{49}

The liquor code reviews illustrate the tension between the advertising industry, broadcasters, politicians, public groups and the BSA. Broadcasting legislation states that the Authority shall "encourage the development and observance by broadcasters of codes

\textsuperscript{45}Ibid.
\textsuperscript{46}Ibid.
\textsuperscript{47}\textit{1992 Broadcasting (Liquor Advertising) Bill}. Published under the authority of the New Zealand Government, Wellington.
\textsuperscript{49}Ibid.
of broadcasting practice appropriate to the type of broadcasting undertaken by such broadcasters...."\textsuperscript{50} To encourage a reluctant industry to implement codes which may inhibit its ability to attract sponsorship funding for sports or other programming, or risk advertising dollars, can be a formidable task. Gail Powell, Executive Director of the BSA, comments that the industry will challenge the BSA's jurisdiction at every possible chance. "Initially we were regarded as a draconian measure, but as the industry came to recognise that we're not acting arrogantly then they became more accommodating and diplomatic. However, while they are more accepting of case decisions, they continue to strongly challenge the need for a regulatory body in what is supposedly a self-regulating system."\textsuperscript{51}

Lindsey Dawson, an Authority member, feels the BSA's relationship with the industry is fragile.\textsuperscript{52} As the Authority is required to work with broadcasters to develop codes a certain amount of cooperation is required. To dictate to the industry what codes will include (possible under section 21(f) of the Broadcasting Act) would jeopardise the functional relationship the Authority has with the industry.\textsuperscript{53} Joanne Morris recalls this was the case with alcohol advertising.

The Authority was committed to permitting brand advertising. Opinions either side of the issue were extremely polarised. To have have forced an order on the industry, over what essentially was a matter of the degree of regulation, would have been counter productive. We could have risked having the codes ignored, and the issues involved weren't important enough to have warranted that. Finally it was a pragmatic

\textsuperscript{50}1989 Broadcasting Act, Government Printer Wellington. Section 21(e)  
\textsuperscript{51}Gail Powell. Interviewed 19 August 1993.  
\textsuperscript{52}Lindsey Dawson. Interviewed March 17 1995.  
\textsuperscript{53}Ibid.
decision. The industry said there was some things they wouldn’t do and we decided it was better to have them willingly comply with the code, than constantly breaching the regulations.\textsuperscript{54}

Morris asserts, however, that this acquiescence with the industry would not occur in an area that the Authority felt strongly about, and had conclusive evidence to support its stance. She uses violence as an example of a code that the Authority was simply not prepared to compromise on:

With violence we were standing on surer ground. There is a large body of research that suggests violence, especially cumulative or gratuitous violence, can have an effect on viewers. There was also an increasing amount of public concern about the level of violence portrayed on television. Internationally violence was becoming more of an issue and we felt the New Zealand codes did not reflect those concerns.\textsuperscript{55}

\textit{Violence.}

The 1991 BSA Working Paper on the New Zealand Violence codes identified a number of weaknesses and omissions including a lack of statement of principles or philosophy; absence of acknowledgement of the cumulative effect of violence; lack of recognition of the different classifications for early and late news; omission of requirements for warnings to precede particularly violent programmes; lack of regard for the effects of violence in cartoon programming; neglect of the content of trailers taking violent acts out of context; absence of a code covering violence in sport; and a lack of examples or specific illustrations to assist in interpreting the codes.\textsuperscript{56}

\textsuperscript{54}Joanne Morris. Interviewed 3 April 1995.

\textsuperscript{55}Ibid.

The Authority recommended that a new stand-alone violence code should be developed immediately. It suggested the new code should contain; a statement of principles, specific concise standards, and guidelines with specific examples for interpreting each standard. This would alleviate any confusion over interpretation or purpose of the code.\textsuperscript{57} The Authority had, in 1990, commissioned a survey of the communities perceptions of violence on television, and an overview of the research into the effects of television violence. The research concluded that the bulk of researchers into violence, while being unclear about the processes that create an effect from viewing violence, or who is most at risk of being affected, still claim that a causal relationship is indicated by the findings. Many felt that in absence of hard qualitative data, there remains the question of moral and aesthetic values in television.\textsuperscript{58} The public opinion survey found resoundingly in favour of a reduction in television violence, with nearly half of all adults questioned naming violence as their main issue of concern about television.\textsuperscript{59}

During 1991, two content analyses of television violence were administered nine months apart by researchers at the Massey University Educational Research and Development Centre. The first analysed all violent acts on the three television channels during the week 11-17 February. This study found that the news and cartoons and films were the most violent genres on television.\textsuperscript{60} The second

\textsuperscript{57}Ibid. "Recommendations."
study compared the violence in news shown during February, when the Gulf war was on, to a week in November. It found that,

war coverage offers such irresistible imagery to television news editors that war pictures will be found somewhere at any time...war imagery was the most violent and most extensive violent component of the news bulletins in both February and November."61

Finally, in July 1991 the BSA organised a national seminar on violence. Four keynote speakers came from overseas to join nineteen other speakers and many industry representative, during the two-day seminar in Wellington. After this "extensive consultation" the Authority confirmed its views on the issue of television violence.62

The Authority realised that making the media scapegoat for violence in society was "neither fair nor constructive and alienates the very decision-makers who can reduce the amount of violence screened." However it concluded that television is a powerful influence in society and that "as a society we must act to avoid any glamorising or condoning of violence on our screens."63

A new code became effective on 1 January, 1993. It acknowledged a number of factors: the cumulative effect of repeated violence; adult viewing time versus family and children's viewing time; realistic versus farcical violence; contextual versus gratuitous violence; and parental responsibility and consumer choice. The Authority was pleased to have the code recognised at the Canadian International Colloquium on Television Violence as "being a good

63 Ibid, p. 15.
example of a fair comprehensive and effective code for regulating violence on television."\(^{64}\)

In the two years since the code has been implemented, neither the Mental Health Foundation nor the BSA have been able to afford to commission surveys of violence on television. As a consequence, there has been no independent review of the success of the code in reducing violence on-screen. However, the Media Aware lobby believes the amount of violence on-screen is decreasing. This is attributed to two factors.

Firstly, the range of American programmes available to New Zealand buyers is less violent than previously due to a trend away from violent entertainment in America. A study by the United States Psychological Association concluded that the average American child would witness eight thousand made-for television murders by the time they finish primary school.\(^{65}\) Statistics such as that have lobby groups campaigning against violence, and politicians in Washington "growing increasingly vocal in their opposition to television violence."\(^{66}\) This has resulted in networks cutting back on television violence to avoid being regulated. The president of CBS broadcast group, Howard Stringer admits that "the networks have a responsibility to assess violence in programming."\(^{67}\)

Secondly, there is an increasing number of advertisers signing the Media Aware register which lists groups that have told their advertisers "nor to slot commercials into shows with a high violent content."\(^{68}\) When the register began in 1993 eleven major companies

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\(^{67}\) Ibid.

\(^{68}\) "Advertisers shy of violence" *New Zealand Herald*, 17 June 1993.
signed.69 By November 1994, the number of “socially responsible advertisers” had risen to seventy four and was steadily increasing.70 Media Aware regards the register as an effective way to communicate to broadcasters that companies and the public are not satisfied with the current level of violence. Spokesperson Marion Hancock notes “The demand for reduced levels of violence is overwhelming.”71

The introduction by MP for Southern Maori, Mrs Whetu Tirikatene-Sullivan, of the Reduction of Violence on Television Bill, supports Hancock’s statement. The bill, introduced on 2 June, 1993, aims to enforce the portrayal of violence standard by making it mandatory for broadcasters to reduce the showing of violence on television. Tirikatene-Sullivan believes this will reduce the prevalence of violence in society and its impact on the life in of the community. The Broadcasting Standards Authority would be responsible for monitoring and enforcing the mandatory code72

The bill was sent to the local government and internal affairs select committee “after gaining support form Government and Opposition MPs.”73 The bill basically took the portrayal of violence code and transformed it into legislation. Gail Powell made an oral submission to the select committee outlining some of the BSA’s concerns with the bill. These focused mainly on the inconsistency of the bill with the principle of self-regulation under which the broadcasting industry presently functions. A further concern was that under the bill it would take an act of parliament to change the

69Ibid.
73“Anti violence bill sent to committee” Evening Post 17 June 1993.
violence code. Presently, if a weakness is identified, the Authority can bring it to the attention of broadcasters and working with them, amend it.\textsuperscript{74}

A recommendation by Minister of Broadcasting Maurice Williamson, which was to go to Cabinet late in 1994, proposed to give the Authority more funding to monitor TV violence, and the power to take a programme off air if it breaches the TV violence code persistently. This effectively supersedes Tirikatene-Sullivan’s bill.

Graeme Wilson, Managing Director of Television at TVNZ, claims the new proposals, which also include reducing the time-frame for complaints, and requiring television channels to show advertisements publicising complaints procedures, “came out of a meeting between television industry representatives and MPs” in October 1994.\textsuperscript{75} Tirikatene-Sullivan believes the proposals are aimed at her withdrawing the Reduction of Violence bill, which has upset broadcasters intent on self-regulation. She asserts that she will not withdraw her bill “unless the proposals address all the concerns.”\textsuperscript{76}

The broadcasters are becoming more aware of the high level of social concern regarding television violence. In 1993, following the introduction of the extended code on violence, TVNZ rejected forty eight programmes on the basis that they were excessively violent. Another 587 programmes were edited.\textsuperscript{77} TVNZ’s Shepherd maintains that TVNZ has always been vigilant in reducing scenes that include violence, “especially if they included scenes of sexual

\textsuperscript{74}Gail Powell (1994) Oral Submission to the Internal Affairs and Local Government Committee on the Reduction of Violence on Television Bill, 27 June.
\textsuperscript{75}“Television violence may face government axe.”\textit{Sunday Star Times}, November 6, 1994.
\textsuperscript{76}ibid.
violence, rape or weapons that were easily imitated." However, the broadcasters remain dissatisfied with some of the Authority’s decisions regarding violence. Shepherd believes the Authority’s benchmark decision over the movie ‘Hard to Kill’ was inappropriate and paternalistic. She comments,

604,000 people watched that movie and a decision was made on the basis of one complaint. I take issue with telling such an enormous audience that they were wrong. I consider that paternalistic. That movie was no worse than many others that have been to air before, will subsequently go to air, and are currently going to air on TV3. TVNZ tends to gather more complaints regarding areas such as violence as the older members of the viewing audience still sees us as the matriach of broadcasting.

TV3 Standards Manager, Kirk-Sargent, agrees. “TVNZ is known as an SOE by the public, which makes them feel that they own it, and because of that, should be more satisfied with it.” She also maintains that Hard to Kill was a bad decision. “Its awfully politically correct to say that you’re against violence at the moment. The reality is it rates and people watch it.” She notes that violence is likely to diminish on television, “simply because its being treated seriously in other parts of the world where the majority of programmes are made.” Chris de Bazin, Head of Programming services at TV3, is particularly concerned with restrictions which cover censoring the violence in news. He contends,

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79 The BSA ruled in Decision 78/93 that the film ‘Hard to Kill’ contravened breached three parts of the codes of practice: V1, which makes broadcasters responsible for ensuring that any violence shown is justifiable, V2, which prohibits violence being used gratuitously in a realistic manner, and G2, which requires consideration of social norms of taste and decency. The film was defended by TVNZ as being farcical, however the Authority outlines in its decision numerous occasions where real fears and situations are depicted.
News content cannot be censored, you can’t justify an editorial decision on the basis that it might offend someone. To not show scenes that may be disturbing defies the purpose of news - to inform the masses of all they need to know. There should never be a situation where the public say they didn’t know, and often knowledge is matter of perception. To reel off numbers cannot accurately describe atrocities of war of famine. To confront the audience with the visual reality often makes them more aware of the extent of the atrocity.\textsuperscript{82}

De Bazin believes that generally the codes are accepted by broadcasters and functioning well. He believes that conflicts normally arise over matters of interpretation, and that once that once a body of cases or precedents is established, matters become clearer. "When new codes are developed it takes time to decide whether all the parties are thinking in the same way. Over a period of time the instance of the same interpretation occurring will increase."\textsuperscript{83}

Research on the portrayal of violence on television remains a high priority for the BSA. Following a $90,000 one-off funding injection, approved by Cabinet in November 1994,\textsuperscript{84} the Authority was able to commission the Mental Health Foundation to conduct its annual survey of television violence. The Ministry of Commerce recognises this as a useful exercise due to the on-going nature of the research and the benchmarks it provides for future comparative surveys. The BSA is also eager to repeat its detailed violence monitoring exercise, last conducted in November 1991. This will be its first priority once funding becomes available.\textsuperscript{85}

This examination of the portrayal of violence code illustrates further the conflictual environment in which the BSA functions.

\textsuperscript{82}Chris de Bazin. Interviewed 22 August 1993.
\textsuperscript{83}Ibid.
\textsuperscript{84}Ministry of Commerce(1995) Quarterly Review on the BSA. 30 March.
\textsuperscript{85}Ibid. 20 December 1994.
Broadcasters show violence because it rates well, which means increased advertising revenue. Politicians are against violence in principle, yet the Reduction of Violence on Television Bill has taken two years to be heard by select committee and still has not been passed. Pearce (1980) argues that broadcasting has a symbiotic relationship with government. He maintains that politicians rely on broadcasters to provide coverage in election campaigns, and publicise economic and social policies, and concludes “This simple fact of life gives the broadcasting stations a great deal of influence or power over politicians.”86 It is in the broadcasters best financial interests to have violence on television continue. It is not entirely surprising then, in light of Pearce’s assertion, that statutory means of prohibiting screen violence has been given a low priority by politicians.

Lobby groups, such as Media Aware and the Children’s Media Watch, actively campaign broadcasters and politicians on behalf of a society that claims its largest concern regarding television is the excessive use of violence87. Yet 604,000 members of that same society watched ‘Hard to Kill’ on TVNZ, and only one was so offended by what they saw that they felt compelled to complain. The BSA is in the unenviable position of making judgements for a society that appears to be unsure of what it really wants. Gail Powell admits that a double-standard exists for violence. “It is worrying that while all the surveys show conclusively that the community is concerned about violence, we get very few complaints. Of course this can be

87 See the discussion earlier in this chapter regarding the research which Research International New Zealand prepared for the Broadcasting Standards Authority on “Community Attitudes and Perception of Violence on Television.”
frustrating, and I understand why the broadcasters get upset. But that is no reason to contravene industry accepted rules."\textsuperscript{88}

\textit{Children’s Television Programme Standards.}

This was the third priority area that the Authority identified in the 1989 codes. The primary issue was the watershed between adult and children’s programming. Information received from data collected by people meters suggested that eighty three percent of children aged five to twelve watch television after eight thirty in the evening, the time adults-only programming begins.\textsuperscript{89} The Authority took different measures in this code review. A discussion paper on classification and standards in children’s television programming was made available to interested parties “to foster discussion of the standards issues involved.” Broadcasters and other interested parties were invited to respond to the paper, which covered age-specific programming and outlined the regulation for children’s programming in other countries.\textsuperscript{90}

Next, the Authority consulted community groups and individuals to air their views on the matter. Finally, a workshop was held, in connection with the national violence seminar in July 1991. The Authority received a commitment from TVNZ and TV3 to provide more on-screen information about the classification of programmes and the watershed time, so that parents could make informed choices about their child’s viewing.\textsuperscript{91}

\textsuperscript{88}Gail Powell. Interviewed 19 August 1993.  
\textsuperscript{89}Ministry of Commerce (1990)Quarterly Review on the BSA, 27 July.  
Other issues that were raised at the workshop included the amount of violence in children's programming and the prevalence and style of advertising that appears in children's time brackets. The revised portrayal of violence code addressed a number of concerns regarding children, especially the violence in cartoons and the effects of cumulative violence. Early in 1993 a paper was released discussing a number of issues regarding children's programming. The first report analysed children's comprehension and evaluation of television programme events and characters, with a focus on the two-way relationship between how television shapes the views of children and how a child's maturity and thinking shapes their understanding of programmes. The second studied children's viewing patterns, and the third analysed advertising during children's television programming. The Authority believes "these papers make an important contribution to the debate on children's television."^93

Through recent decisions on violent or unsuitable children's programmes the Authority has made clear its interpretation of the classification and the violence codes with regard to their impact on children. In September 1994, the American children's programme 'Mighty Morphin Power Rangers.' was the basis of a number of complaints to the BSA. The Authority upheld the complaints on the grounds that the programme depicted violence as an acceptable means of conflict resolution, and that showing the programme five times a week could be construed as unacceptable cumulative violence. The Authority then took the "unusual" step of notifying TVNZ prior to

\(^{92}\text{Ibid.}\)
\(^{94}\text{Broadcasting Standards Authority(1994) Decisions 81-84/94.}\)
the release of the decision. TVNZ responded by cancelling the next series of the Mighty Morphins. The Authority was satisfied with this response and determined no order should be made. However, it criticised the fact that despite repeated formal and informal complaints, public and media awareness of the programmes violence 

TVNZ had not moved to cancel the programme earlier.

A further complaint alleged certain cartoons broadcast on TV2 were unsuitable for children under eight years of age because they “relied on violence for their main themes and contained inappropriate language.” The Authority used this as an opportunity to communicate to broadcasters that it “expects broadcasters to provide clear guidelines to parents...as to the suitability for pre-schoolers of children’s programmes broadcast at times popular with children...”

The Authority expressed a desire to see broadcasters incorporating a greater range of non-aggressive programming into the children’s schedules.

Balance, Fairness and Accuracy.

The Authority has made minor changes to other codes during the past five years, primarily to clarify their interpretation of an existing code to broadcasters, or to reflect a changing society. In March 1992, the Authority attempted to commission research on “forces that

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95 Ministry of Commerce(1994) Quarterly Review on the BSA, September 27.  
96 Ibid.  
97 See for example the article “Morphins rekindle television violence debate” in the Evening Post, 6 August 1994.  
99 Ibid.  
100 The Authority did not make an order over this case as it was the first instance of cartoon violence that they had dealt with. Mighty Morphin Power Rangers featured actors. “Parental guidelines for TV cartoon urged.” Dominion, 21 December 1994.
shape the news and people’s perceptions of the fairness, accuracy, and balance, of news and current affairs reporting in New Zealand.” The research plan involved Professor Jim Tully, Head of the Canterbury University Journalism Department, and Dr Alan Bell of Victoria University, observing the processes reporters go through to obtain information, the editing of material, and how decisions are made about what is broadcast.  

The project was finally aborted due to lack of cooperation from broadcasters. Ray Lilley, General Manager of News and Current Affairs, contends that the research was tantamount to the BSA interfering in editorial matters. “There was an unequivocal ‘no’ from all parts of the media, as we believed the Authority had overstepped its mark.” Lilley asserts that the research should never had been proposed. “Editorial independence is a serious issue and the chairperson and members are now aware of broadcasters attitudes toward this issue...I think they were surprised at the strength of protest at the study.” He believes that having more journalists on the Authority would alleviate mistakes like this. “More journalists, especially broadcast journalists, would give the Authority more credibility with the industry and to help define the lines of the Authority’s responsibility and control. Journalism experience would also bring an understanding of editorial processes and decision making.” This issue will be discussed further during an examination of the BSA’s members.

Finally, a seminar in May 1994, “Power and Responsibility - Broadcasters striking a balance” considered the issues of balance,
fairness and accuracy. The Authority concluded that the relevant
codes appeared to be adequate in these areas, however, the accurate
and fair treatment of people in news is an issue that the Authority
considered warranted further exploration.\textsuperscript{104} NZOA and the BSA
jointly commissioned a report on fairness and balance in New
Zealand broadcasting news. The report is due in the middle of
1995.\textsuperscript{105}

Jim Tucker, a lecturer in journalism at the Auckland Institute
of Technology, claims that this project originated partly due to
political pressure "applied on the Authority by the Bolger
government, whose views on whether the main evening news
programmes are fair and balanced are known to be jaundiced."\textsuperscript{106}
Tucker asserts that while broadcasting in New Zealand is meant to be
free from direct or indirect influence by government, in reality this
needs to be questioned. The BSA's Gail Powell denies Tucker's claim,
maintaining the research was commissioned due to a lack of New
Zealand material on balance, fairness and accuracy. She does admit
though, that the Authority could conceivably be ordered to take a
particular stand, or threatened with a reduction in funding.\textsuperscript{107}

A recent interpretation of the balance, fairness and accuracy
codes has been made by the Authority, with regard to TVNZ's political
coverage of the 1994 Selwyn District by-election. Helen Clark, Leader
of the Opposition, made two complaints to the BSA concerning
TVNZ's coverage of the Selwyn by-election campaign which Clark
alleged lacked accuracy, objectivity, and impartiality. She gave
examples from five news items broadcast during July and August to

\textsuperscript{104} Broadcasting Standards Authority(1994) \textit{Annual Report}, p.6.
\textsuperscript{105} ibid.
\textsuperscript{107} Gail Powell, Personal Correspondance, 5 October, 1992.
support her view that TVNZ’s political correspondent was turning the election into a test for the leadership of the Labour Party.\textsuperscript{108} The Authority found that some matters that were clearly the correspondent’s opinion were not identified as such, and concluded,

...there should be a clear distinction between what is news and what is the correspondent’s interpretation of the news. It believes this can be achieved by always sourcing factual matters and clearly attributing opinion.\textsuperscript{109}

The second complaint concerned a brief news item reporting Clark had issued a “strict edict” that prevented MPs, with the exception of David Lange, from commenting on the election results, and that in order to isolate Mike Moore, the Labour Party was turning to the left.\textsuperscript{110} In this instance the Authority commented that TVNZ’s summary was not an accurate depiction of events, and, while accepting that the political correspondent’s job included analysing and interpreting political events, “agreed with Ms Clark that such assessments should be based on verified facts and contentious remarks attributed to sources.”\textsuperscript{111}

These decisions raised some discussion in the media regarding the role of the political correspondent. Following the publication of the BSA’s decisions, TVNZ released a media statement questioning the Authority’s understanding of the nature of political reporting.

\textsuperscript{108}Broadcasting Standards Authority(1994)\textit{Rt.Hon.Helen Clark versus TVNZ.} Decision 135/94. Clark alleged “editorial comment, unsourced gossip, and mischievous remarks were made.” Additionally, Clark argued that “the use of any statement with no factual basis reached the requirement that news sources have reliability and integrity.”

\textsuperscript{109}\textit{Ibid.} p.8.

\textsuperscript{110}Broadcasting Standards Authority(1994)\textit{Rt.Hon.Helen Clark versus TVNZ.} Decision 136/94. Clark alleged that comments included in the broadcast were inaccurate and inadequately sourced.

\textsuperscript{111}\textit{Ibid.} p.6.
Shaun Brown, Managing Editor of News and Current Affairs at TVNZ, asserted,

It is clearly in the interests of politicians that much of the political process takes place behind closed doors and is then represented to the public with the best possible gloss on it. It is equally in the interests of the public that the correspondent probes behind the political facade to establish what is really happening and provide an analytical context.\textsuperscript{112}

Brown further contended that the role of the political correspondent was to provide analysis and interpretation “even when the source or attribution must remain confidential.”\textsuperscript{113} The BSA did not make an order in relation to either decision, stating that the aspects of the complaints that were upheld were minor matters, unrelated to Clark’s “serious allegations about the coverage of the Selwyn by-election” and would have been unlikely to mislead viewers in the context of the overall news items.\textsuperscript{114}

Decisions such as these frustrate some broadcasting journalists who view them as attempts by the BSA to placate politicians, while fundamentally agreeing with the networks coverage. A television journalist, who would not be named, asserted broadcasters find political complaints upheld on a technicality or minor detail particularly irritating, as it appears the Authority is striving to appease all parties.\textsuperscript{115} To appear as politically directed or sympathetic reduces the Authority’s credibility both within the industry and the public sphere.

\textsuperscript{113}Ibid.
\textsuperscript{114}Concluding remarks in the BSA Decisions 135&136/94, op.cit.
\textsuperscript{115}Unattributed interview with senior broadcasting journalists, 6 April 1995.
Media commentator Marcia Russell attacked the BSA for the Selwyn by-election decisions which she regarded as restricting media freedom by prohibiting political analysis, informed comment or attributed speculation. Essentially, Russell believes the Authority is restricting the broadcast media’s ability to challenge political establishments, to demand answers to difficult or politically sensitive questions, and generally undermining the media’s role as the Fourth Estate.\textsuperscript{116}

Broadcasting industry representatives support this view. A previous decision upholding a complaint by then Minister of Social Welfare, Jenny Shipley, over a broadcast on Holmes, was criticised by the broadcaster as “outrageous and insulting.” Paul Holmes further criticised the Authority as “irrelevant to the modern working broadcaster in television and radio…” due to its lack of knowledge of the political news environment.\textsuperscript{117} TVNZ Standards manager, David Edmunds, commented that journalists often suffer most at the hands of the Authority;

\begin{quote}
Journalists don’t feel as if the Authority understands television journalism; the immediacy of the medium and the resultant pressures. They have no understanding of production concerns; the last minute editing and time constraints. Broadcasters don’t have the luxury of re-examining every last detail of an item as the BSA does when it comes up in a complaint.\textsuperscript{118}
\end{quote}

This frustration is further apparent in the number of appeals made by broadcasters over balance, fairness, and accuracy issues. These will be discussed in the following chapter.

\textsuperscript{117}“Decision against TV show ‘outrageous, insulting.” \textit{The Press}, 25 August 1993.
\textsuperscript{118}David Edmunds. Interviewed, 23 August 1993.
Pay Television Codes.

Sky Television negotiated with the BSA with regard to the formation of its codes, believing that the direct buyer/seller relationship of the service justified modified broadcasting codes from those applying to to free to air broadcasters. The Authority agreed, noting Sky was “a discretionary service to particular subscribers rather than a broadcast service to the community at large.”119 The Pay TV codes were approved in January 1992, at which time Sky “unequivocally” denied the introduction of ‘soft porn’ programming.120

However, in 1994, late-night Playboy programmes began, resulting in a complaint late that year that the content breached the standards of good taste and decency, and denigrated women. The Authority upheld the good taste and decency breach, noting that one of the tests for making decisions based on context was that of the expectation of the viewer.121 In the BSA’s view, the time slot of 10.45pm was well within “normal viewing times” and that notwithstanding the Adults Only classification the audience would expect programming which “would not be likely to offend the ordinary viewer.” Furthermore, the Authority held that as women comprise fifty percent of adult viewers, and considering their well-documented negative reactions to material which dwells upon female

121 A benchmark set in the first decision considering good taste and decency; Decision 2/90.
sexual attributes, that it could be surmised that they would be offended.122

The standard prohibiting denigration of women was not considered to have been breached by the majority, though the minority felt strongly that scenes including a rape myth fantasy and the sexual objectification of women did breach this standard.123 Sky immediately moved the Playboy programme to midnight or later but in August 1994 a further complaint was made. The Authority, in the absence of adequate research on public attitudes and overseas research, declined to determine the complaint until a formal review of the code for pay television could be completed. Part of the complex nature of this complaint involves not only a decision regarding whether soft porn encourages discrimination, but, if so, whether the code which bans all material discriminating against women, is appropriate for pay television. This creates the further complication of possible changes to the Broadcasting Act 124

The Authority notes in the background paper on the pay television code, that it is aware that a decision upholding the complaint would have “important ramifications “ for the pay television industry. It also notes that both complaints have come from the same complainant.125 It concluded, “The Authority is faced with one of the most important rulings it has had to make since its

123Ibid. p.9.
124Broadcasting Standards Authority (1995)Background information on the formal review of the Code of Broadcasting Practice for Pay Television with focus on “soft”pornography R-rated “adult entertainment”.
125Gail Powell addresses this problem in an article in the New Zealand Herald. She commented that the Authority’s role was defined by the Broadcasting Act, which did not mention the number of complaints. “We acknowledge that there have not been many complaints but in the final instance the Authority decided this was an important issue it had to address.” “Playboy ruling on hold” New Zealand Herald. 9 March 1995.
establishment and it considers that it does not have adequate information to do so at present.”126

This lack of information could have been avoided if a Ministry of Commerce recommendation to the Minister of Broadcasting, Maurice Williamson, had been heeded in June, 1993. The Ministry quarterly review of the BSA noted that the level of general complaints made to the Authority regarding Sky’s explicit material was a steady “two of three letters a week.” Additionally, the report noted that Williamson had received a number of ministerials expressing concern about the issue. The report concluded,

This level of public concern may indicate that consideration should be given to the extent of the regulation against pornography at present. It is recommended that you agree that the Ministry report to you further on the options available for addressing the issues relation to sexually explicit material on pay television.127

Williamson regarded the problem as “not of a sufficient magnitude to require consideration.”128 This type of ministerial power over Authority affairs contravenes the PSB principle that broadcasting functions should be removed from the influence of the incumbent government. The members and staff of the Authority are appointed as professionals in the field of broadcasting standards. To have the minister supersede the BSA’s authority undermines its effectiveness as representative of the public. As a specialised regulatory agency, the BSA is the body that should make the decisions regarding the importance or necessity of research and investigation into public concerns. It can make those decisions on the basis of a

126BSA Background Paper on Pay Television, op.cit. p.2.
128Ibid. Williamson’s reply, 7 July 1993.
body of accumulated and expert knowledge and practice. It is entirely inappropriate for a single political representative to make judgements on broadcasting content issues. Limiting the government's role in broadcasting to legislative authority, appointments and appropriation affords adequate power to ensure the regulatory body does not abuse its position. These issues will be expanded on in the following chapter.

Minor Code Changes.

A number of other codes have had minor changes. In May 1993, a complaint was upheld by the Authority concerning the issue of balance in controversial issues on an access radio station. On the basis that the current code did not properly apply to access radio, the Authority ordered the Community Access Broadcasters Authority to draw up new rules promptly. In November 1993 the BSA approved the new code, which stated,

Community access broadcasters provide facilities for members of the community to make and broadcast their own programmes. When dealing with political matters, current affairs and all questions of a controversial nature, community access broadcasters will, if requested, provide equivalent time to alternative points of view under the conditions and guidelines of the station.

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129 "Access station told to tighten standards" Dominion, May 8 1993. The complaint involved the Honorary Irish consul-general, Rodney Walshe and Auckland Access Radio, over a programme broadcast publicising radical views of the Provisional IRA. The station said the programme was not the one in the community broadcasters original proposal, and that Access had since changed its rules so scripts had to be considered by management and disclaimers were broadcast regularly.

Minor changes were also made to the code covering discrimination in programming. The wording was altered to include avoidance of programming that represents any section of the community as "inherently inferior." This elaborates on the previous codes requirement that prohibits the portrayal of people in a manner that encourages discrimination, and resulted from difficulties in defining 'encouragement'.

A further issue the Authority is considering is the increasing variety of programme sources and delivery systems available in New Zealand, and the impact these developments have of programme standards. In 1993 the Authority commissioned Chris Watson, a Massey University academic on sabbatical leave, to examine the impact of technology changes on broadcasting standards in North America and Europe. His report, "Regulating Aliens: Problems Relating to the Control of Extra-Terrestrial Television" outlines the international debates. The Authority is considering the degree to which New Zealanders may want to impose standards on programmes directly broadcast into New Zealand homes from international sources.

This issue involves a wide spectrum of considerations, including telecommunications laws, and modern discourse on the principles of censorship and freedom of information. The BSA recognises these

132 Broadcasting Standards Authority (1994) *Codes of Broadcasting Practice, TV Programme codes*, p.3.
136 A useful reference for further reading on these issues is the seminar proceedings, *Censorship Issues: Law, Technology and Effects*, Griffin University / Queensland University of Technology. May 27/28, 1993.
debates are not confined to broadcasting services and will require both political and industry involvement.

Browne (1989) contends that broadcasting regulatory agencies face a number of obstacles in operational matters. He identifies these as; funding, legislative authorisation, political or broadcast industry influence, and public access. By examining the development of the codes of practice, one of the BSA’s statutory requirements, it is possible to recognise how these obstacles limit its effectiveness. Covert political interference in professional matters, industry power and complicity, diverse public opinion, and rapidly evolving technology have affected the Authority's ability to perform its statutory duties. It is significant, then, that the revised codes have been internationally recognised as efficient and effective rules for the maintenance of acceptable standards in broadcasting. Criticism from the industry generally does not question the content of the codes, so much as their interpretation in particular cases. Decisions that fail to recognise accepted journalistic techniques, or substantiate nominal details (for example the Selwyn by-election cases), frustrate broadcasters and prompt further questioning of the fundamental reasoning for the existence of a quasi-judicial body to maintain standards, rather than a system of self-regulation.

The following chapter will continue to deal with operational matters, namely the appointment and performance of members and staff, complaints and appeal procedures, and the relationship between

the Authority’s research function and its funding. Browne’s obstacles to regulatory equity and efficiency will be applied, to further understand the pressures that bear upon the Authority, and to analyse its performance.
The Broadcasting Standards Authority.

Part Two: Procedural Matters.

This chapter addresses procedural issues: the appointment of Authority members, administrative systems, complaints processes, and research funding concerns. The Authority’s mission statement and goals will be examined to assess the BSA’s performance.

Members.

The 1989 Broadcasting Act specifies that the Authority will consist of four members, appointed by the Governor-General on the advice of the Minister of Broadcasting. One of these members will be appointed chairperson, and shall be a barrister or solicitor of not less than seven year’s experience in the High Court. With regard to the Authority’s function of parliamentary election programme allocation, two extra members will be appointed. One each will be nominated by the Prime Minster and the Leader of the Opposition. For the purposes of any matter before the Authority, it may co-opt “any one or more persons whose qualifications or experience are likely, in the opinion of the Authority, to be of assistance in dealing with that matter.”¹

The membership term is three years. However, the act provided that the initial members be appointed for either one or two years. The legislation did not specify the qualities which would be regarded as desirable for prospective members. A spokesperson for

¹1989 Broadcasting Act, Section 26 (4)
the MOC said the minister generally looks for legal experience, a background in media issues, or some level of representation of the community. Members may meet some or all of the criteria.²

Iain Gallaway, Q.S.O., M.B.E. was appointed chairperson in July 1989. Gallaway had sat on the BCNZ board for a total of seven years, and had almost forty years experience as a sports and current affairs commentator. He had been Chancellor of the Anglican Diocese of Dunedin for over thirty years and involved in numerous national charitable trusts.³ Gallaway notes that his apolitical stance was an attractive feature to Jonathon Hunt, then Minster of Broadcasting.⁴ Hunt elaborated on Gallaway’s qualities, mentioning his broadcasting experience and understanding of the Anglican church as important attributes. However, Hunt wanted the Authority to have a female majority, as he believed more women than men watched television and would feel more strongly about issues of sexual violence and discrimination. Having a majority on the complaints board would redress the balance of power over broadcasting content, which Hunt contends is primarily produced and focused on men.⁵

The remaining appointees were Jocelyn Fish, B.A.; Joanne Morris, L.L.M.; and Jan Hardie, B.A. Fish was a farmer and trained teacher from the Waikato, and president of the National Council of Women, who had previously served as a local government representative and appointee of the Film Censorship Board of Review. Hardie, an educationalist, had experience in children’s television production, bicultural issues, media education and

²Personal Correspondence with Emma Tetley, Broadcasting Policy Advisor, MOC. 16 November 1994.
⁵Jonathon Hunt, Interviewed. 16 August 1993.
community action. Morris, a senior law lecturer at Victoria University, chaired the Ministerial Inquiry into Pornography, and was a member of the Waitangi Tribunal.\textsuperscript{6}

Broadcasters were upset at the lack of journalistic training represented on the Authority, claiming there was little understanding of production issues.\textsuperscript{7} Morris notes that Hardie and Fish were both teachers and had a very consumer-oriented approach to decision making, rather than a legalistic or journalistic approach.\textsuperscript{8} By the time this research was underway in 1993, Fish and Hardie had been replaced by Lindsey Dawson and Rosemary Barraclough. National had won the 1990 election and it was informally recognised that Hardie, who was active in Labour Party politics, was unlikely to be reappointed.\textsuperscript{9} Hardie was informed of this in May 1993, but was asked to continue until a replacement was appointed. Fish was not told at that time that she would be replaced, and her continued service was accompanied by a growing expectation in the Authority that she would be reappointed.\textsuperscript{10}

On May 10, 1993, a controversial complaint was upheld by a majority of the Authority, maintaining that the mispronunciation of Maori place names in a Telecom advertisement was in bad taste.\textsuperscript{11} This decision received a considerable amount of negative coverage in the media. Maurice Williamson, the new Minister of Broadcasting, received many critical letters from members of the public and is known to have criticised the Authority’s decision for its trivial nature.\textsuperscript{12} Morris considers it would not have been difficult to establish which members comprised the majority in the Telecom decision. Shortly afterwards the Authority was notified that Fish would not be reappointed.

\textsuperscript{6}Broadcasting Standards Authority (1990) \textit{Annual Report}, p.5.
\textsuperscript{7}Galloway, op.cit.
\textsuperscript{8}Joanne Morris, Interviewed, 20 July 1993.
\textsuperscript{9}Galloway, op.cit
\textsuperscript{10}Morris op.cit
\textsuperscript{11}Broadcasting Standards Authority (1991) \textit{Nga Kaiwhakapumau I Te Reo versus TVNZ}, Decision 20/91.
\textsuperscript{12}Unattributable source. Williamson was not prepared to be interviewed by a student so these matters could not be put to him for comment.
Morris was disturbed by this turn of events. She recalls the Authority's earlier discomfort with the new Minister's professed intention of maintaining contact with the Authority by visiting it on meeting days.

He visited a few meetings and let us know where he was coming from on issues like sex and violence on television, and the control of advertising. But that sort of contact soon ceased. Perhaps he became too busy, or was rebuked for it, I don't know, but it was much more appropriate after that as it had put the Authority in an uncomfortable position.\(^{13}\)

Any degree of covert political interference in the BSA's procedural matters is not only inappropriate, it is a transgression of the minister's legislated powers. Section 23 of the Broadcasting Act 1989 specifically states that the minister will only have power to refer matters to the Authority for consideration of whether an advisory opinion is necessary. Any such order must be published in the Gazette and laid before the House of Representatives as soon as is practicable. The BSA was instituted to maintain certain PSB functions in an otherwise deregulated broadcasting environment. The infringement of such a basic principle of PSB - the protection from intervention by political interests - raises questions regarding the credibility and independence of the implemented system.

Keane (1991) states, that in view of the growth of "lawless and invisible governments, the onus must be placed on governments everywhere to justify publicly any interference with any part of the circulation of opinions." He asserts Erskine's defence of Paine, that the liberty of opinion keeps governments in due subjection to their duties, as the basis for this reasoning. Keane believes that public

\(^{13}\text{Morris op.cit.}\)
discussion "must never be made dependent upon government sufferance" as "political freedom ends when government can use its various discretionary powers to silence its critics."\(^{14}\)

According to the principles of PSB, one of broadcasting's purposes is to act as a conduit for information and debate on matters of public importance and significance. Williamson's interference in the Authority's operational matters must be viewed as an impediment to the impartiality of that system. Ironically, in an address to the BSA's "Power and Responsibility" seminar in 1994 Williamson stated, "I accept absolutely the right of opponents to express their views. And I am fully prepared to defend that right by ensuring that we have a fair, responsive and effective standards regime."\(^{15}\) A standards body can only be fair and effective if it does not function under the threat of imminent dismissal or power of political interests.

Dawson and Barraclough's appointments placated some of the industry's criticism of the Authority's lack of understanding in journalistic matters. Dawson had twenty years print journalism experience and had also worked in private radio, television, and public relations. She was founding editor of both Next and More magazines. Barraclough was a print journalist and sub-editor in Timaru and Hamilton for ten years, a member of Parent Centre and Media Women.\(^ {16}\) Morris believes the new members brought a valuable insight to journalism and a different style of analysis to complaints, especially with regard to the issues of balance, fairness,


and accuracy. She explains, "Rosemary and Lindsey have a different understanding of balance to me. Mine is very legal, it's a matter of time spent on an item, whereas they realise it has more to do with covering the issues." 17

Dawson believes that some degree of journalistic knowledge is important on the Authority, and regards an understanding of the electronic media as most desirable. "The Authority would benefit from people who understand the technicalities and deadline pressures involved in TV and radio news. No member has ever had that sort of training." Dawson further asserts that care needs to be taken to ensure member selection includes a spread of philosophies and attitudes reflecting the wider community. 18 According to Barraclough an understanding of the issues parents face in screening their children’s television viewing is also useful. "It is valuable to have members that have young children to represent the protective view." 19

Dawson and Barraclough finished their terms in 1994, Dawson to return to the magazine industry and Barraclough for travel overseas. Two new members were appointed in September 1994. Lyndsay Loates had fourteen year’s experience in print journalism including time at More magazine as a senior feature writer and deputy editor. Bill Fraser is a business person from Timaru, with managerial and ownership interests in the Foodstuffs chain and previously Abco Meats. He is also Deputy Mayor of the Waitaki District Council. Loates believes that at least two of the four members should have journalistic training; any more than this would make for an unbalanced approach. She contends that it is important that at least

17 Morris, op.cit.
18 Dawson notes after this comment that "Wellington quangos breed PC-ness like mad!" Dawson, op.cit.
19 Barraclough, op.cit.
one member have "very little" knowledge of journalistic practice "in order to approach complaints from the Joe Blogg's position."\textsuperscript{20}

Morris disagrees. She believes that the large body of legalistic style precedents and social issues and journalism-related research that the Authority has gathered in the last five years requires some degree of journalistic, social research or legalistic knowledge to comprehend and apply to the complaints effectively.\textsuperscript{21} She recognises, that while it is desirable to have representation of the 'average person from middle New Zealand', the size of the Authority means that "throwing someone in without a context to work from" could render the Authority useless.\textsuperscript{22} This underlines the fact that appropriate appointments are crucial to the Authority's credibility. The legislative limit of four members means that voting power of each is such that to include too liberal or conservative a viewpoint could deteriorate the Authority internally.

The complex and legalistic nature of determining complaints and understanding standards research produces a need for well-informed, astute members, preferably with an understanding of legal, journalistic or social issues. All the members interviewed agreed that the concept of imposing standards on a populace of which they, as members, were not especially representative, could be construed as paternalistic. However, all believe it is necessary to balance the rights of the population to choose their viewing standards with the need to protect the vulnerable or disadvantaged in society. This is in accordance with the International Covenant on Civil and Political

\textsuperscript{20} Lyndsey Loates. Personal Correspondence, 15 December 1994.
\textsuperscript{21} Joanne Morris Interviewed 3 April 1995.
\textsuperscript{22} Ibid.
Rights which balances freedom of speech with duties and responsibilities in Article 19(3):

The exercise of (these rights) carries with it special duties and responsibilities. It may therefore be subject to certain restrictions, but these shall only be such as are provided by law and are necessary,
(a) for the respect of the rights or reputation of others, or
(b)for the protection of national security or of public order or public health or morals.23

Ettershank (1993) contends that content regulation is a careful balancing act between the principles that adults in a free society should be granted the freedom to see and hear what they wish; the need for adequate protection for children from material that may harm them; and the right of people offended by certain material to expect it will not be thrust upon them without warning.24 Performing this act efficiently and equitably requires an understanding of specialised knowledge, and the credibility of the BSA relies on the appointment of appropriately informed members. The recent resignation of both Gallaway and Morris, the last two founding members of the Authority, will place increased importance on the appointment of capable members.

Complaints Processes and Administrative Systems.

The 1991 MOC review of the BSA found that one of the major criticisms of the Authority was the lengthiness of the complaints

procedures. In the report Media Aware described the system as "tortuous, time consuming and requiring a certain degree of tenacity." Concern was expressed by MOC officials that the process involved too many steps and was spread out over too great a time period, which was dissuading viewers from using the system. The review further noted that there had been a significant amount of criticism in the media regarding the time it took to reach certain decisions.25

A complaint’s journey is dictated by the Broadcasting Act which specifies time limits on the submission, broadcaster’s reply and possible re-submission to the BSA. The complainant must submit the initial complaint in writing to the relevant broadcaster within twenty working days of the offending broadcast. The broadcaster then has sixty working days to respond. If the complainant is dissatisfied then they can lodge a complaint with the BSA within twenty working days of receiving the broadcaster’s response. This means it may be more than four months before the Authority is involved.

Once the Authority receives the complaint, both parties are given full opportunity to make submissions. These are referred to both parties for comment on the relevant issues. This fulfils the requirement that the Authority observe the principles of natural justice. The broadcaster must be given the opportunity to ensure that no further points have been raised by the complainant that were not addressed in the initial complaint. Under the 1989 Broadcasting Act and in accordance with the principles of self-regulation, the Authority

may only consider complaints that have been assessed in the first instance by the broadcaster.26

Once both parties have replied to the Authority, Michael Stace, complaints manager, reads the correspondence and summarises the relevant questions in an appendix. He writes a covering page outlining, in his opinion, the relevant issues, and what questions need answering. Gail Powell notes it is inappropriate for Stace to 'steer' the Authority to an answer and this degree of instruction is avoided. At the next monthly meeting the Authority considers the complaint, which is then returned to Stace who writes up the debate and resultant decision. Stace then circulates it to the members to approve.

At the next meeting the complaint will be discussed a second time and any changes necessary are made to the draft decision. Frequently, only small changes are made and the decision will be released, but in more substantive decisions the complaint can circulate members another time and be discussed at a third monthly meeting. This process is extended further if it is necessary to co-opt extra members to assist on a complaint.27 Powell is aware that in a worse case scenario it can take over a year from the time the programme was broadcast to the final decision being released.28

One of the major factors in the delay between the Authority receiving a complaint, and a decision being released, is the time taken by some broadcasters in responding to requests for comment or further information on a complaint. The BSA stated in the MOC

26David Edmunds, Programme Standards Manager at TVNZ notes that this happens on a fairly regular basis.
27Information on the complaints procedure was provided by Gail Powell.
28In the Telecom advertisement complaint, concerning the mispronunciation of Maori placenames, and discussed in Chapter Four, the final decision took 14 months.
review that in some instances it had taken TVNZ up to six months to reply. The MOC suggested such lengthy delays could be seen as undermining the BSA’s credibility and outlined a combination of factors that contributed to the delays. These were:

1. The lack of a firmly established, strict timeframe for responses from both broadcasters and complainants;

2. The complexity of the issues(s) in question or arising from a complaint, and need for issues to be investigated carefully. The nature of the penalties the BSA may impose may also have affected broadcasters willingness to respond quickly;

3. Lack of appropriate procedures within some broadcasting organisations to deal with these matters.

4. An apparent reluctance on behalf of some broadcasters to take the BSA sufficiently seriously.29

Directly prior the the MOC review, the Authority implemented a requirement that broadcasters respond to requests for comment within sixty working days, maintaining that this was ample time to draft a submission.30 The MOC regarded this period as generous and considered there seemed “little reason why a shorter time frame could not apply to most enquiries.” This would have the dual affect of reinforcing the need for broadcasters to ensure they had in place appropriate procedures for addressing complaints.31

Research undertaken for this thesis involved spending time at all major broadcasting institutions, assessing their complaints procedures and interviewing the people involved in standards matters. The procedures demonstrated a commitment to upholding broadcasting standards and to meeting the requirements of the

Broadcasting Act. While frustration was frequently expressed at the complexity of the complaints procedure, the need for an external body was generally accepted. However, it was often questioned whether the BSA was the most effective form of regulation. Some broadcasters felt that the increasing body of ‘case law’ or precedents set by the BSA could become a dangerous threat to the freedom of the electronic media to investigate public issues.

These observations suggest that the delay in broadcasters responses could be attributed to a reluctance to have an upheld decision restrict future viewing schedules. The ‘Hard to Kill’ decision regarding excessive violence created a precedent that resulted in TVNZ removing the heavily promoted ‘Red Dawn’ from its schedules, and the rejection or reappraisal of numerous other proposed films. The resultant loss of revenue from forfeited advertising opportunities, or the cost of the revoked films, could encourage delaying the process that may result in a restrictive decision.

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33The broadcasting institutions visited included:
1. TVNZ. David Edmunds, Programme Standards Manager, and Cheryl Shepherd, Chief Appraiser were interviewed with regard to specific procedures, and Paul Norris, Director of News and Current Affairs, and Noel Vaultier, Secretary and General Counsel, were interviewed with regard to overall company policy.
2. TV3. Donna-Marie Kirk Sargeant, Broadcasting Standards Manager, and Chris de Bazin, Head of Programming Services outlined procedural and policy matters.
3. RNZ, Richard Hereford, Executive Assistant to the Chief Executive Officer, worked through an number of external complaints, explaining RNZ’s procedures. Ray Lilley, General Manager, News and Current Affairs, and Trevor Henry, Director of Current Affairs and Rural Programmes, explained the internal journalistic procedures and outlined the process a complaint follows on arriving at RNZ.
4. IBA. Brent Impy was interviewed with regard to private stations polices and industry wide procedures.
5. A number of producers, including Chris Mitson of Fair Go and Sara Stretton of Alive and Kicking, were interviewed with regard to producers understanding of the codes of practice and resultant production policies.

The MOC suggested an independent review of the Authority's procedures, which was carried out by Ian McLean, former Secretary of the BCNZ. The major recommendation was the reduction to twenty working days of the time for broadcasters to respond to formal complaints referred to the Authority, with dispensation available only at the request of authorised executive of the relevant broadcasting organisation, and supported by adequate reasoning. Further recommendations included increased publicity of complaints procedures and the codes of practice; continued delegation of responsibility for initial complaints consideration by the administrative staff; releasing composite press releases regarding the decisions of each meeting; and the introduction of a supplement to the BSA's annual report, in which benchmark or precedent setting decisions are described.35

Most recommendations were adopted by the Authority. However, the summary of each year's benchmark decisions has not eventuated. With an increasing number of new broadcasters entering the market36 the Authority needs to be aware that past interpretations of the codes of practice will be unknown to these broadcasters. Many of these interpretations are benchmark decisions that translate the codes for broadcasters and communicate the degree to which certain phrases and terms are to be enforced. The Authority has the facilities to compile a document outlining basic interpretations and benchmark decisions.37 This is an option it will need to consider with the advent

36Early 1995 has seen the introduction of the regional Horizon TV network, Liberty Radio in Wellington and plans for the sell off of RNZ's commercial stations, which could result in more inexperienced players in the market.
37The BSA maintains a database which records past decisions that have set any type of precedent or interpreted a code. Gail Powell. Interviewed, 27 March 1995.
of new members to the Authority and new players in the broadcasting market.

The Authority is aware of the frustration complainants and broadcasters feel regarding the delay involved in publishing a decision. Over the past three years the time-frame for deciding on complaints has reduced considerably, with a present average of forty-two working days from receipt of final comments to the published decision.\textsuperscript{38} A private member's bill introduced in March 1995, seeks to impose further time restrictions on the Authority, requiring it to finalise complaints in thirty working days.\textsuperscript{39} However, Powell asserts a certain amount of time is necessary for thorough examination of the issues and that broadcasters must be given adequate time to deal with related matters. "The Authority has powerful sanctions at it disposal and if we are to retain those sanctions then the natural principles of justice must be observed."\textsuperscript{40} Gallaway further contends that "the right of appeal to the High Court also requires broadcasters and the Authority to ensure that their reasoning is carefully and clearly explained and fully documented."\textsuperscript{41}

Late 1994, the Authority made recommendations to the MOC regarding the introduction of a two-tier system which could provide a fast-track alternative to the the present procedure, at the complainant's request. The BSA is concerned about the increasing number of complaints prepared by legal or other professional services, and the resultant extension of time involved in considering the information and determining the complaint. While it recognises the

\textsuperscript{38}Broadcasting Standards Authority(1994) \textit{Annual Report}, p.8.
\textsuperscript{40}Gail Powell, Personal Correspondence, 5 October 1992.
\textsuperscript{41}Broadcasting Standards Authority(1993) \textit{Annual Report}, Chairperson's introduction.
complainants right to utilise any services available, it is concerned that "every effort be made to preserve the informality of the process so that all consumers have ready access to a fair and efficient determination of their complaints."42

A concluding comment. In March 1995, Roger Ellis, private secretary to the Minster of Broadcasting, Maurice Williamson, was prepared to go on record saying that a bill was being drafted by the MOC which dealt with the introduction of reduced time limits for broadcasters and the BSA with regard to the complaints procedure. This bill is expected to be put to Parliament in July 1995.43 It appears at this stage, the Authority's recommendation for two systems of complaint has not been implemented.

Appeals.

The Authority established its complaints procedures to reflect the dual mandate of maintaining informality and observing the principles of natural justice.44 Gallaway notes that developing a system that was user-friendly and yet rigorous enough to stand appeal or judicial review in the High Court "was indeed challenging."45 The Authority has been very aware of the right of appeal. A MOC report on the 17 October 1989 expresses the BSA's concern at the prospect of resultant high legal costs.

42Broadcasting Standards Authority(1994)Annual Report, p.11. Fair Go's ex-producer, Chris Harrington, feels the complaints procedure is being subverted by powerful lobby groups and business people who hire lawyers to work "for months" on complaints, while television organisations "don't have the money and resources to put into weighing the same kind of defence." "Complaints set-up subverted." Evening Post, 16 September 1991.
45Gallaway, op.cit.
A preliminary legal issue concerned the Authority's powers when the subject of the complaint was also before the civil or criminal courts. In the case of Eveready v TV3 Network Services Ltd the substance of the case was also before the BSA. TV3 took the Authority to High Court to clarify the issue of concurrent jurisdiction. Justice McGechan ruled that the parties were required to disclose their arguments to the Authority, but the Authority could not make a decision until the verdict of a jury trial was known. McGechan argued that a jury, unlike a judge, may be unduly influenced by publicity given to a decision issued by the BSA.46

The first appeal occurred in 1991. TVNZ refused to broadcast the summary of an Authority decision regarding breaches of the fairness, balance, impartiality and accuracy codes in a Fair Go programme which questioned the personal liability of company directors whose businesses had gone into liquidation. The BSA concluded that the programme linked unfairly the liquidated company and a separate building contractor, and that the independence of these companies should have been stressed.47

TVNZ based its refusal to broadcast a correcting statement on the basis that an appeal against the Authority's decision would be lodged in the High Court. However, no application had been made to the High Court. The MOC advised the Authority that it took a dim view of broadcasters that refused to comply with an order and would initiate a prosecution if necessary. Finally, in February 1994, the case went to the High Court and was dismissed in substance. Fair Go was

47Broadcasting Standards Authority(1991) R.Mansell versus TVNZ, Decision 25/91. The details of all appeals were released by the BSA under the Official Information Act.
required to broadcast a correction contained in the Authority’s decision.\textsuperscript{48}

Meanwhile, a Christchurch citizen, Mike Bradstock, had taken a complaint to the BSA, which dealt with breaches of the alcohol advertising code. The decision upheld part of Bradstock’s complaint, maintaining the Canterbury Draught advertisement had made a direct association between drinking and driving. TVNZ appealed the decision, claiming that recent BSA decisions had created “an extremely difficult position for advertisers. At least one company has put future plans on hold until greater reasonableness and certainty is restored.”\textsuperscript{49}

This appeal revealed the need for the Broadcasting Act to be examined with regard to the possibility of a complainant having to defend a BSA decision in the High Court. Powell acknowledges the concern that “a complainant, using what is perceived to be a cost-free system, may be faced, if their complaint is successful, with being called on to defend the decision in the High Court.” She regarded the possibility of legal aid eligibility as a viable option to ensure that decisions could be fought.\textsuperscript{50}

Following publicity of the case, Bradstock received public donations and succeeded in getting his lawyer appointed as an amicus curiae, or ‘friend of the court’, which meant that the case would be defended at the public expense in recognition of its public interest value. In March 1994, just before the case was to be heard, TVNZ withdrew and agreed to pay half Bradstock’s costs, with the remainder met by donations and a grant from the secretary for justice.\textsuperscript{51}

\textsuperscript{48}Ministry of Commerce(1992)\textit{BSA Quarterly Review}, 26 June, p.3.
\textsuperscript{49}“TVNZ will appeal against beer advert decision.” \textit{The Press}, 6 November 1992.
\textsuperscript{51}“TVNZ to pay for beer ad row.” \textit{Dominion}, 31 March 1994.
A further eight appeals were lodged in 1994-1995. An examination of the nature of and progress on each appeal highlights areas of contention regarding the Authority's performance. A privacy complaint, decision 1/94, was upheld by the Authority and subsequently appealed by TV3. The Authority considers it has made a substantial contribution to the more complex standards issues in the area of privacy. While New Zealand law recognises trespass, nuisance, defamation and breach of confidence as areas of tortious liability, there is no general tort of privacy. The BSA turned to international definitions of privacy when establishing a body of principles to work from.\(^{52}\) While its decisions provide an informal body of "case law" for its own purposes it will welcome the appeal result to formally establish the legal limits in the privacy area.\(^{53}\)

The privacy complaint was made by a Mrs S, and upheld on the basis that surreptitious filming of the subject ignored a identity suppression order and could not be justified in the public interest. An order for compensation of $750 was made. Mrs S declined to take part and because of the importance of the privacy issues Alisa Duffy of Crown Law was appointed by the High Court to appear as an amicus. The appeal was heard in December 1994 but the judgement has not yet been released. The fate of another appeal by TV3 involving a complaint about the same programme (decision 21/94, Mrs P) awaits the outcome of the appeal on decision 1/94.

CTV has appealed against two decisions upheld by the Authority on complaints from Group Opposed to Advertising of

\(^{52}\)The BSA Advisory Opinion 25 June 1992 contains a summary of these principles. The development of the privacy code will be elaborated on in Chapter six.

Liquor (GOAL) about DB Sport. The decisions concerned CTV being party to incidental alcohol advertising and the saturation of liquor promotion credits. CTV was ordered to broadcast a statement summarising the complaint and outlining the rationale of the standard that requires incidental liquor promotion be minimised.\textsuperscript{54} In view of the reluctance of CTV to take broadcasting standards seriously (they have been the subject of numerous alcohol complaints) the Authority is “firmly of the view that it should defend the appeal.” Both cases have been transferred to the High Court.\textsuperscript{55}

Both Comalco and the Exclusive Bretheren Christian Fellowship, as complainants, have appealed against the Authority’s decision in case 14/94 and 59/94 respectively. Both cases were only partly upheld regarding balance and fairness issues and both complainants are seeking judicial review of the Authority’s decisions. The Authority asserts that as judicial review involves question of its standards procedures and process of determination, it is important matters are presented by the Authority to the Court.

Three further cases are presently in stages of appeal. Jardine Insurance Brokers, the complainant, appealed against aspects of the Authority’s decision 70/94 regarding two items on Fair Go. Seven of ten issues were upheld and TVNZ was ordered to pay $5000 in costs. TVNZ has subsequently appealed the order for costs. The appeal was heard in the Auckland High Court in March 1995 and will be concluded shortly.

TVNZ has appealed against decision 91/94 when the Authority upheld in part a complaint from Southland Fuel Injection Ltd


regarding an item on Fair Go. The complaint concerned breaches of the balance and fairness codes. Early 1995, the Authority received an appeal by Australian Man Boy Love Association (AMBLA) regarding decision 4/95 when the Authority declined to uphold AMBLA’s complaint that the term paedophile had been used incorrectly on a Frontline item about the Kai Marama unit for child sex offenders. The appeal is presently being processed.

The BSA is concerned that if these appeals are upheld it would not have the financial resources to cover ensuing costs on claims. Pending the availability to the BSA of additional operational funding, the MOC has provided for costs in its own register of contingent liabilities totalling $110,000 with respect to these legal actions.\textsuperscript{56} The increasing number of appeals illustrate the complexity of the complaints that the Authority is receiving, and an increasing understanding by the public of the complaints system

A majority of appeals concern issues of balance, fairness and accuracy. This is a contentious area which generates a large number of complaints (38% in 1993/4) and involves a high degree of subjectivity. These complaints often allege inaccuracies and concern one party recall of an event not matching anothers. The Authority is more frequently declining to determine complex accuracy issues that would involve considerable expense and lengthy hearings, and instead is focusing on the allegations of balance and fairness, determining those matters by primarily relying on the broadcast itself.\textsuperscript{57} In the Authority’s experience “the matters of balance and fairness are at the heart of complex complaints and can be determined satisfactorily by assessing the broadcast in light of the often extensive written material

\textsuperscript{56}Ministry of Commerce(1994)\textit{BSA Quarterly Reports}. 27 September.
\textsuperscript{57}Broadcasting Standards Authority(1994)\textit{Annual Report}, p.11.
supplied by the complainant and broadcaster."\textsuperscript{58} This greatly reduces the strain that such complaints places on the Authority's limited time and resources.

\textit{Funding issues.}

The 1989 Broadcasting Act legislated that the BSA would be funded by government appropriation, a proposition the Broadcasting Tribunal fully supported. In its submission to the Planning and Development Select Committee on the 1989 Broadcasting Bill, the Tribunal expressed frustration at the system of funding it had operated under, whereby it had no control over the recruitment of staff or expenditure of a budget.\textsuperscript{59} Submissions were also made by the National Council of Women, the New Zealand Foundation for Peace Studies and a number of private citizens regarding guaranteed sufficient funding for the Authority to undertake all its functions.\textsuperscript{60}

An appropriation, while establishing the Authority's operational power with regard to the expenditure of funds, has one major flaw. Browne (1989) notes that funding by appropriation establishes a direct means of political control between the encumbent government and the broadcasting body. He asserts: "If an agency is funded through annual government appropriation the government may 'lean' on the agency by threatening to reduce its budget..."\textsuperscript{61} BSA

\textsuperscript{58}Ibid.
\textsuperscript{59}Broadcasting Tribunal(1989)\textit{Submission to the Planning and Development Select Committee on the Broadcasting Bill}, p.29
executive director, Gail Powell, admits the BSA could be directed in this way. She explains,

Although the BSA reports directly to Parliament, not the Minister, and was deliberately set up to be independent of ministerial direction, nevertheless, the Authority is working in a political environment and conceivably the Authority could be instructed to take a political stand or threatened with a reduction in funding.62

Powell stresses that there have been no political directives to date, though a number of budget cuts have been incurred. Since 1990 the annual appropriation has been reduced from $746,666 to $548,444 in 1994. During this time the number of complaints before the Authority steadily increased, from twelve in 1990 to one hundred and fifty one in 1994. Without a corresponding rise in funding, the volume of complaints has adversely affected the Authority's research function. This was foreshadowed by a notice in the BSA's 1993 annual report, which stated:

With a reduced grant an a much smaller amount carried forward than in previous years the Authority may find it impossible to contain this year's expenditure within its income without eliminating at least one of its most important areas of activity, research.63

During the following year the Authority absorbed a five percent funding cut by discontinuing its research function.64 This move directly contradicts the Authority's mission statement which asserts the BSA's responsibility to,

Establish and maintain acceptable standards of broadcasting in New Zealand radio and television broadcasts, within the

context of current social values, research and the principle of self-regulation in a changing and deregulated broadcasting industry.65

Members recognise the value and importance of the Authority’s research function, not only for providing information for the broadcasting industry, but for maintaining the Authority’s understanding of the populace’s concerns and attitudes.66 Morris asserts that the research function provides an useful and important extension of the members knowledge. She maintains:

People are bound by their upbringing, socialisation and age. If we [the members] believe we are here to represent the general population, then it is imperative that we have a strong understanding of their views and opinions. Current research is necessary to update the member’s understanding of the wider audience’s attitudes. Without it we run the risk of becoming paternalistic and enforcing standards that receive little societal support.67

Midway through 1994, the MOC commissioned Coopers and Lybrand to review of the BSA’s statutory requirements and terms of funding. In November 1994, the BSA received a capital injection of $90,000, designed to offset a balance sheet deficit and restore a level of Crown equity. The additional funding did not free up significant levels of funds for new activities, rather it has allowed the Authority to maintain its existing level of activity through to the end of the financial year (30 June). Resumption of full statutory duties relies on further operational funding being provided in the proposed 1995 Broadcasting Amendment Bill.68

66 This was a frequent comment expressed by various members of the Authority during interviewed in July and August 1993.
The BSA was created to allow the New Zealand public access to some degree of control over the broadcasting product. The Authority, in many respects, is a public agency, charged with representing the populaces opinions and attitudes in the broadcasting environment. To do this effectively it requires adequate funding for research, political independence and members who are knowledgeable about a variety of aspects that impact on broadcasting standards. Having established the factors that affect the BSA’s performance, an examination will be made of the of cases and decisions pertaining to privacy, violence, and liquor advertising. This will illustrate the Authority’s interpretation and application of these codes, and will thus determine whether the Authority is following its original rationale in each area, and if not, what changes have been made, and why they have been implemented.
The Broadcasting Standards Authority.

Part Three: An Analysis of Cases and Decisions.

In the five years the BSA has been operating a substantial body of 'case law' has been established. In developing its complaints procedures, the Authority has adopted a legalistic approach, aware that its decisions are subject to judicial review or appeal in the High Court. The initial decisions provided reasoned arguments and extensive explanations to inform broadcasters of the Authority's interpretation of the codes. This has provided the Authority with a body of benchmark decisions or precedents, which determine parameters for broadcasters to function within. Later cases refer to these benchmarks as justification for a similar decision. BSA member Joanne Morris notes, 'We rely on the precedents as time-saving devices. They enable brief decisions based on an earlier, fuller explanation of a similar case.'

This chapter will examine key precedent-setting complaints relating to the privacy and violence codes, in order to assess the internal policies which influence the Authority's decisions, and illustrate the formulation and application of principles established in benchmark decisions. The degree to which this body of 'case law' influences broadcasters in the selection and presentation of

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1Morris, interviewed, op.cit.
2The violence code was chosen for examination because it illustrates the process of interpretation that occurs when a code is amended. A study of the privacy code provides a sound example of the BSA's internal policy formation and the use of advisory opinions.
programming will be studied. This chapter will further consider the possible threat to media freedom, which could result from the development of a restrictive regime, which is reliant on precedents or takes insufficient account of societal changes in attitudes or the merit of individual cases.

Privacy.

On 26 June 1992, the Authority released an Advisory Opinion on privacy under section 21.1 (d) of the 1989 Broadcasting Act, which enables the BSA to comment on standards and ethical conduct in broadcasting. Section 4 (1) (c) legislates that every broadcaster is responsible for maintaining standards consistent with the privacy of the individual. New Zealand has no tort of privacy in the common law. While there is a basic judicial recognition of the concept, there has been no precedent set that confirms the position of those who believe their privacy has been infringed.\(^3\)

As BSA decisions can be appealed in the High Court, the Authority believed it was appropriate to follow legal precedents in privacy cases. However the lack of clear legal definition of privacy in a New Zealand context necessitated reliance on principles established in the United States. The Authority relied on the American tort of invasion of privacy, which Prosser and Keaton (1984) maintain actually consists of four distinct torts. The American torts of "appropriation of name or likeness" and "placing a person in a false light in the public eye" are covered in New Zealand by other legal measures, such as defamation and copyright laws. The remaining two

\(^3\)John Burrows, Professor in Law at the University of Canterbury. Interviewed, 20 April 1992.
American torts, "unreasonable intrusion upon the seclusion of another" and "the public disclosure of private facts" were regarded by the Authority as relevant to "the limits of protection afforded to an individual's privacy by section 4 (1) (c) [of the 1989 Broadcasting Act]." The Authority established that the tort protecting the public disclosure of private facts also protects against the public disclosure public facts, provided in both cases that the facts disclosed would be "highly offensive and objectionable to a reasonable person of ordinary sensibilities." Examples of private facts given by Prosser and Keaton (1984) include the details of a person's sexual relations or intimate private characteristics and conduct. They further describe public facts as "facts that occurred in a private place and in view of the general public...or...[that] can be found in a public record."

The Authority further relied on McGechan's ruling in Tucker v News Media Ownership Ltd [1986], which supported the introduction of a New Zealand tort of privacy covering the public disclosure of private facts, and in some instances the protection of public facts. McGechan qualifies this notion, maintaining that in Tucker's case his publicity was forced upon him due to an inevitable situation. This created an "element of unfairness" in holding the circumstances against him, irrelevant of whether the facts released were of a private or public nature.

The second tort that the Authority regarded as relevant to the determination of the limits of the protection afforded by section 4 (1)

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6 ibid.
(c) was the tort referred to by Prosser and Keeton as unreasonable intrusion. Under section 950 (1) (b) ii of the repealed 1976 Broadcasting Act, the Broadcasting Complaints Committee was empowered to receive and consider formal complaints of "unwarranted infringement of privacy in, or in connection with the obtaining of material included in, programmes broadcast by any broadcasting body."

The 1989 Act omitted any reference to infringements of privacy committed in the preparation of programmes. Despite this omission the BSA, in its first privacy case, McAllister versus TVNZ (decision 5/90), went ahead and examined McAllister's claim that by filming her son's funeral TVNZ had intruded upon her family's privacy.

According to Prosser and Keeton (1984) a complainant should establish:

1. something in the nature of prying or intrusion,
2. that the intrusion would be offensive or objectionable to the reasonable person,
3. that the thing which is intruded upon, is or is entitled to be, private.10

Prosser and Keeton contend that defence in both torts is the competing claim of the public concern.11 The BSA elaborates this point, maintaining that the privacy of the individual cannot be protected by law to such an extent as to override the legitimate interests of other members of society. In Mc Allister the Authority states, "If individual privacy is given its largest interpretation the valued freedom of the media would be severely constrained."12

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91976 Broadcasting Act, op.cit, section 950 (1) (b) ii.
11Ibid.
12BSA Decision 5/90, op.cit, p.9.
With regard to McAllister; the public nature of the funeral, the fact that the filming took place from the street, and the invitation to enter the cemetery later extended to the film crew by the brother of the deceased, were held by the Authority to lean against the establishment of invasion of privacy under the tort that protects against the public disclosure of private facts. Furthermore, even if the facts had been determined private, the BSA regarded the public interest in the issues surrounding the funeral (crime, anti-social groups and pertinent government policy) would have made it “impossible to describe the October 6 Network News item as highly offensive and objectionable to a reasonable person of ordinary sensibilities.”  

The Authority recognised that the 1989 Broadcasting Act does not specifically authorise complaints which allege that an individual’s privacy was infringed by a broadcaster’s conduct in obtaining materials for broadcast. Regardless, it considered the ambiguity of the legislation as great enough to assess whether unreasonable intrusion into the McAllister family’s privacy had occurred from the conduct of the TVNZ film crew. Prosser and Keeton (1984) note that the success of a privacy claim on these grounds depends there being “something in the nature of prying” into something which is, and which is entitled to be, private, where the intrusion would be offensive and objectionable to the reasonable person of ordinary sensibilities. The Authority did not believe that the filming of the funeral constituted prying, or would be objectionable to an ordinary person, therefore declined to uphold McAllister’s complaint.

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13Ibid
15BSA Decision 5/90, op.cit.
Foster (1991) believes the BSA's test for infringement of privacy, that intrusion or publication be "highly offensive to a reasonable person of ordinary sensibilities" is too narrow. She contends that a further test of foreseeability, or the reasonable expectation of a person in the shoes of the plaintiff, is necessary to fully protect the privacy rights of the individual.\textsuperscript{16} In her argument Foster cites the second BSA decision concerning privacy, Dr Ranganui Walker versus 89FM Auckland, decision 6/90, which dealt with the defendant’s on-air encouragement of harassing phone calls to the plaintiff. The Authority ruled that "the effect suffered by the complainant was a reasonably foreseeable consequence of the conduct alleged to have caused it."\textsuperscript{17} Foster regards this as essentially a proximity test, adopted to alleviate the burden of proof on Dr Walker, and believes it left the issue of causation unsatisfactorily dealt with.\textsuperscript{18}

The Ranganui Walker case also raised the issue concerning the type of plaintiff entitled the protection of privacy actions. In decision 6/90 the Authority recognised a distinction between the privacy afforded a private or public figure.\textsuperscript{19} This question of applicability is addressed by Prosser and Keeton (1984) who assert that the higher the public office or position, the greater the array of facts which can sustain legitimate public interest.\textsuperscript{20} The rationale in both cases is that the public figures concerned have implicitly given their consent to a degree of public scrutiny. Regardless, in general privacy law there is

\begin{itemize}
\item \textsuperscript{16}Foster, C. (1991) \textit{Invasion of Privacy and New Zealand Media Law}. Law Department, University of Canterbury.
\item \textsuperscript{17}Broadcasting Standards Authority (1990) Dr Ranganui Walker versus 89FM Auckland, Decision 6/90, p.12.
\item \textsuperscript{18}Foster, C. (1991) \textit{op. cit.}, p.19.
\item \textsuperscript{19}BSA Decision 6/90. \textit{op. cit.}, p.7.
\end{itemize}
still a recognition for protection of a public figure’s personal information.\textsuperscript{21}

In Dr Walker’s case the Authority ruled that the fact he was a prominent public figure was irrelevant, and ruled against the broadcaster, finding that the broadcast of encouragement to infringe an individuals privacy was not consistent with the provisions of the 1989 Broadcasting Act. In a discussion of the Ranganui Walker decision, Foster (1991) reasserts her foreseeability test for privacy, maintaining that "the degree of public profile involved, and the degree to which the information or activity concerned should still remain private could be taken into account using this formula."\textsuperscript{22}

She further contends that to not include a foreseeability clause into the privacy principles of intrusion or publication of private and public facts, results in bias against the complainant, by restricting the breadth of argument in each individual case.\textsuperscript{23}

The Authority’s third privacy case, Cook versus TVNZ, decision 1/91, reconsidered the balance between the individual’s right to privacy and the public’s right to know. The Authority stated in the McAllister case that in any inquiry into a complaint of privacy would require examination of the competing claim of the public interest.\textsuperscript{24} In 1/91 the Authority defined the public interest as "a matter of legitimate public concern to viewers."\textsuperscript{25} The Authority found that the offending article on Fair Go, (which included shots of Mr Cook’s house, car, and street number) did not reveal private or public facts of a nature that would be "highly offensive and objectionable to an

\textsuperscript{21}Foster, C. (1991) \textit{op.cit}, p.20. Foster cites the 1965 Bardot case where the plaintiff successfully claimed entitlement to the privacy of her own back garden.
\textsuperscript{22}\textit{Ibid.} p.21.
\textsuperscript{23}\textit{Ibid.} p.25.
\textsuperscript{24}\textit{BSA Decision} 5/90. \textit{op.cit}, p.11.
\textsuperscript{25}\textit{Broadcasting Standards Authority}(1991)\textit{Cook versus TVNZ}, Decision 1/91. p.4.
ordinary person of reasonable sensibilities” and therefore did not breach the broadcasting codes.

The following case, decision 7/92, regarding a complaint made by Gisborne Boy’s High School over a Radio 89FM of Gisborne article, reiterated the principles associated with the public interest. The Authority reasserted Prosser and Keeton’s discussion regarding the American torts of privacy (outlined earlier in this chapter) and also canvassed the Australian Law Reform Commission Report on Privacy, which endorsed the principle that publication of private facts could be allowed if they were in the public interest. The Law Reform Commission noted that for the public interest defence to be valid the facts involved had to be of legitimate concern to the public not “merely published to arouse prurient or morbid curiosity.”26

The Authority found that the broadcaster may have breached the code requiring that conversations with members of the public could only be recorded with their knowledge and permission. However, the complainant had not brought the case before the Authority under that code, so the Authority was unable to deal with any possible breach. The BSA then proceeded to deal with the complaint under the privacy code and found that, while unethical, the broadcast did not include facts of such a nature to be considered objectionable.27

The fifth privacy complaint to the Authority, decision 19/92, Clements versus RNZ, reapplied the previously developed principles of privacy but emphasised that the particular facts of each complaint are especially important when privacy is an issue. Soon after the BSA

27Ibid. p.7.
released an advisory opinion recording five relevant privacy principles, developed from the cases in which privacy was a dominant concern. This was to assist broadcasters and complainants in recognising breaches of section 4 (1) (c). The principles clarify the issues raised in the privacy cases, concerning the definition of public and private facts, and the constitution of intrusion into an individual's solitude. The public interest and consent to invasion by an individual are listed as defences to a claim for breach of privacy.\textsuperscript{28}

The first five cases that concerned questions of privacy, provided the Authority with a solid base of policy to apply to future cases. In a March 1993 report to the MOC, the Authority considered it was making a substantial contribution to the complex standards issues in the area of privacy. It further noted that while its decision provided an informal body of 'case law' for its own purposes, it would welcome an appeal to formally establish the legal limits in privacy issues.\textsuperscript{29}

The previous chapter outlined the appeal of decision 1/94 by TV3, presently before the courts. The result of this appeal will dictate future directions in privacy law and the BSA's policies toward privacy cases.

In July 1994 the Authority released two further advisory opinions on privacy. The first was to Pirate FM of Wellington, regarding a privacy complaint made by Mrs Suzi Archer. The Authority was unable to uphold the complaint as the comments made were untrue, and privacy complaints must be based on the disclosure of private facts. However, the Authority noted that had the complaint been based on codes requiring fair dealings with persons dealt with in programmes or good taste and decency, it would most likely have been upheld.

\textsuperscript{28}Broadcasting Standards Authority(1992) \textit{Advisory Opinion on Privacy}, 26 June.
\textsuperscript{29}Ministry of Commerce(1993) \textit{BSA Quarterly Review}, 31 March.
As a result of this issue, the BSA released another Advisory Opinion to all broadcasters, regarding the time limits for privacy complaint applications. Under the 1989 Broadcasting Act, privacy complaints may be made directly to the BSA. The BSA recognises that through its efforts to achieve a balance between the public interest and the privacy of the individual, it has developed "a reasonably narrow definition of privacy." It further notes that this does not always correspond with the public's concept of privacy, which has resulted in cases such as Ms Archer's, where complaints have been based upon inappropriate codes.\textsuperscript{30}

As the statutory time limit which broadcasters must accept a complaint within may have expired before the Authority has issued a decision on a privacy complaint, the BSA decided that in all cases received alleging a breach of section 4 (1) (c) it would advise the complainant that it may be appropriate to lodge a further complaint under standards requiring fair and accurate treatment of individuals in programmes. The Authority asserted that decisions on complaints should not be determined by legislative technicalities "at the expense of a complainant's central concern."\textsuperscript{31}

This type of proactive determination of issues by the BSA is the work which broadcasters are opposed to. The detailed explanation of the privacy issues effectively restricts freedom of interpretation or the less clarified statutory guidelines. The privacy standard is less controversial than many, due mainly to its grounding in legally accepted principles.\textsuperscript{32} The Authority's interpretations of the violence

\textsuperscript{30}\textit{Broadcasting Standards Authority(1994) Advisory Opinion to Pirate FM Wellington, 26 July.}

\textsuperscript{31}\textit{Broadcasting Standards Authority(1994) Advisory Opinion on Privacy Related Matters. July 26.}

\textsuperscript{32}\textit{Based on interview comments by various broadcast appraisers and standards managers outlined in footnote 32 in chapter five.}
code has resulted in considerable criticism by broadcasters and media commentators alike.

Violence.

The Authority recognises two recent decisions as benchmarks in the area of violence: 78/93 regarding the film Hard to Kill, and 81-84/94 on the children's television series, Mighty Morphin Power Rangers. These decisions reinforce, and substantially build on, previous cases that have dealt with violence in programming. The amended violence code, introduced January 1993, was considerably more extensive than the previous code, and resulted in the BSA upholding a greater proportion of violence complaints than in the past. Prior to this, decisions relied on broad interpretation of five basic statements regarding the use of excessive, imitative, or gratuitous violence. Following the 1991 National Seminar on Violence, research presented by various keynote speakers was also applied to relevant cases.

It is pertinent to note that while considerable research has been devoted to the area of violence, and public concern with respect to television violence remains high, very few complaints concerning violence are lodged with the BSA. Since its establishment the number of decisions on violence has averaged between four and seven percent annually. Consequently, the Authority has had very few chances to relay its interpretation of the code to broadcasters. However, those decisions which have been upheld established strong precedents for

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33 Michael Stace, Personal Correspondence, 21 March 1995.
35 See for example Decision 41/91 regarding the 'Defenders of the Earth' cartoon.
36 Chapter Four outlines the research and opinion surveys completed by the BSA.
future programming, often at the dissatisfaction of broadcasters who believe the paucity of complaints reflects a societal ‘double standard’ about violence. Examination of the body of decisions illustrates the Authority’s strength of resolve regarding television violence.

An early decision dealt with the issue of violence in children’s cartoons, and established a widely applicable rule for violent programmes. Children’s Media Watch, a public lobby group, complained to TVNZ that an episode of the series ‘Defenders of the Earth’ breached the provisions on the Television Code of Broadcasting Practice relating to the protection of children and the portrayal of violence. TVNZ maintained the cartoon’s farcical nature did not constitute a breach of the code, a decision which Children’s Media Watch believe illustrated “TVNZ’s lack of understanding of the way in which children perceive programmes they view...”\(^{37}\)

As this was the first complaint dealing with the issue of cartoon violence, the Authority dealt with it in some detail. In its decision it notes:

[The Authority] will endeavour as far as possible to ensure that its decision incorporates relevant and coherent research findings, and informed opinion about the wider controversy in relation to violence in children’s television programmes.\(^ {38}\)

The decision outlines the Authority’s policy toward the arguments for and against television violence. While recognising that conclusive research finds television violence reinforces violent behaviour in those individuals living in homes where violence is the usual response to problems, and that violent programmes may

\(^{37}\)Children’s Media Watch(1991)\textit{Complaint to the BSA} over Defenders of the Earth. 26 April.

influence a small sector of isolated anti-social adolescents, the Authority does not regard the possible effect on a small section of society warrants a rigid approach to all television violence. With regard to the Defenders of the Earth, the Authority relied heavily on the research findings of David Docherty, Director of Research at the British Standards Council, and Barbara Biggins, Chairperson for the Australian Council for Children’s Film and Television.

Docherty develops the concepts of 'deep' and 'shallow' play. The former are items which carry the greater influence; that are realistic and reflective of the viewers everyday life. In comparison, shallow play does not impinge on the viewers daily experience of the world. The Authority notes, “It [shallow play] is remote from the audiences's cultural social or political milieu. Most cartoons, by their very nature, involve shallow play.”

Biggins regards the research that claims television violence does not affect children inconsistent with what is known about child development. She explains,

...knowledge tells us that children are active learners and learn from what they’re exposed to. If they’re constantly exposed to the uses of violence to solve conflict, they will learn them. It would be strange if children failed to learn the basic values of the TV programmes that they watch.

The Authority accepts differing points of view on the issue of television violence, but places its sympathies and power with those in the community concerned with television violence, maintaining that

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39 Ibid, p.3.
it is at "an unnecessarily high level." With regard to the 'Defenders of the Earth' the Authority concluded that while singular episodes were farcical, the cumulative effect of such violence on children needed further consideration. It declined to uphold this complaint under the codes established when the Authority commenced in 1989.

Further comment on the complaint notes,

Despite this finding, the Authority is of the opinion that if the standards prohibited the repetitious broadcasting of programmes devoid of merit or worth for children, particularly in cartoon form involving predictable plots containing conflict which is inevitably resolved by violence, it could have upheld this complaint.42

Cumulative violence and its effects was one of the primary issues addressed in the violence code review and amendment. The new 'Portrayal of Violence' code, released in January 1993, includes clauses restricting the prolonged coverage of real or fictitious violence, and continuous or cumulative programming of excessive violence. The Authority's support for Docherty's theories was evident in the establishment of a code distinguishing farcical and realistic violence.43 It was under this new, more extensive code, that a complaint regarding the children's series, 'Mighty Morphin Power Rangers' was determined. Four complaints were received by the Authority regarding this programme, the majority of which were upheld.

The Authority observed that 'Mighty Morphin Power Rangers' was described in publicity material as a science fiction adventure series about five teenage superheroes, and contained elements of science

41BSA Decision 41/91_op.cit p.4.
42Ibid p.7.
fiction and fantasy as well as martial arts sequences. TVNZ claimed the programme offered "creative fantasy situations" to children.\textsuperscript{44} The Authority disagreed, maintaining that the fantasy aspects of the programme did not mitigate the excessive violence, and the realistic weapons used by the Rangers were all familiar to children. The Authority ruled that the programme breached the standards restricting violence which is not in context; cumulative violence appearing excessive; and the glamorisation of anti-social behaviour. Furthermore, the BSA believed TVNZ was not mindful of the effect the programme would have on children. \textsuperscript{45}

The Authority released the decision to TVNZ prior to its publication, which resulted in TVNZ cancelling the next series. The benchmarks set in the Mighty Morphin decision were confirmed in decision 134/94, Bannatyne versus TVNZ, regarding a number of children’s cartoon programmes which focused on violence. In this case the Authority found that one cartoon featured human-like creatures and incorporated a realistic storyline, which, combined with a high level of violence, breached the code requiring the avoidance of excessive violence in cartoons. Other programmes were found in breach of the code restricting cumulative violence. The Authority concluded that a number of the programmes were inappropriate for pre-school children, and that classifications pertaining to this issue should be broadcast to warn parents.\textsuperscript{46}

The Authority’s decision in the Bannatyne case expanded on the Mighty Morphins precedent by setting a further benchmark with regard to cartoons, and the effects of broadcasting repeatedly violent

\textsuperscript{44}Broadcasting Standards Authority(1994) Assorted Complainants versus TVNZ. Decisions 81-84/94.
\textsuperscript{45}Ibid.
\textsuperscript{46}Ibid.
shows. While relying on the rationales expounded in the Defenders of the Earth decision (concerning deep and shallow play) this decision was able to go a step further, due to the increased powers of the BSA under the amended violence code.

The second benchmark decision the Authority refers to is the precedent set by the film 'Hard to Kill'. Again this decision relies on the concepts of deep and shallow play which were incorporated in the amended code under clause V2: "When obviously designed for gratuitous use to achieve heightened impact, realistic violence - as distinct from farcical violence - must be avoided." The Authority found that Hard to Kill contained unacceptable levels of realistic and gratuitous violence to achieve heightened impact.47 MacDonald (1993) observes that Hard to Kill's violence "isn't so much 'in the context of the story line' as it is the storyline." He questions, however, the fairness of a system that can effectively ban programming that 604,000 viewers watched, on the grounds that one complained.48

TVNZ proffers this view in its correspondence to the BSA concerning the Hard to Kill case. Expressing regret that the complainant was offended, TVNZ concluded:

That notwithstanding, we observe that to uphold this complaint on the grounds of any of those codes quoted amounts to telling 604,000 New Zealanders that a film they chose to watch was not suitable for them. With the greatest

respect, we suggest that such a decision could appear unduly paternalistic.\textsuperscript{49}

The Authority regarded this comment as a claim that in certain undefined circumstances the codes of violence, agreed to by the broadcasters and Authority, could be ignored. It found this disturbing, and noted it was quite prepared to be thought of as paternalistic in ruling the film contained a degree of violence which was unacceptable. The Authority further noted that while it normally was reluctant to mention standards which were not raised in the original complaint, the Hard to Kill decision was the first of its kind made under the revised Violence code, and it was important to advise broadcasters of the Authority's interpretation of the standards. Therefore, it discussed the standard concerning the cumulative effect on violence, noting its applicability to the current complaint.\textsuperscript{50}

The precedent set by Hard to Kill was applied in two following cases. In the first, concerning the movie 'Robocop', the Authority declined to uphold the complaint in substance, maintaining the majority of the violence was "less real" than in Hard to Kill. The Authority concluded "Most of the film - including the violence portrayed - was of a science-fiction variety and thus unrealistic." While the Authority unanimously decided the violence was predominantly the comic book type, a majority regarded an early scene showing a policeman being brutally assaulted, in breach of the code that restricts lengthy scenes of violence for gratuitous purposes. \textsuperscript{51}

\textsuperscript{49}BSA Decision 78/93, \textit{op.cit.} p.3.
\textsuperscript{50}ibid.
\textsuperscript{51}Broadcasting Standards Authority(1993)\textit{Ashley Felderhof versus TVNZ}, Decision 118/93.
The second complaint which confirmed the Hard to Kill precedent, concerned the film 'Red Heat'. The Authority found that TVNZ violated the code requiring that violence be justifiable, that is, essential to the context of the programme. TVNZ suggested the film would be acceptable if modified and rescheduled to a later time slot. The Authority asserted the film should not have been shown at all, and advised that the broadcast of other films of the same violent nature, whether scheduled to a later time or not, would be considered in breach of the portrayal of violence code.52

David Edmunds, Programme Standards Manager at TVNZ, was "extremely dissatisfied" with the Authority's Hard to Kill decision, and the precedent it has set. He argues that part of the problem with the standards regime is that the decisions are made on the basis of one complaint. He elaborates,

I think if there was an upswell of public opinion about something that happened then we'd know something was out of line. But, more often than not, these decisions are the result of one complainant. It seems a somewhat unjust system...that standards are being set, because each one of these decisions is a precedent, on the strength of one or two people who have pretty extreme views about what they see.53

Edmunds believes New Zealanders have a double standard with regard to American and British drama. He maintains there is a strong dislike of American produced material by the demographic that utilises the complaints system. Edmunds explains,

Some of the British material we run on Sunday Montana Theatre is more sexually explicit and violent than lots of the American product, yet it is inevitably the American material that attracts complaints. This makes interpretation of the codes

quite difficult as you basically have to interpret them differently for each audience and programme. There's no consistency.\textsuperscript{54}

With regard to the Hard to Kill decision, Edmunds notes that it set a precedent. Following the BSA's decision TVNZ cut and rescheduled films and series which previously had been passed, including the film 'Red Dawn' which had already been heavily promoted.\textsuperscript{55} Members of the BSA are well aware of the consequences their decisions have. Regarding the Hard to Kill decision, Rosemary Barraclough commented,

We are very aware that the role the Authority fulfils is often one of defining society's standards, which by its very nature can be considered paternalistic. With the Hard to Kill decision we had to find a balance between protecting the weak or vulnerable in society, and having responsible adults see what they enjoy. The Authority does not make such decisions lightly.\textsuperscript{56}

Joanne Morris has little problem with the concept of censorship or paternalism, questioning whether the alternative would be any more satisfactory. She maintains that in a commercially-driven environment there is a greater need for a body to represent community interests from a distance. Morris believes any situation where the standards body is involved in the economics of the industry, may result in the justification of programming that is profitable, but which may not necessarily be the most socially responsible choice. She contends the problem with liberal views is that they "have a very narrow definition of harm" which often excludes protection of women, children, and minorities in society.\textsuperscript{57}

\textsuperscript{54}Ibid.
\textsuperscript{55}MacDonald, F. (1993)\textit{op.cit.}, p.18.
\textsuperscript{56}Barraclough, Interview, \textit{op.cit.}
\textsuperscript{57}Morris, Interview, \textit{op.cit.}
The underlying danger inherent in the development of a body of rulings which restrict broadcasters interpretation of the codes, or ability to apply them on an individual basis, is the threat of censoring public service or educative programmes. Recently TVNZ banned a three-part story on Cracker, maintaining the programme,

...clearly contravened New Zealand standards, which clearly state that care must be taken in “depiction items which explain the technique in a manner that invites imitation” and must “avoid giving the impression of excessive violence.”58

The Listener obtained copies of the series from overseas and showed them to a panel consisting of media academics and commentators, law enforcement employees, a psychologist, and a rape victim. With one exception the panel found the public interest defence offered by TVNZ as “grossly overstated” and “were dismayed at the suppression of a programme that could have provided a useful social service in educating about rape.”59

O’Hare (1995) suggests the censoring of Cracker occurred because of an “atmosphere of fretful self-censorship created by the powerful Broadcasting Standards Authority.” David Edmunds, TVNZ standards manager, agrees, maintaining that complaints are a “deterrent factor” as they set precedents for that type of programme. O’Hare observes the “worrying trend” away from censoring single programmes to the banning of genres of programming, “seemingly regardless of merit.” He cites the BSA’s Gail Powell, who maintains the BSA is not pro-censorship, but commends TVNZ’s decision on the basis that the programme dealt with sexual violence. She contends:

No one would argue that the screening of one programme would do demonstrable harm, but if broadcasters decide to

59 Ibid. p.27.
show that programme...then they’ve got to screen the next series that deals with sexual violence. It’s a cumulative effect. You’ve got to draw the line and it has been drawn here.\textsuperscript{60}

While a body of sound, well developed precedents, can assist the BSA in its interpretation and ongoing application of the codes of practice, there needs to be an awareness of the danger of ruling in accordance with precedents becoming the motive power in decision making. Former member Lindsey Dawson notes that the body of precedents does restrict individual case interpretation. She asserts:

The legalistic approach does sometimes restrict individual case interpretation, especially if a strong view is held by one of the more legalistic members of the Authority. Lawyers tend to be persuasive speakers and good at convincing others that perhaps a certain attitude should be taken, not because it’s necessarily common sense but because it’s in line with the Authority’s thinking on some earlier similar case.\textsuperscript{61}

Morris contends that the precedents can stymie the BSA as much as the broadcasters, and that in many cases previous decisions are quoted back to the Authority as defence for a similar situation. She comments:

Great care is taken over the wording in decisions; we are cautious to not add in anything unnecessary unless it is used against us. Often there is detailed explanation to minimise misunderstanding or liberal interpretation of the decision.\textsuperscript{62}

Barraclough believes that while the Authority is tied to a certain extent to its old decisions, the unique circumstances of a complaint would override the need to abide by precedents.\textsuperscript{63} Lyndsay

\textsuperscript{60}Ibid.  
\textsuperscript{61}Dawson. Personal correspondence, op.cit.  
\textsuperscript{62}Morris. Interview, op.cit.  
\textsuperscript{63}Barraclough. Interview, op.cit.
Loates, one of the most recently appointed members, agrees with Barraclough. She observes,

There is a tendency to refer to former decisions in the interests of consistency. However I am also aware that with a change of line up in the Authority, different views are expounded and respecting this, there is no obligation for the Authority to be absolutely consistent...Obviously it is confirming (to the Authority) if it is able to reach decision in accordance with the body of rulings, but that is not the main priority.\textsuperscript{64}

Nevertheless, the cautionary comment in the Red Heat decision regarding the broadcast of violent films, and the position outlined by Powell regarding the banning of Cracker, suggest a different attitude; that on the basis of one programme, or one complaint, an entire genre can be severely restricted, irrelevant of the merits of individual programmes. It is important to remember that the BSA was established as a reactive body, and that a complaint can be instigated on the basis of a single complaint. In the interests of maintaining the 'principles of natural justice', (part of the BSA's legislative requirements) complaints should be dealt with on a singular basis, in a reactive manner, and not be a forum for the public criticism of a genre of programming, which could be interpreted as subtle orders to the broadcasting industry regarding future censorship.

The Authority's performance in developing sound rational policies in the area of privacy illustrate the importance of its role as an independent and impartial standards body. In contrast, the application of the violence codes illustrate the dangers inherent in the formation of a standards authority: that precedents set by the body will

\textsuperscript{64}Lyndsay Loates. Personal Correspondence, 15 December 1994.
restrict the freedom of broadcasters to interpret individual programmes on their merits. The Authority appears to have adopted an almost emotive stance on the violence issue, and its forthright and outspoken attitudes are having repercussions in programming. For the Authority to be seen as possessing an agenda, rather than as an impartial forum for public discussion on standards, may considerably reduce its credibility.
Conclusion.

Public service broadcasting aims to empower citizens by informing them. Its philosophical maxim is that broadcasting should serve people as a whole, regardless of geographic, economic, or cultural circumstances. Commitment to the public good is what defines PSB, and what distinguishes it from market systems, which are defined by profit motives. Furthermore, advocates of PSB maintain that broadcasting must be accountable to government on the basis that it uses a public resource, and that licensing of stations is necessary for that resource is used in an orderly manner. Subsequently, the need arises for some sort of regulatory body to assure that stations stay on their assigned frequencies and at their power limits. Most industrially developed nations also seem to agree on the need for governments to concern themselves with certain programming issues: incitement to riot, pornography, positive portrayal of minority groups, violence, and fairness and accuracy.

This thesis maintains that for a regulatory body to perform PSB functions effectively and equitably, it requires independence from political and broadcast industry influences, adequate funding, appropriate legislative authorisation, and a high degree of public accessibility. The Broadcasting Standards Authority was established to maintain standards in an otherwise deregulated and market oriented broadcasting system. It developed out of an environment of regulation and restriction, of government control and censorship. New Zealand's broadcasting history, previously characterised by political interference in content and access matters, was radically
altered in the state sector reforms of the late 1980s. Prior to the creation of the BSA, PSB objectives were embodied in an institutional structure, which retained a mixed set of obligations. Policy advice, engineering and transmission functions, allocation of the public broadcasting fee, enforcement of standards and complaints procedures, programme production, and control of national radio and television networks - all these functions were the responsibility of a single public broadcaster, accountable only in standards matters to an overworked licensing tribunal. Acting in the public interest, therefore, was more an institutional ethos than a legislated requirement.

The deregulation of the radio frequency spectrum and subsequent proliferation of new players in the broadcasting market, necessitated the establishment of a new agency to promulgate standards and to represent the public's attitudes and opinions. The powers afforded to the BSA in the 1989 Broadcasting Act illustrate the degree of political intention regarding the maintenance of PSB principles in the new broadcasting environment. Responsibility for public service requirements was transferred from a single institution to specialised agencies, removed from either political or industry influence. This restructuring attempted to increase the accountability and independence of public service agencies by making their actions more transparent to public scrutiny.

The purpose of this thesis was to examine the original rationale for the BSA, establish whether its present nature is that which was intended, and analyse the reasoning behind any differences. Accepting that the Authority was instituted to retain a certain degree of PSB obligation, the question remains, has it performed this function effectively and equitably, and if not, what were the pressures or circumstances that disabled it? Comprehensive examination of the
BSA's functions; i.e., promulgating codes, deciding on complaints, and undertaking research, goes part-way in establishing the success of the system. However, some factors remain out of the Authority's control. Legislative authorisation, member appointments, and funding allocations all affect the BSA's ability to perform its statutory duties effectively, yet the Authority has little control over these elements. Assessing how these factors influence the BSA's performance is a critical part of understanding the Authority's current nature.

The Authority has performed a number of its functions with admirable skill and efficiency, especially considering the initial animosity it faced from the broadcasting industry and then Opposition National party. Furthermore, restrictive legislative specifications precluded any latitude in the interpretation of procedural matters, and Authority decisions are subject to appeal in the High Court, invoking the need for a legalistic complaints system. Within the Authority's first year it had employed personnel, instituted a process for complaints, given pro forma approval to the Broadcasting Codes of Practice, identified codes for priority attention, and undertaken research on violence and alcohol advertising. These operations required effective liaison with broadcasting representatives, lobby groups, Ministry of Commerce policy advisors, politicians, and concerned publics. In 1990 the National party was elected, and the new Minister of Broadcasting, Maurice Williamson, requested a review of the BSA's role and performance. The resulting report was supportive and positive toward the Authority's existence and conduct.

Code developments and related research have illustrated the depth of the Authority's commitment to the maintenance of standards, and to the principles of self-regulation and public input. The Authority is a valuable tool in keeping the question of
broadcasting standards and ethics in the public arena. Despite these achievements, a number of issues must be addressed if the BSA is to remain credible and effective in this role.

Firstly, the complaints procedures need simplifying. The complexity which at present is associated with lodging a complaint would deter even the most vigilant complainant. The BSA is constrained by legislative time frames, and the need to apply sound legalistic techniques to decisions which could subsequently be appealed in the High Court. This restricts its ability to reform the complaints procedures internally. Attempts by the Authority to have a two-tier, fast track system integrated into the legislation appear at this stage to have proved unsuccessful. Reducing the period for broadcasters to respond within could improve matters, but simply reducing time frames can not be considered an appropriate answer. In complicated and precedent setting cases the Authority, and broadcasters, need to be assured the time to address complaints in an appropriately thorough manner, giving due consideration to the public's concerns. In many cases this depth of assessment is not necessary and briefer decisions can be released. This is where the fast-track system would be valuable, as it would afford the Authority the power to determine the level of complexity, and necessary time frame in individual cases. Public accessibility is fundamental for the success of the BSA. To restrict or disuade people from complaining on account of a unduly elaborate procedure, does not serve the public interest.

A minor issue related to the complaints system is the right of appeal afforded broadcasters and complainants by the 1989 Broadcasting Act. The Authority has substantial sanctions at its disposal and the right of appeal is not disputed. However the process
that results in the complainant being named as the defendant of a BSA decision needs attention. This can only serve to further dissuade the public from utilising the complaints system.

The second issue that affects the BSA's effectiveness is the appointment of members. Again this issue is very much out of the Authority’s control. Members are appointed by the Governor General on the advice of the Minister of Broadcasting. Specifications include legal, media, social issues, or community experience. Over the last five years the Authority has developed a large body of legalistic style precedents, and research relating to journalism and social issues. The Authority consists of only four members, which means that each individual’s voting rights have considerable power in the determination of complaints. To include a member who has little background in journalistic, legal or social issues could impair the Authority’s ability to make appropriately informed decisions. Ideally each member should contribute a specialised skill or body of knowledge to the Authority’s information base. Positions are limited enough without further restricting information flow by including a member who lacks a context to work from. Likewise the legislative restriction of four members means that inclusion of a strongly liberal or conservative viewpoint could substantially effect the Authority’s ability to balance the issues of freedom of speech and censorship in an effective and equitable manner. The BSA is not able to sustain personal agendas when each member holds a quarter of the voting rights. To do so would considerably reduce its credibility.

Political independence is the third issue impacting on the Authority’s performance. Whether it be appointments, operational matters or funding allocations, there is no place in the Authority’s functions for the covert interference of politicians. The advantages
which control of broadcasting can offer politicians (its immediacy, mass coverage, and authoritativenss) mean it is necessary that the management of broadcasting facilities operate independently from politics. This enables broadcasters to objectively report and analyse political and economic events; and enables governments to challenge what they see as misinterpretations, under conditions where all activity is transparent to the public. Likewise broadcasting agencies should remain impartial and independent of political involvement. This ideal exists for the benefit of public and broadcasters alike. The Authority has a dual role: it represents the public interest to broadcasters, and it ensures that political complaints regarding programming are addressed in an appropriately public manner. Ideally, then, it should remain accountable to all three interests: the public, broadcasters, and government, but under the primary influence of none.

In view of this, the examples of political interference outlined in this research, raise serious questions regarding the Authority’s ability to serve the public interest and operate fairly and effectively. It is desirable that the Authority strongly resists any attempt by politicians to influence decisions or affect general policies or research directions. For the BSA to be considered under the influence or direction of political interests would undermine its credibility as an independent and impartial regulatory body, instituted to represent the public interest.

The fourth issue impacting on the Authority’s performance is inadequate funding. For the Authority to remain informed and aware of public concerns and attitudes requires current and comprehensive research. The present situation, with the BSA unable to fund research due to the increasing size and expense of the complaints system,
amplifies the risk of the Authority becoming paternalistic, by making decisions on behalf of a populace it neither represents nor understands. The very nature of a standards regime is, to a degree, paternalistic (due to the fact that four people pass down decisions on an entire nation) without exacerbating matters by terminating the Authority's research function. If members are well informed regarding the public's concerns and attitudes, then the risk of decisions being made that are paternalistic are greatly reduced.

A final issue relates to the Authority's body of precedent, or 'case law', and the effect it has on broadcasters independence and decisions regarding programming, and the public's right to choose broadcast products on their individual merit. Recent decisions have established the BSA's attitude toward programming that contains excessive violence - it simply should not be broadcast irrespective of individual circumstances or merit. This precludes programming that deals with important issues, and could be socially beneficial, being broadcast. Restricting entire genres of programming is dangerously close to censorship, especially considering the decisions were based on a single complainant. The Authority maintains that the legislation requires it give equal attention to each complaint, yet in instances where a number of complaints have been lodged regarding the same programme, the Authority will often factor this strength of public concern into its decision. This principle does not seem to apply in reverse. Chapter six illustrates that in the area of violence the Authority is prepared to create powerful precedents, regardless of the minimal number of complaints relating to this code. Decisions on violence often concern solitary complaints, and in instances like the Hard to Kill film, are made against a huge amount of public support for the programme in question. While recognising a double standard
exists for violence, the Authority continues to advance a private agenda - to reduce the amount of violence on-screen. This thesis does not advocate violence. It does however question the validity of decisions that are designed to restrict an entire genre of programming, furthermore a genre that draws the attention of a large proportion of the public. If a double standard is recognised, then decisions should be based on that recognition. Programmes could be scheduled later, lengthy violent scenes reduced, and only broadcast occasionally. Regulations to this effect are easy enough to implement, as the success of brand advertising illustrates. The danger arises in censoring viewer’s choices or maintaining that the public is unaware of the threat which programming poses. The Authority was designed as an impartial forum for the public discussion of standards. The balancing act between freedom of speech and censorship of material which threatens the vulnerable in society requires a case-by-case approach to prevent that impartiality coming into question.

For the BSA to remain effective and efficient in its duties it requires adequate funding, political independence, appropriately informed members, a revised complaints procedure, and a commitment to the principle that evolving societal standards and expectations necessitates individual case consideration. Many of these conditions are out of the Authority’s control, and are unlikely to occur unless the public is made aware of the importance of retaining a well-resourced representative in the broadcasting arena.
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Appendix.

This appendix contains examples of the broadcasting codes of practice and rules developed by successive standards authority's in New Zealand. They are in chronological order.
NEW ZEALAND BROADCASTING AUTHORITY

PROGRAMME RULES

Second Edition
1970

The New Zealand Broadcasting Authority
T & G Building
Grey Street
Wellington
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FOREWORD

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APPENDIX A: Violence in Programmes; Code of Practice

APPENDIX B: Programme Returns (Form PROG. 1).
1. INTRODUCTION

1.1 The New Zealand Broadcasting Authority is established under the Broadcasting Authority Act 1968, which provides as follows:—

"S.10. Authority to make rules —

(1) In the exercise of its functions the Authority shall ensure ........
(a) That nothing is included in programmes which offends against good taste and decency or is likely to incite to crime or to lead to disorder or to be offensive to public feeling;
(b) That programmes maintain a proper balance in their subject-matter and a high general standard of quality;
(c) That news given in programmes (in whatever form) is presented with due accuracy and impartiality and with due regard to public interest.

(2) The Authority shall prepare and promulgate rules in respect of all or any of the following matters:
(a) For giving effect to the provisions of subsection (1) of this section;
(b) Prescribing the character and standard of advertising which may be broadcast;
(c) Prescribing standards of programmes and prohibiting the broadcast of such matters as may be prescribed in the rules;
(d) Providing that matter broadcast during a specified period shall contain a prescribed proportion of items produced in New Zealand and encouraging, in such manner as the Authority thinks fit, the inclusion in broadcasting schedules of as much matter produced in New Zealand as is reasonably possible;

(2) Requiring the holders of warrants to submit information to the Authority regarding their programmes, financial affairs, ownership, control, and such other matters concerning their operations as the rules may specify;
(g) Providing for such matters as are necessary for the Authority to exercise its functions and for its due administration.

(3) Any rules under this section may apply generally to all broadcasting stations or may apply only to broadcasting stations of specified types or classes and may from time to time be varied, amended, or revoked."
ADVERTISEMENT RULES

Broadcasting Council of New Zealand
BOWEN STATE BUILDING, BOWEN STREET, WELLINGTON.

P.O. Box 98, Telephone 721-777
Cables and Telegrams "BROADSERV"
Telex No. NZ3061

ADVT-76
1.2 These rules prescribe the requirements of the Authority in relation to the preparation and presentation of advertisements broadcast over any class of broadcasting station.

1.3 In the preparation and presentation of advertisements, it is a basic requirement that all relevant legislation is complied with in every respect. Without in any way limiting the scope of this requirement, some of the more common legal references are given in Appendix A to these Rules.

1.4 Further directives relating to advertisements may be issued in writing by the Authority from time to time either by the amendment of these Rules or otherwise.

1.5 Directives relating to advertising programmes and their placement in relation to other programme matter, are contained in the Programme Rules.

1.6 Directives relating to recordings (including discs, tapes, films, slides, opaques, and roller captions) for transmission over broadcasting stations are contained in the Recording Rules.

2. DEFINITIONS

"Advertisement" means any words, whether written, printed, or spoken, and any pictorial representation or design or device used or appearing to be used to promote the sale of any goods or to promote any services or cause, intended for the pecuniary benefit of any person; and includes all music and sound effects associated with such advertisements.

"Advertising programme" means a programme or part of a programme intended to serve as an advertisement for the pecuniary benefit of any person.

3. GENERAL PRINCIPLES

3.1 No station shall broadcast any advertisement which directly or by implication:

(a) Fails to observe high standards of ethics, propriety and good taste.

(For example, material which dramatises or describes distasteful physiological functions, symptoms or effects; contains expressions or subject matter not generally acceptable in polite conversation; or attempts to exploit abnormal national or international conditions.)

(b) Is likely to endanger the physical, mental, or moral welfare of the audience in general and children in particular.

(For example, material which tends to subvert or disparage law and order, adult authority or moral standards.)

- 9 -

(ADVT. 70)
Sections 24 and 95 of the Broadcasting Act 1976 set out the responsibilities of the Broadcasting Corporation of New Zealand and the Independent Broadcasters Association to maintain in their programmes and their presentation standards which will be generally acceptable in the community, and in particular having regard to:

(a) The provision of a range of programmes which will cater in a balanced way for the varied interests of different sections of the community.

(b) The need to ensure that a New Zealand identity is developed and maintained in programmes.

(c) The observance of standards of good taste and decency.

(d) The accurate and impartial gathering and presentation of news, according to recognised standards of objective journalism.

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

(f) The maintenance of law and order.

(g) The privacy of the individual.

Section 26 of the Act requires the Corporation, subject to regulations made under the Act, to establish a standing committee whose principal function is to prepare and promulgate rules complying with Section 24 of the Act in respect of programmes and advertising. This committee is known as the Broadcasting Rules Committee.

In approaching the task of translating these statutory requirements into a set of rules and standards, the committee has been well aware that it cannot legislate good broadcasting into being, either by prohibitions or prescriptions. The quality of broadcasting in New Zealand is very much in the hands of the broadcasters themselves: the standards they aim at, and the degree of self discipline they impose on themselves, will more than anything else dictate the nature of the end product. One way in which their self-discipline can express itself is by the manner of their approach to rules, and in particular by their willingness to carry out the spirit as well as the letter of any rule. The rules and standards themselves have not been plucked out of the air, so to speak, but could be said to be the current expression of the tradition of acceptable broadcasting conduct that has been gradually developed over several decades.
1. General Standards

1.1 In the preparation and presentation of programmes, broadcasters are required:

(a) to be truthful and accurate on points of fact;

(b) to take into consideration currently accepted norms of decency and taste in language and behaviour, bearing in mind the context in which any language or behaviour occurs;

(c) to be mindful of the effect any programme may have on children during their generally accepted viewing periods;

(d) to acknowledge the right of every person to hold individual opinions;

(e) to deal justly and fairly with any person taking part or referred to in any programme;

(f) to respect the principles of law which sustain our democratic society;

(g) to show balance, impartiality and fairness in dealing with political matters, current affairs, and all questions of a controversial nature;

(h) to avoid the use of any deceptive programme practice which takes advantage of the confidence viewers have in the integrity of broadcasting.
CODES OF BROADCASTING PRACTICE

TV PROGRAMME STANDARDS

**general**

In the preparation and presentation of programmes, broadcasters are required:

1. To be truthful and accurate on points of fact.

2. To take into consideration currently accepted norms of decency and taste in language and behaviour, bearing in mind the context in which any language or behaviour occurs.

3. To acknowledge the right of individuals to express their own opinions.

4. To deal justly and fairly with any person taking part or referred to in any programme.

5. To respect the principles of law which sustain our society.

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

7. To avoid the use of any deceptive programme practice which takes advantage of the confidence viewers have in the integrity of broadcasting.