

BEFORE THE BROADCASTING STANDARDS AUTHORITY

Decision No: 69/92

Dated the 28th day of September 1992

IN THE MATTER of the Broadcasting Act 1989

AND

IN THE MATTER of a complaint by

LAUREN PRESLAND of Whangarei

Broadcaster

NORTHLAND RADIO COMPANY
LIMITED of Whangarei

I.W. Gallaway Chairperson
J.R. Morris
R.A. Barraclough
L.M. Dawson

DECISION

Introduction

A 12 year old girl and her 13 year old friend both called Danica requested a dedication from KCC FM on Friday 29 May 1992. KCC FM is operated by Northland Radio Company Ltd of Whangarei and the dedication song was "Lets Talk About Sex" by Salt 'n' Pepper. At about 10.15pm, the announcer introduced the dedication and, with reference to the song's title, said "we know your mothers don't just talk about it".

Mrs Lauren Presland, the mother of the 12 year-old, complained informally to the broadcaster that the comment breached the broadcasting standards requiring good taste and decency, the protection of children and the protection of an individual's privacy. The broadcaster acknowledged that the comment breached broadcasting ethics and, as a result of the broadcast, suspended the announcer from air shifts for four weeks.

Mrs Presland also initiated a formal privacy complaint by referring that part of the complaint directly to the Broadcasting Standards Authority under s.8(c) of the Broadcasting Act 1989.

Decision

The members of the Authority have read the correspondence (summarised in the



Appendix). As the broadcast was not the type of programme for which radio broadcasters are required to keep a tape for 28 working days, the Authority accepts that one is not available. The broadcaster, however, does not dispute the complainant's record of the offending remark. Mrs Presland requested a formal hearing in order to explain the harm that the broadcast had caused her and her family. Taking into account the comprehensive way she has expressed her concern in her letters, the Authority has exercised its power under s.10(1) of the Broadcasting Act to set its own procedure and has decided to follow its usual practice to determine the complaint without a formal hearing.

The Act requires (s.5(f)) that formal complaints to broadcasters must be in writing. On this occasion the broadcaster accepted what was called a formal complaint about the broadcast over the telephone and, when it responded in writing, referred to the process for making a formal complaint whereas it apparently meant a referral to the Authority. Although the broadcaster seems to have confused the requirements in the Act with regard to formal and informal complaints, this did not affect the Authority's power to deal with Mrs Presland's privacy complaint. Section 8(c) of the Act provides for complaints on the grounds of privacy to be made directly to the Authority within 20 working days of the broadcast. As Mrs Presland complied with the requirement when she referred her complaint to the Authority, the Authority has dealt with her complaint as one based on privacy made directly to it.

Although the broadcaster may have confused the statutory distinction between a formal and an informal complaint, the Authority commends it for its prompt action and the serious attempt it made to respond to Mrs Presland.

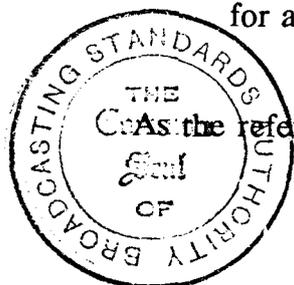
The broadcast to which the complaint related involved a dedication request by the complainant's 12 year-old daughter and her friend, both named Danica. The dedication requested by the children was for the tune "Lets Talk About Sex" and it is agreed by the parties that the announcer stated:

I hope that all you girls do is talk about it but we know your mothers don't just talk about it.

In her complaint to the Authority, in addition to the complaint on the grounds of privacy, Mrs Presland stated that the broadcast also breached the standards requiring the observance of good taste and decency and the protection of children. In treating the telephone call as a formal complaint, the broadcaster dealt with those issues and wrote:

The staff member in question has expressed regret in the matter concerning the broadcast of the request inferring or at least implying some form of alleged distasteful activity.

In response KCC FM has suspended that staff member in question from air shifts for a period of not less than 4 weeks.



As the referral to the Authority of all questions other than privacy, eg good taste and

decency, did not comply with the legislation, the Authority has not reached a decision on any other aspect of the complaint.

As the situation in regard to the privacy complaint was far from clear initially, the Authority sought more details of the complaint from both parties. After first advising the Authority that the announcer knew of her family situation and later, that at the time of the broadcast, she had been involved in a relationship with a person who was also known to the announcer, the Authority decided that a breach of privacy under s.4(1)(c) of the Broadcasting Act was the appropriate grounds for Mrs Presland's complaint.

The Authority's approach to the concept of privacy as a matter of broadcasting standards was explained in an Advisory Opinion dated 25 June 1992 distributed to all broadcasters. It stated:

Although the right to be left alone is a common sense definition of privacy, as the Authority's decisions may be appealed to the High Court it is necessary for the Authority to follow what it considers to be the appropriate legal precedents. Because of the paucity of reported cases and the lack of a clear legal definition of privacy in New Zealand, the Authority has relied upon precedents from the United States in developing the following five principles which have been applied to privacy complaints so far by the Authority when determining them under the Broadcasting Act 1989.

The principle which the Authority considers relevant to Mrs Presland's complaint reads:

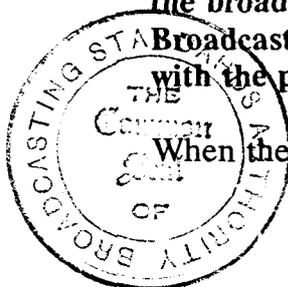
- i) The protection of privacy includes legal protection against the public disclosure of private facts where the facts disclosed are highly offensive and objectionable to a reasonable person of ordinary sensibilities.

As the dedication request referred to the unusual name of the complainant's daughter and her friend with the identical name, the Authority agreed with Mrs Presland that sufficient information was disclosed to allow listeners who knew of the family circumstances to identify her.

Applying the principle outlined above to the complaint, the Authority decided that the broadcast disclosed private facts of no public interest and exposed Mrs Presland's personal life to the public in a way which most people would find objectionable. Mrs Presland acknowledged to the Authority that she was a separated woman who, at the time, had been involved in a relationship with a person also known to the announcer who made the comment. In her comments to the Authority, Mrs Presland has expressed considerable anguish about the public disclosure of the private fact and the Authority accepted that disclosure of the relationship was highly offensive to an ordinary person.

For the reasons set forth above, the Authority upholds Mrs Presland's complaint that the broadcast by Northland Radio Company Ltd on 29 May breached s.4(1)(c) of the Broadcasting Act 1989 which requires broadcasters to maintain standards consistent with the privacy of the individual.

When the Authority upholds a complaint, it may impose an order under s.13(1) of the



Act. Section 13(1)(d) provides that the Authority may order compensation up to a maximum of \$5000 when a broadcaster has failed to maintain standards consistent with the privacy of an individual.

As in all decisions where a privacy complaint is upheld, the Authority examined the action taken by the broadcaster. The broadcaster advised the Authority that the employee:

Trudi McRae is a part time announcer, her duties on the station go beyond on air work, however as the complaint arose from her "on air" role, it was appropriate that we dealt with the complaint based on her performance in that area.

Loss of income through the period of suspension:-

- Miss McRae is a salaried employee and her agreement states she is required to perform regular on air work
- her wage review has been suspended for two months
- part-time announcers were called upon for the month in question, a total 20 hours
- any initial financial loss was met by the station as a consequence of her actions, as this is the first occasion that we have had to reprimand Miss McRae for any wrongful doings whilst on air, we choose the most appropriate sentence to fit the crime.

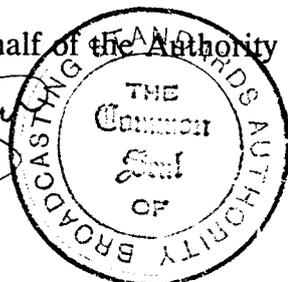
The Authority balanced the action taken by the broadcaster against the offending comment. It believed, as noted above, that the comment involved the public disclosure of private facts. The release of those private facts, moreover, was highly offensive and objectionable to a reasonable person of ordinary sensibilities and there was no apparent public interest which overrode the individual's claim for privacy. Furthermore, the Authority believed that the implication in the comment made, which, as has been mentioned, clearly referred to the mothers of two girls with unusual names, amounted to a blatant abuse of an announcer's power and privilege and was both unethical and outrageous. The Authority also acknowledged that the broadcaster mentioned Miss McRae's apology for the broadcast comment and had taken internal action.

In the result, the Authority has determined that Northland Radio Company Ltd should pay Mrs Presland compensation of \$750 for its failure to maintain standards consistent with her privacy.

For the reasons set forth above, the Authority orders Northland Radio Company Ltd to pay compensation to Mrs Presland in the amount of \$750.

Signed for and on behalf of the Authority

Gavin Gallaway
Gavin Gallaway
Chairperson
28 September 1992



Appendix

The Broadcast

On Friday 29 May, Danica Presland (aged 12) and her friend Danica Miller (aged 13) requested a dedication on KCC FM Whangarei. The dedication was "Let's Talk About Sex" by Salt 'n' Pepper. At about 10.15pm, the announcer (Trudi McRae) introduced the item in the following way (or with similar words):

This is a dedication for Danica and Danica - Lets Talk About Sex babies by Salt 'n' Pepper. I hope that all you girls do is talk about it but we know your mothers don't just talk about it.

KCC FM Whangarei is operated by Northland Radio Company Ltd.

Mrs Lauren Presland's Complaint to KCC FM Whangarei

The initial complaint was made by Mrs Miller (Danica Miller's mother) on Mrs Presland's and her own behalf to the broadcaster by telephone on Saturday 30 May. She complained that the broadcast invaded their privacy, was in bad taste and was unsuitable for children.

Mrs Miller received a letter from Mr Chris Gregory, Programme Director of KCC FM, dated 2 June, acknowledging a breach of the standards and reporting that the staff member involved had been suspended from air shifts for at least four weeks.

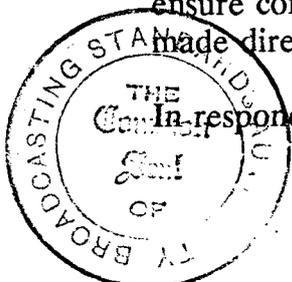
Mrs Presland, by telephone, reminded Mr Gregory that she was also a complainant and she received a letter from Mr Gregory dated 3 June similar to the one received by Mrs Miller.

Mrs Presland's Complaint to the Broadcasting Standards Authority

In a letter dated 9 June 1992, Mrs Presland complained to the Broadcasting Standards Authority that the broadcast had failed to maintain standards consistent with an individual's privacy. In addition, she wrote, the broadcast breached the standards requiring good taste and decency and the protection of children.

As there was no record of a written formal complaint to the broadcaster, the Authority assumed initially that the complaint about privacy was made directly to it under s.8(c) of the Broadcasting Act 1989. However, it later transpired that the broadcaster had accepted a telephone call as a formal complaint. Nevertheless, to ensure compliance with the Act, the Authority has acted on the privacy complaint made directly to it.

In responding to the informal complaint, KCC FM acknowledged that the standards



had been breached and reported that the staff member expressed regret for implying distasteful behaviour. In addition, she had been suspended from air shifts for at least four weeks.

Mrs Presland complained that the action was insufficient in view of the rude way in which the announcement had been made and the effect of the broadcast on her and her family. She noted that the announcer knew of the family situation. In addition, she stated that the broadcast had upset her daughter considerably and that it could affect her own career as a manager of a retail outlet. Moreover, she was concerned that many people would recognise the reference because of the girls' distinctive names. She wrote that the announcer (Trudi McRae):

does not like me and has made harassing comments regarding my children on other occasions in public - those of which I have handled but I cannot handle things when its voiced over the radio. I am trying to get my family's emotions together and work at my career but cannot do either when I'm having to stop and become emotional over some distasteful implication by a 20 year old inexperienced D.J.

KCC FM's Response to the Authority

As is its practice, the Authority sought the broadcaster's response to the complaint. Its letter is dated 17 June and Radio Northland's reply, 22 June.

Explaining that a tape was unavailable but accepting Mrs Presland's recollection of the words spoken, it wrote:

We are sympathetic to the complainant's request and regret any ill-feeling.

The station has upheld its responsibility in serving a suspension on the announcer in question and has extended our regret verbally.

We consider the matter closed.

Mrs Lauren Presland's Final Comment to the Authority

When asked to comment on KCC FM's reply, Mrs Presland said that she had not received a verbal apology. She described the suspension from announcing of a person who was not normally an announcer as "no punishment". By telephone, she added that Ms McRae's principal tasks were as a sales representative or a receptionist for the radio station.

Expressing her continuing anger at the comment which was broadcast, she maintained that the announcer, despite her denials, had a tape of the broadcast which had been played to some mutual friends. She also disagreed with the broadcaster's comment that the matter was closed as, despite the support from family friends and business



people, she had asked for a transfer to Auckland. She could not, she concluded, cope with Ms McRae's return as an announcer on KCC FM.

Further Correspondence

In view of the personal issues raised by the complaint, the Authority in a letter dated 15 July explained to Mrs Presland that, from the facts, it considered the complaint to be one of good taste and decency which had been referred to the Authority as the complainant was dissatisfied with the action taken by the broadcaster when it upheld the complaint. It was also pointed out that the Authority dealt with broadcasting standards matters, not issues of defamation, and, as the Authority could not suppress the names of the parties to a complaint, its decision might receive some publicity in the local media.

Mrs Presland advised the Authority by telephone on 20 July that she wanted the Authority to determine her complaint under the Broadcasting Act 1989.

The Authority also received a further letter from the broadcaster, dated 21 July, in which it explained the details of the announcer's (Ms McRae) suspension. It said that Ms McRae's duties went beyond air work but, as the complaint focused on her on air performance, so had its actions. Ms McRae's wage review was suspended for two months and it had been necessary to use part time announcers for 20 hours. Adding that it was the first occasion on which it had been necessary to reprimand Ms McRae, the broadcaster believed its actions to be appropriate.

In a letter dated 3 August, Mrs Presland advised the Authority, with reference to the date of the broadcast:

At the time I had started a relationship with a friend of hers , the relationship ceased after her comments on air and she appeared to know all about my relationship and my where abouts which should not have been aired on KCC FM that night.

As a result of the personal and professional embarrassment to which she had been subject, Mrs Presland believed that she was entitled to compensation.

