

to three different chairs, Judith Potter, Sam Maling and Peter Cartwright.

One of the many things Michael did in those years was to write a monograph about the BSA's privacy decisions between 1990 and mid-1998, and he did it in typically understated style. When his partner got a call inviting her to the launch of the book, she asked "what book?" because Michael had not mentioned that he was writing it.

Mid 2001 marked the start of the next phase of Michael's BSA life, when he decided to resume the complaints manager's position. Evan Voyce was appointed CE, and already on staff by then was Wiebe Zwaga as Research and Communications Manager.

Joanne Morris said, "That was an historic time for the BSA – it was the first time there were three men on staff all at once. Well, I've done a phenomenological gender analysis of the BSA's staff over its lifetime, and I can reveal that of the 30 people ever employed by the BSA, just six (that's 20%) were men. And in 2001, three of those men were there all at once! Which means that in his entire BSA work life, Michael has been surrounded by women, which inevitably raises the question – how come, we still haven't managed to change his taste in ties?"

Michael's female colleagues have appreciated, however, his far more important qualities: his love of animals and the planet, his compassion and impeccable

manners, and his delight in supplying a cake for morning tea – and in eating it!

So, we come to mid 2004, when Michael decided to work half-time for the BSA, continuing with complaints work and also recording some of his accumulated knowledge about the decisions issued over the years – for which we are extremely grateful.

"Personally, I think Michael is leaving at a time when the BSA is in exceptionally good shape – and I sincerely hope that is a source of pride and pleasure to him, because he has been a vitally important part in getting us here," said Joanne.

Former board member Rodney Bryant summed up our feelings about Michael in this message, read out at the farewell: *"I feel confident that on this occasion I won't be a dissenting minority when I say how much you'll be missed. Your gentle guidance, drawn from the vast store of your experience and wisdom, has assisted successive members of the Authority to discharge their duties with some semblance of consistency, dignity and some understanding of the principles that were intended to guide us.*

Your ties, however, are another matter and I feel emboldened enough to venture that, then and now, no matter what all your sampling of public opinion reveals, they still clearly constitute a breach of good taste and decency!

Thank you for some memorable times – go well."

Community Advisory Panel Work Plan

In February, the ten members of the BSA's community advisory panel (CAP) confirmed their workplan out to July 2008. They have identified a need for ethnic broadcasters and communities to receive tailored information about the complaints system and about BSA decisions. As a result, a series of communications for these stakeholders will be developed. The CAP also identified a lack of awareness about the classification and timeband systems among sections of the community, particularly among some caregivers of young children. Providing targeted information about these protections is a CAP priority. To this end, we will be developing an awareness raising campaign in the coming months about the AO 8.30pm watershed and the classifications system.

Children's Media Research

This year the BSA's research programme is about children's media use, exposure, and response. A literature review, which includes recent New Zealand studies, has been undertaken as a first phase. The second phase will see a major quantitative and qualitative study commissioned aimed at bringing us up to date with the media experiences of New Zealand children between the ages of four and fourteen.

Feedback on the BSA Quarterly newsletter

We have set up an online survey for your feedback on this newsletter. The link is on the homepage of our site www.bsa.govt.nz at the top of the recent publications column. We would be grateful for your views, so jump online and let us know what you think.

New Legal Manager



We are pleased to announce that Christina Sophocleous, formerly the Senior Complaints Executive, has been appointed Legal Manager, effective 5 June. Christina joined the BSA in October 2004. Previously she worked in the Insolvency Service at the Ministry of Economic Development. John Sneyd, who held the position since June 2004, is moving to the Department of Building and Housing as their Chief Advisor – Legal. John's outstanding contribution in the role has been greatly appreciated.

Directory

The current members of the Broadcasting Standards Authority are:

Joanne Morris (Chair), Tapu Misa, Diane Musgrave and Paul France.

Contact us at:

2nd Floor, Lotteries Commission Building, 54–56 Cambridge Terrace,

PO Box 9213, Wellington, 6141, New Zealand.

Phone: 64 4 382 9508

Fax: 64 4 382 9543

Email: info@bsa.govt.nz

Website: www.bsa.govt.nz

Editorial enquiries: info@bsa.govt.nz

0800 Number

The Broadcasting Standards Authority's free phone number is

0800 366 996

A recorded message explains the complaints process, and a connection through to the office is provided.

QUARTERLY

NUMBER 34, MAY 2007



Farewell to Dr Michael Stace

We recently marked the retirement of Dr Michael Stace. Michael has held key positions at the BSA for more than 16 of its nearly 18-year life. At the function to farewell him, BSA Chair Joanne Morris said, "We've only ever had between four and seven staff at any one time – and Michael has been one of them for virtually the entire time." The following tribute to Michael is adapted from Joanne's farewell speech.

Over the years there have been 50 people who have worked for the BSA: 20 board members, five chairs, 30 staff, and five chief executives. "And all of them speak of Michael in glowing and very fond terms," said Joanne.

But even Michael had a life before the BSA. He did his law degree at Victoria University in the mid 1960s, then started work as a probation officer in the Department of Justice, meanwhile, doing his Master of Laws degree which he achieved with 1st class honours.

He was promoted to be the probation division's assistant inspector and staff training officer, and around this time, his son Rupert was born.

In 1975, Michael was appointed a lecturer at Victoria University's newly established Institute of Criminology. Three years later, he won a Commonwealth Scholarship and headed off for Toronto to do a Doctorate in Jurisprudence, for which he chose a really simple thesis topic: a phenomenological study of the relationship between law and morality, with a focus on Canadian and New Zealand juvenile delinquency initiatives!

On his return in 1980, Michael was a Research Fellow at the Institute of Criminology for five years and involved in studies of such things as police processes, rape sentences, the jury system, and mental health committal procedures.



BSA Chief Executives. Left to right: Evan Voyce, Dominic Sheehan, Gail Powell, Jane Wrightson, and Michael Stace.

Then he went back to the Department of Justice as chief researcher for the working party on liquor laws, then on to the Economic Development Commission, and then to the State Services Commission – and all of that by the start of 1991.

Joanne Morris said, "I'm sure by now you'll understand why Michael has been so eminently well-suited to BSA work – I mean, immoral behaviour, criminal behaviour, booze, and phenomenological research – these are our daily fodder!"

Michael's work for the BSA began nearly 18 years ago when it had to invent itself, with Iain Gallaway as its first Chair. Joanne Morris was one of the original members, and Gail Powell was the first chief executive. In 1991, Michael took on the legal, complaints-focused position at a time when the board had barely begun finding its decision-making feet.

Joanne Morris said, "My memories of the first five years of the BSA's life are all positive. I found Michael to be extremely clever, principled and humane in his approach to the complaints that came

before us. And also very easy to get along with – he listened to all views and was unfailingly polite and helpful."

In the first five years that Michael worked for the BSA it issued 680 decisions and Michael personally drafted more than 500 of them. He was complaints manager until March 1996 – and along the way Philippa Ballard was appointed to assist him.

When talking with people who have worked with Michael over the years, certain of his qualities keep coming up. His tremendous work capacity has already been mentioned, but also legendary is Michael's encyclopaedic ability to recall the decisions that the BSA has issued – which is why Michael has been relied on as the institutional memory of the place.

Michael is also renowned for his love of language, his attention to detail, his ready sense of humour, and his talent for teaching new staff the skills and knowledge they need to develop.

We come to 1996 when Michael was appointed chief executive, a position he held for five years, during which time he worked

DECISIONS

The BSA issued 23 decisions between January and March 2007

Decisions of interest included the following:

Good taste and decency – Radio Sport

On a Sunday morning at 10.15am, a Radio Sport presenter played a 34-second clip which conveyed the impression that a woman was having sex with a bull. Following the clip, the presenter commented:

My god is there nothing those people won't get up to up there? I guess if you spend most of your life looking at the back end of a cow it's liable to affect you in the long run.

The complainant wrote that this was a breach of Principle 1 of the Radio Code, which requires broadcasters to observe standards of good taste and decency.

The broadcaster defended the broadcast saying that Radio Sport was aimed at a male audience who expected this sort of "bar-room humour". It noted that the clip was intended to represent "the provincial, country cousin (Waikato) putting it up the city slicker (Wellington) in the NPC rugby final".

In its decision, the BSA acknowledged the relevance of Radio Sport's target audience, but emphasised that even niche-targeted stations are expected to exercise discretion at times when children are likely to be listening to the radio. In this case, the time of broadcast on a Sunday morning meant children were likely to have been in the audience.

The BSA concluded that the clip was prolonged and gratuitous, and would have been offensive and distasteful to a large number of listeners. It upheld the complaint as a breach of good taste and decency, but did not impose an order.

Decision ref. 2006-122

Privacy and fairness – Target

An episode of *Target* compared the service provided by several trans-Tasman airlines.

In one segment of the programme, an actor was filmed with a hidden camera as she checked into her flight at the Qantas desk. Parts of the exchange between the actor and the attendant were broadcast, along with comments from the actor and the presenter to the effect that the attendant was rude and unprofessional.

The attendant complained to the BSA alleging that his privacy had been breached and that the broadcast was unfair to him.

The BSA did not uphold the privacy complaint as the complainant was filmed in a public place and the broadcast did not reveal any

private facts about him.

A key plank of the complainant's fairness complaint was that he had been filmed with a hidden camera. In considering this question, the BSA acknowledged its well-established general principle that broadcasting hidden camera footage will be unfair because it denies the individual the right to withhold comment.

In the present case, however, the BSA modified that general principle and concluded that where an individual is filmed in a public place performing employment duties which involve interaction with members of the public, and where the footage fairly represents what occurred, broadcasting hidden camera footage may not be unfair.

The BSA also concluded that, in these circumstances, *Target* was not required to offer the complainant the opportunity to respond. *Target* had written to the complainant's employer, Qantas, and offered it the opportunity to respond. As the complainant was performing his employment duties in a public place, *Target*'s actions were considered sufficient for the purposes of the fairness standard.

The BSA did not uphold the fairness complaint.

Decision ref. 2006-084

Privacy and children – Sunday

An episode of current affairs programme *Sunday* included an item about fathers who were dissatisfied with their treatment in the Family Court. The item featured interviews with two fathers who had been involved in custody disputes and were angry with the Family Court system.

One of the men was interviewed at various points throughout the item, and during these segments about a minute of home video footage of the man's daughter was shown. The man was also shown speaking on the telephone to his daughter whose responses were audible, and sub-titled.

The daughter's mother complained that the item breached the girl's privacy and exploited her.

The BSA upheld the complaint. It concluded that in disclosing that this girl was caught in the middle of an acrimonious custody dispute, the broadcaster had revealed a private fact about her. Further, the disclosure of such personal and emotional matters involving a child was highly offensive.

Although the father had consented to the broadcast of the images of his child, the privacy principles still required the BSA to consider whether the broadcast was in the best interests of the child. The BSA concluded that it could not conceive of any positive consequences for the child arising from the broadcast, and in fact noted its concern that TVNZ had failed to recognise the potential for the child's wellbeing to be seriously compromised by disclosing facts about her personal situation.

The BSA recorded its view that the footage was included purely for emotional effect, and that this amounted to exploitation of the child. The BSA upheld the complaint as a breach of Standard 3 (privacy) and Standard 6 (fairness). It ordered TVNZ to broadcast a statement, pay compensation to the child of \$500, costs to the Crown of \$2,500, and costs to the complainant of \$3,000.

Decision ref. 2006-090

A note about children and privacy

Recent decisions have highlighted some issues about children's privacy. Currently, there seems to be a feeling among broadcasters that the privacy rules almost prevent them from showing children on TV. This is not the case. However, once a breach of privacy has been established, it is true that there are more limited grounds for justifying the breach in the case of a child than for an adult. But, the threshold for establishing a breach of privacy for a child is the same as it is for an adult.

To establish a breach of a child's privacy, two elements must be decided:

1. Disclosure of private facts

There must be a disclosure of a private fact about the child. Private facts have to be just that – private. Not every portrayal of a child discloses a private fact about them. It doesn't disclose a private fact to show a child at the cricket with Mum or Dad, or show them with the winning snapper in a fishing contest. Private facts are things about which we could reasonably expect to have privacy. Things that the BSA has found to be private facts about children in the past include:

- the child's paternity in a disputed case
- a child's diagnosis of ADHD and the associated problems
- the fact that the child was at the centre of a bitter custody dispute
- the fact that a child was the son of a convicted murderer
- the fact that identified children were prostitutes.

2. The disclosure must be offensive

Once a complainant has established that a private fact was disclosed, he or she must establish that the disclosure was offensive. In many cases, the disclosure of a private fact will be considered offensive because of the private nature of the disclosure, but it will always depend on the particular circumstances including the manner of the disclosure.

Once these elements are decided, the BSA considers the issue of consent. In the case of an alleged breach of an adult's privacy, it is a complete defence to establish that the adult gave their informed consent.

In the case of a child, if a breach is established, it is not a defence to show just that either the child or the parent gave their consent. Where a programme breaches a child's privacy, the broadcaster must show not only that they obtained consent, but also that they independently and reasonably concluded that the broadcast would be in the best interests of that child.

The question of the child's best interests was the subject of considerable debate between broadcasters and the BSA when the privacy principles were reviewed in 2006. After seeking legal opinions from family law experts, and after considering the legal opinions provided by broadcasters, the BSA concluded that the test needed to remain at the "best interests" level, despite an earlier proposal to lower the threshold.

A broadcast that is likely to prejudice the child's interests in any way will seldom be seen as being in their "best interests".

Broadcasting a matter in the public interest is also a defence to a privacy claim. The public interest is different from something which the public is likely to find interesting. Public interest has been defined by the BSA as including:

- criminal matters, including exposing or detecting crime
- issues of public health or safety
- matters of politics, government, or public administration
- matters relating to the conduct of organisations which impact on the public
- exposing misleading claims made by individuals or organisations
- exposing seriously anti-social and harmful conduct.

Public interest is a sliding scale – the more serious the breach of privacy, the more compelling the nature of the public interest required to justify the broadcast. In the case of children, a breach of privacy is likely to be at the serious end of the scale in light of the need to protect children. The public interest required to justify such a broadcast would need to be correspondingly high.

A more detailed practice note about these issues is planned for publication later this year.

Printed copies of the codes of broadcasting practice for radio, free-to-air television, and pay TV, and of the radio and television complaints guide are available free of charge from the BSA, email: info@bsa.govt.nz, freephone: 0800 366 996 | Full decisions can be found on the BSA's website www.bsa.govt.nz