

## RECENT BALANCE DECISIONS

### Introduction

The Broadcasting Standards Authority has asked me to review five recent decisions on the “Balance” standard. I reviewed a group of earlier decisions on this standard in 2015, and the report resulting from that review is on the BSA website. I do not wish to indulge in unnecessary repetition of what I said there, but I shall provide summaries of some of the conclusions arrived at to provide background and context.

The Balance standard derives from section 4 of the Broadcasting Act 1989. It is one of only two standards where the Act sets out a detailed formulation of the standard. The relevant provision of the section reads:

Every broadcaster is responsible for maintaining in its programmes and their presentation standards that are consistent with –

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

The standard as it appears in the codes differs slightly from that in the Act in that it is the active rather than the passive form, and it inserts words to the effect that it applies to discussion in “news, current affairs or factual programmes”. That latter qualification spells out what is probably implicit in the statutory wording anyway; it would make little sense otherwise. (In early versions of the code the wording of the standard departed rather more from the words of the Act, but those differences have been removed in the current version, presumably to counter any possible argument that the code was inconsistent with the Act.)

This standard embodies one of the age-old precepts of good journalism. There are several justifications for it.

The first is the most important, and is the one given by the BSA in its commentary on the standard. It is to ensure that competing viewpoints about significant issues are presented to enable the audience to arrive at an informed and reasoned opinion. This is important in an open and democratic society, and is consistent with freedom of expression.

The second was put forward by Ms Joanne Morris, a former chair of the BSA. She said that the standard is to ensure that audiences are given the “bigger picture”, because without that context particular information can be misleading.

A third justification is less often given, although it is in my view very important. It is that without a balance requirement there is a danger of power imbalance. Those in positions of power have readier access to the media than other people, and may be able to promulgate their views with an effectiveness and domination not available to the ordinary citizen. The balance requirement can go some way to countering this.

Fourthly, we live in a very diverse society in New Zealand. People of many different cultures and ethnicities live here. People from different backgrounds may have different perspectives which deserve to be heard.

### **The changing environment**

The balance requirement has been part of our law since it appeared in the Broadcasting Act 1976. The current provision dates from the Act of 1989. In 1989 the World Wide Web had not been invented; the only way of communicating information to the public was via newspapers and broadcasting. The role of these traditional media was not only important, it was unique. It carried great responsibility.

Since that time there have been huge changes in modes of communication in general and in broadcasting in particular.

There is now a multitude of new sources of information and opinion – online news services, blogs, niche websites and, of course social media. The quantity and variety of their content would in 1989 have been beyond human imagination. These new sources are both a benefit and a detriment. They are a benefit in that they make available to us almost unlimited information and opinions on any subject we choose to search. Infinitely more knowledge is accessible to us than ever before. However these new media are a detriment for at least three reasons. First, they are unregulated and there is no guarantee of the accuracy, objectivity or balance of their content. Secondly, there is so much content that users must choose what to read, and they tend to gravitate to the sites, commentators and “friends” that share their own view of the

world. The phenomenon of the “echo chamber” is not conducive to balance. Thirdly, much of the internet deals in small snippets of information, accompanied by inducements to jump to other items. This affects reading habits and disinclines some readers to engage in following in-depth reasoned argument. It leads to what has been aptly described as “the butterfly mind”. That is not good for balance either.

So, ideally, we need a “safe” and responsible section of the media that we can resort to in the confidence that we are getting an account of events that is fair, accurate, and *balanced*.

As far as broadcasting itself is concerned, styles have changed dramatically. The new environment makes it difficult to attain the kind of ideal balance envisaged by the original drafters of the Balance standard. There are now many different types of radio station. Talkback radio has been around for a while, but has become more challenging. On both radio and television much news commentary consists of brief provocative segments which are so short that balance is hardly possible. Some “news” and “current affairs” programmes set out to provide entertainment as much as information; some are humorous, some are “edgy”. In some the presenter enters as a participant in debate. Breakfast television is very different from the six pm news. Foreign ‘pass-through’ television channels can be accessed on our domestic screens although there is no domestic ability to control their content.

### **The BSA’s response to change**

Yet despite these changes the Broadcasting Act’s Balance standard has remained unchanged since 1989. It applies the same standard to “every broadcaster”, as if one size fits all. Overseas jurisdictions have made attempts in the wording of their codes to differentiate the balance requirement according to the type of subject matter, or the type of broadcaster (public or commercial, radio or television). In New Zealand it has been left to the BSA in its decision-making to look at situations on their merits and develop a flexible jurisprudence which arrives at workable solutions.

It has done this by a process of interpreting the standard in a liberal way. Certain key words and phrases in the standard have been the agents of this flexibility. Thus, the standard is not engaged unless **controversial** issues of **public importance** are **discussed**. If the standard is engaged, **reasonable**

**efforts** must be made, or **reasonable opportunities** given, to **present** significant points of view.

The BSA defines an issue of public importance as “something that would have a significant potential impact on, or be of concern to, members of the New Zealand public”. A controversial issue is “one which has topical currency and excites conflicting opinion or about which there has been ongoing public debate”. “Discussion” is not defined; nor is, and nor could be, the flexible and mobile word “reasonable”.

By dint of liberal interpretation of these terms the BSA has arrived at bold decisions (and written guidelines to the standard) which keep the code a living document abreast of modern times. The decisions I reviewed in 2015 led to the following statement of position:

- A programme may present a one-sided particular perspective provided it is very clear that that is what it is, and viewers are not misled into thinking it tells the whole story. Audience expectation of the programme is a crucially relevant factor.
- Views which balance those provided in the programme in question may be located in other programmes of the same broadcaster, or anywhere in other media or information sources.
- While it will usually be necessary to acknowledge the existence of other views in the programme in question, even that may not be necessary if their existence is well known.

Some may ponder how the “audience expectation” criterion can be arrived at as a matter of interpretation of the words of the standard. But, daring though it may be, the position arrived at by the BSA makes practical, and necessary, common sense.

The other potent factor in the BSA’s decision making is of course the New Zealand Bill of Rights Act 1990 which provides that limitations on freedom of expression must be reasonable and justified in a free and democratic society. This can tilt marginal cases in favour of the broadcaster. (The Bill of Rights Act has a rather different operation when dealing with the balance standard. When a complaint is upheld for breach of the other standards it is usually because the broadcaster has published something it should not have published. In the case of the balance standard it is because the broadcaster has *failed* to publish something it *should* have published. The freedom which is

limited by upholding the complaint in such a case is the broadcaster's freedom to publish in the manner it chooses.)

### **The five decisions**

I shall deal in turn with the five decisions referred to me.

#### ***Lobb and Television New Zealand Ltd – 2020-154 (20 April 2021)***

This case involved an item on *1 News Midday* covering the last day of campaigning in the 2020 US election. The complainant believed the item lacked balance because it contained clips of the Biden campaign and vox pop interviews with Biden supporters, but not of the Trump campaign or Trump supporters.

The Authority held that the broadcast item was a discussion of a subject which met the threshold for applying the balance standard. It was one of public importance, and it was controversial.

It is difficult to disagree with those findings. Although it related to an election in an overseas country, the leadership of that country has powerful effect world-wide and its policies affect international relations. That is of concern to New Zealanders. Moreover there was significant difference of public opinion about the candidates: it was clearly a “controversial” question.

Having decided that the standard was engaged the Authority found there was no breach of it. There were effectively two related grounds of decision. First, the audience would not have been misled by the item complained about. What they would have expected was not an in-depth balanced discussion, but just a coverage of the latest developments –a progress report if you like - in the unfolding election campaign. Secondly, there was adequate balance in any event. The programme host did refer to Mr Trump's campaign, noting that he was that day holding five rallies. Moreover in past programmes TVNZ had provided wide coverage of the campaign, including the perspectives of Trump supporters. The audience was told there was further coverage to come. Other media outlets had also covered the campaign during the current period. Viewers must have had an understanding of the issues.

The second of these reasons would alone have been enough. It seems to me that it is a paradigm example of compliance with the balance standard by other programmes “within the period of current interest”. The programme in

question was just one in a long series. But the BSA, by also giving the “audience expectation” justification, is endorsing the position established by previous decisions.

***Ancel and Television New Zealand Ltd -2020 – 112 (16 March 2021)***

The complaint related to a BBC report broadcast by TVNZ on *1 News* which showed an increase in the emperor penguin population in the Antarctic. While celebrating this as very good news, the report warned that climate models predicted that diminution of ice by climate change could lead to a dramatic decline in penguin numbers in coming decades. “One forecast suggests that the global population of emperors could crash by half by the end of this century.”

A complaint by Mr Ancel under the Accuracy standard was not upheld because the statements complained about were statements of opinion not fact.

Mr Ancel also complained that the item breached the Balance standard. He said that the prediction was based on unproven science. “Predictions due to global warming based upon a still unproved science should not be included in news items.”

The BSA held that the complaint about lack of balance did not meet the threshold requirement, because the subject matter, climate change and its effects, was no longer controversial. A BSA decision in 2013 had held that at that time it was, but by 2020 things had changed. There had been much research done in the intervening years, and the impact of climate change on sea ice, and the effects this will have on wildlife habitats, “have come to be widely accepted internationally”.

In its decision the BSA referred to, and quoted from, several authoritative scientific reports. In the light of such reports it concluded that while there may still be some people who maintain a different view, the level of scientific acceptance is such that “we do not consider the issue of climate change remains ‘controversial’ for the purposes of this standard”.

I agree with this assessment. Many assertions take time to gain recognition and in their early years are controversial, but once there is wide scientific acceptance of them it is time to acknowledge that the time of controversy has

passed. We have to listen to the science. This decision sets a very significant precedent in acknowledging this.

The finding will leave some people dissatisfied. So it is important that in cases like this the BSA produces solid evidence for its decision. That may require research. The materials from authoritative bodies relied on in this decision were very persuasive.

However it is not quite as simple as might appear. Issues, and decisions on them, can often be stated at varying levels of generality, and this was very much the case here. So what did the BSA find was uncontroversial? First, the existence of climate change is accepted as being beyond argument. Secondly, the BSA says that the *impacts* of climate change are not controversial. But which impacts? The only example it gives is “the decline of sea ice and the effects this has on species that depend on sea ice for survival” (at para 17). That is what this complaint was about, and it is notable that the four quotations from research reports cited in the decision relate solely to this phenomenon. So if other well-known effects of climate change arise for consideration in future – for example rising sea levels and their effects on human populations, extreme weather, decline of vegetation – how will the BSA approach them? While it is highly likely it will reach the same decision as in *Ancel*, it may well feel it has to support the finding by citing further research. The *Ancel* decision stops short of making explicit decisions about these other impacts.

There is yet another complicating factor. Just because the decline of sea ice is beyond controversy, it does not follow that every proposition put forward about it necessarily is. If someone forecasts that the Antarctic will disappear entirely by 2050, one could hardly accept that without question. It was this sort of thing that Mr Ancel seems to have been concerned about. He complained about the prediction in the broadcast that the Emperor population might decline by up to one half by the end of the century. The BSA deals with this briefly, but implicitly accepts that this prediction may be challengeable. It places weight on the fact that the broadcast referred to it as just “one forecast”, thus indicating that there were others too. So if balance was indeed necessary in relation to this prediction it was to some degree achieved in this way. As the BSA says, “any potential harm was mitigated by the language used”.

***Muir and Television New Zealand Ltd – 2019-039 (23 August 2019)***

Five days after the Mosque shootings in Christchurch on 15 March 2019 *Breakfast* broadcast an interview with Professor Douglas Pratt, an expert in theological and religious studies. Professor Pratt put forward the view that the Christchurch attacks were not just based on racial hatred but were a form of Christian terrorism that is entwined with far-right, white supremacist beliefs, a growing phenomenon around the world.

Mr Muir complained under two standards: Balance, and Discrimination and Denigration. Only the Balance standard is under consideration here.

The BSA accepted that the motivation of the shooter was a controversial issue of public importance. But it found that the interview was not a “discussion” within the meaning of the standard, so the standard was not engaged. The complaint was not upheld.

The decision turned on this not being a “discussion”. The Authority did not define the term “discussion”, but cited earlier decisions holding that it is not a discussion where the issue is not considered in depth, *or when it is clearly just someone’s personal views being presented*. In this case Professor Pratt’s opinion, elicited by questions from the programme host, was described as “in-depth”, so it obviously failed to come within the concept of “discussion” simply because it would be seen by viewers as a personal view or perspective.

The *Macmillan Encarta Dictionary* defines a “discussion” as “a talk between two or more people about a subject”. The *Oxford Dictionary* definition is “a conversation or debate about something”. It seems to me that sometimes a conversation between an expert and a programme host could fall within those definitions, depending on the role and contributions of each, but the BSA obviously thought that was not the case on this occasion.

Given that this is not the only time that the term “discussion” has caused difficulty, it would be interesting to collect all the decisions where it has featured to see if a coherent picture emerges. However that would be resource-intensive, and it may be thought that there are benefits in retaining the present flexibility.

Be that as it may, the position arrived at in this decision emphasises again the importance of the “audience expectation” criterion. Provided the audience know what is being presented is just a personal perspective they do not expect

a full, balanced debate. They are not misled into thinking that the view they are hearing is the full story. These concepts of “audience expectation” and “no misleading” are by no means new. They have been at the heart of a line of BSA decisions. (See the 2015 review on the Balance standard.)

What is interesting about the *Muir* decision, however, is that it ties the “audience expectation” rationale to the wording of the code standard. It treats it as a matter of interpretation of the word “discussion”. In some of the leading earlier decisions this was not done. In the 2015 review I was unkind enough to say that “The ‘expectation’ and ‘no misleading’ principles do not clearly emerge from the words of the Act.” Later decisions, of which *Muir* is one, provide a way of arguing that they do. This is quite bold interpretation, but the word “discussion” is probably flexible enough to bear it.

Despite any doubts a reader may have about this interpretative approach, the “audience expectation” and “no misleading” yardsticks make eminently good common sense. Any other view would place impossible burdens on broadcasters in programmes like breakfast television. It is commonplace in such programmes to invite an expert, or other prominent individual, to comment on a recent news event, usually within a fairly short time-frame. No-one expects a full debate.

However there are two small reservations.

First, sensible though the BSA’s decision in *Muir* may be, I wonder whether it is entirely consistent with the purpose of the Balance standard as it is described in the BSA’s commentary on the code. That commentary says the purpose is “to ensure that competing viewpoints about significant issues are presented to enable the audience to arrive at an informed and reasoned opinion”. I am not sure one person’s unchallenged view quite achieves that in a case like the present where the audience may not know where to find other views, or indeed that there are any. In some of the earlier cases it was said that the broadcaster should at least make it clear that other views existed. I am not myself sure how necessary this is. (The shooter himself explained his motives in a manifesto. But since that document has been declared an objectionable publication it is not available to us.)

Secondly, the BSA said in *Muir* that the motivations of the shooter were a “controversial” issue. One might hesitate for a moment over whether this issue was “controversial” as that term is defined in the BSA commentary on the

code. I am not aware that at the time of the broadcast there was “conflicting opinion” or “ongoing public debate” about it. However this does not matter too much because the decision did not turn on it.

One should not be too legalistic about this. What the BSA has achieved is a realistic and workable solution for broadcasting in the modern age. Applying statutory words written in 1989 to facts occurring in the third decade of the 21<sup>st</sup> century, in the volatile environment of broadcasting, requires a degree of inventiveness. Strict literalism would lead to an unworkable situation.

***Balance and Accuracy: Phillips and Racing Industry Transition Agency – 2019-044 (22 January 2020) and Davis and Radio New Zealand Ltd – 2019-061 (16 December 2019)***

On paper the two standards Accuracy and Balance seem to address different problems. The Accuracy standard addresses false or misleading *statements of fact*. The Balance standard addresses the omission of *points of view* which the audience need to form their own *opinions*.

However there is more cross-over than one might think between the two standards. Points of view, or opinions, are based on facts. So people may espouse different points of view because they attach importance to different facts. And because some Balance cases are decided on the basis of whether or not the audience were misled into thinking that they were getting the whole story, the issue of “misleading” can be relevant to Balance cases just as it is to Accuracy cases.

So some complainants to the BSA allege that the programme they are complaining about breached both Accuracy and Balance standards, and in some of those the BSA upholds the complaint in relation to both.

Both standards were in issue in the next two cases, and they form an interesting contrast.

### ***The Phillips case***

The first of the two cases is ***Phillips***. The programmes involved were two episodes of *The Box Seat* which examined the practice of blood spinning in the racing industry. There were interviews with two veterinarians and a person

from the Racing Integrity Unit. After seeing the broadcast viewers would have been left with the impression that blood spinning was an uncontroversial, long-standing, legal, and veterinarian approved practice. But this was an incomplete picture. There were other, contrary, views which were not presented in the programmes.

Mr Phillips complained under both the Balance and the Accuracy standards.

In dealing with Balance the BSA found that the threshold factors were all made out. The subject was one of *public importance* (New Zealand is a sporting nation, and matters potentially conferring an unfair advantage on competitors are likely to be of significant concern. There is also a public interest in animal welfare. Horse racing also contributes significantly to New Zealand's economy and employment levels.) Blood spinning was also a *controversial* issue. (There was considerable talk in the industry about it.) The BSA also decided, without any elaboration, that the issue was "discussed" in the broadcast.

The threshold for consideration having been met, the BSA found the omission of other points of view meant the broadcast breached the Balance standard. The audience would have assumed they were getting the whole story when they were not. The broadcast purported to be a thorough piece of "investigative journalism" and was presented as a neutral look at the practice of blood spinning. In fact it was not.

The BSA also dealt with the complaint under the Accuracy standard. They upheld that complaint also, on the ground that the programme as a whole was misleading "by virtue of failing to address alternative perspectives and information that challenge the safety and propriety of blood-spinning".

When reviewing the Accuracy standard last year, I commented that, while it was certainly not wrong to make a finding under both standards, the reasoning was effectively the same under both of them. The gravamen of both was the omission of the other side of the story: the audience were effectively misled into thinking there was only one view. I wondered whether it was necessary to "say the same thing twice". It seems to me that the Balance standard was the more appropriate avenue. The one-sided nature of the presentation was quintessentially an issue of balance.

Three further points may be made about *Phillips*.

First, horse racing is not a matter of interest to everyone. The BSA was still able to find, convincingly, that the case raised an issue of public importance. The gaining of unfair advantage, the economy, and animal welfare, were three leading considerations.

Secondly, the central issue was blood spinning. I would venture to suggest that most people, including many racegoers, would never have heard of blood spinning. So the issue was not controversial to the general public. It was obviously felt to be enough that there was controversy about it in the industry.

Thirdly, if, as I suspect, a reasonable number of the viewing audience would have very limited knowledge of blood spinning, it could be argued that this placed an added obligation on the broadcaster to give a full and balanced account. People coming to an issue for the first time are entitled to expect that.

### ***The Davis case***

***Davis*** was another case where both Accuracy and Balance were the bases of complaint. (So was Fairness, but that was dismissed briefly, and I shall not consider it here.)

The item complained about was a *Checkpoint* interview. Guyon Espiner interviewed Sir Andrew Dillon, the CEO of the UK's National Institute for Health and Care Excellence (NICE), the UK equivalent of New Zealand's PHARMAC. The BSA agreed with Mr Davis, the complainant, that the interview invited listeners to draw comparisons between NICE and PHARMAC, with PHARMAC being portrayed as inferior to NICE, particularly as regards speed, transparency, and proportion of applications funded.

Mr Davis complained, first, that the *Accuracy* standard was breached. Important contextual information was omitted which rendered the comparison between the two agencies misleading. To take just three examples, NICE is not a drug-buying agency in the way that PHARMAC is; PHARMAC has a budget to work within, whereas NICE has a largely advisory role and budget priorities are left to others; as to transparency, PHARMAC does release minutes on the evaluation of medicines and some board minutes.

In a detailed decision, the BSA agreed with Mr Davis that there had been a breach of the Accuracy standard. It said that the item invited listeners to draw

comparisons between the two bodies in a way that suggested they were directly comparable when they were not. “The item ought to have been clearer as to the differences between the entities.”

I agree with the decision. The item was certainly unbalanced, but the imbalance lay in the omission of factual material rather than points of view or opinion. As a result the item as a whole gave a misleading impression of the facts. This accords with the definition quoted in the code commentary on the Accuracy standard that “being misled” is “being given a wrong idea or impression of the facts”. The same commentary also notes that “Programmes may be misleading by omission.”

I think the matter was properly decided under the Accuracy standard.

Mr Davis also complained that the item breached the Balance standard. The BSA declined to uphold this aspect of the complaint. Its reasons are very brief. It said:

Alluding to a range of criticisms which are frequently lodged at PHARMAC, in the context of an interview with a senior executive of NICE, was not in our view a ‘discussion of a controversial issue of public importance’ as envisaged by the standard. The item was framed as a comparison of two agencies, rather than purporting to consider two sides of a debate. We do not consider that the balance standard applied.

It seems to me that there are two ways of interpreting that reasoning.

The first is that, given that PHARMAC’s performance is undoubtedly a matter of public importance, and that controversy has surrounded it, the BSA must have meant that the interview did not constitute a “discussion”. That is a viable finding. The wording of the standard assumes that a discussion involves “points of view”. Here the programme was not presented as involving “points of view”; rather it was just a comparison of two agencies, a purely factual matter. Sir Andrew was not there to give his point of view, but simply to provide information about NICE. On that line of reasoning this was not a “discussion” at all.

The second way of interpreting the BSA’s holding is to say that it found that the issue involved was not a “controversial issue of public importance”. That is viable too. While one cannot doubt the public importance of the topic, a straight factual comparison of the way two agencies work could be said not to be “controversial”. The facts are what they are. It might have been different if

the question had been what should be done to improve the PHARMAC model; that certainly could engender controversy and debate.

This was a case where I would have liked the BSA to explain its reasoning more fully so that a reader could more easily discern what the basis of decision on the Balance point was. But given that the complaint was seen as more appropriately dealt with under the Accuracy standard there was no need to go to great length.

Whichever of the two views is taken of the BSA's reasoning, I think the conclusion arrived at is right. The *Davis* case is about giving a misleading impression of the facts, and that is squarely a matter for the Accuracy standard.

In this regard *Davis* creates an interesting comparison with *Phillips*. In both cases Accuracy and Balance were considered. In *Davis* only the Accuracy complaint was upheld. In *Phillips* both were. In my view, while the double uphold in *Phillips* was not wrong, the case fell more naturally under the Balance standard, in that what was omitted from the broadcast was a contrary *point of view* – a point of view which might require additional facts to support it, certainly, but a point of view nonetheless. In *Davis* it was solely the misleading presentation of the *facts* that was the problem.

### ***Conclusion on the five decisions***

To sum up the five decisions, I think all reached good and workable conclusions. The most important issues to emerge, I thought, were (i) the continuing importance of audience expectation, (ii) whether an item involves a “discussion”, (iii) when an issue can be said to be controversial, and (iv) the difference between accuracy and balance. The most difficult, I thought, was the second. The true definition of “discussion” remains a matter of some mystery – to this reviewer anyway. But its very ambiguity means it can provide a way in which to justify a common sense decision in 2021 via the wording of a statutory standard drafted in 1989.

### **Further comment**

I have a few final comments. I shall not make them at length because I commented more fully in the reviews of the Balance standard in 2015 and the Accuracy standard in 2020, and do not want to repeat myself.

***Style of decision writing.*** The BSA has settled into a consistent structure for writing its decisions. That is good, because readers know exactly where to look for the different ingredients. The summaries at the beginning are helpful too.

The BSA's decisions must be able to be understood by complainants and other members of the public. The writing style should therefore be free from jargon, clear, and not too long. The balance between clarity and brevity is sometimes not easy to achieve. Generally the BSA's decisions in the cases under review managed it admirably. But, as will be apparent from my comments above, I thought there was at least one occasion where the desire to be brief was at the expense of clarity. The balance standard throws up some particularly difficult issues, and sometimes a few more words of explanation can be really helpful.

***Support for decision.*** In two of the decisions it was particularly important for the Authority to provide support for its findings. In *Ancel* it cited authoritative international research to demonstrate that the effects climate change had ceased to be a controversial matter. In *Davis* it considered publicly available sources in addition to the parties' submissions to determine the exact nature of PHARMAC's functions. Given the high public importance of these two decisions that detail was highly desirable.

***Bill of Rights.*** Much has been made over the years of the importance of the New Zealand Bill of Rights Act 1990 in BSA decision making. The freedom of expression it protects can only be restricted by reasonable limitations which are justifiable in a free and democratic society. This requires a balancing process which involves an assessment of the harm which could be caused by the broadcast in question. In all five decisions in this review the BSA begins its analysis with a five or six line paragraph summarising this Bill of Rights requirement. The wording of the paragraph differs slightly from decision to decision, but its effect is the same. The final sentence is usually in this form: "We may only interfere and uphold complaints where the limitation on the right to freedom of expression is reasonable and justified."

Thus the Bill of Rights was front of mind in the decision-making process. I did not think any of the conclusions reached were inconsistent with it.

**Footnotes.** There are footnotes in each decision – consistently around fifteen or so. Some refer to the guidelines to, and commentary on, the code; some to independent research papers and news reports; and a few to previous decisions of the Authority and the courts. They are very welcome. I would encourage the Authority to refer to more previous decisions, not just for quotations from them, but for the factual examples they can provide to help clarify the meaning of some of the open-ended language in the codes. I found the three decisions cited in *Muir* on the word “discussion” reasonably helpful, but wondered if there might have been more. As I have already said, though, tracking them down might take more time than is available, and some might think it is a bit too legalistic anyway. The tribunal is not a court.

**Conclusion.** The BSA has a very important task to perform in ensuring the broadcasters subject to it meet appropriate standards in a democracy. It has in my opinion one of the most difficult tasks of any New Zealand tribunal. It has to satisfy a wide range of people - broadcasters, complainants, the public, lawyers and judges - in both its decisions and the way it communicates them. It has to operate in a media environment which is changing at high speed. It has to combine common sense with legal compliance, and reality with logic. It has to operate with an Act written 32 years ago.

I believe it does the job very well.

J. Burrows

23 May 2021