

BEFORE THE BROADCASTING STANDARDS AUTHORITY

Decision No: 8/91

Dated the 15th day of March 1991

IN THE MATTER of the Broadcasting Act 1989

AND

IN THE MATTER of a complaint by

SHIRLEY EARLLY

of Auckland

Broadcaster

RADIO PACIFIC LIMITED

of Auckland

I.W. Gallaway Chairperson

J.B. Fish

J.L. Hardie

J.R. Morris

DECISION

Introduction

At approximately 5.30 pm on Thursday 26 July 1990, Radio Pacific in Auckland broadcast a pre-recorded six-minute interview between Mr Allan Dick, a radio show host with the station, and Mr Peter Thorpe, the father of two boys attending Kadimah College and Kindergarten. The purpose of the interview was to background certain recent incidents, such as the stabbing of four children at Kadimah, which had involved psychiatric patients released back into the community by the health authorities.

The transcript records that the following comments were made by Mr Dick during the interview:

You see last Friday when I learnt about this other fellow who had been found the day before in a park intoxicated etc, etc, I spoke to the Superintendent at Carrington and while he was open, there wasn't, didn't seem to be, this deep concern that it had occurred. But I've found out subsequently that this particular person was in fact regularly going out, going to hotels, drinking to excess, getting involved in fights - taking off his artificial leg and assaulting, and assaulting people. I mean, it wasn't the first time. You've got to wonder what sort of security and what sort of care there is of these patients who really need to be protected from themselves as much as anybody.



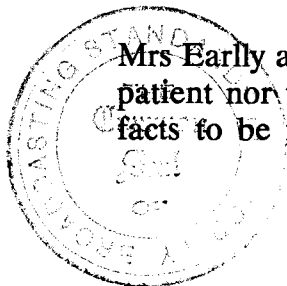
These comments were subsequently drawn to the attention of Mrs Shirley Early who identified "this other fellow" as her son John. The next day she twice telephoned Mr Dick in an endeavour to find out where he had obtained the information on which he had based his comments. She subsequently decided to make a formal complaint to Radio Pacific.

### Mrs Early's Complaint to Radio Pacific

In a letter dated 20 August 1990, Mrs Early alleged that the broadcast of the passage in question breached standards 1.1(i) and (k) and 5.2 (a), (b), (c), (d) and (e) of the Codes of Broadcasting Practice for Radio which read as follows:

- 1.1 In the preparation and presentation of programmes, broadcasters are required:
- ...
- (i) To show balance, impartiality and fairness in dealing with political matters, current affairs, and all questions of a controversial nature, making reasonable efforts to present significant points of view either in the same programme or in other programmes within the period of current interest.
- ...
- (k) To respect the privacy of the individual.
- 5.2 A radio news and current affairs service should take account of the following points:
- (a) Listeners should always be able to distinguish clearly between factual reporting on the one hand, and comment, opinion and analysis on the other.
- (b) News must be presented accurately, objectively and impartially.
- (c) The standards of integrity and reliability of news sources should be kept under constant review.
- (d) News should not be presented in such a way as to cause panic or unnecessary alarm or distress.
- (e) Great care must be taken in the editing of programme material to ensure that the extracts used are a true reflection and not a distortion of the original event or the overall views expressed.

Mrs Early alleged that the broadcast of the passage in question was fair neither to the patient nor to the public and was distressing to relatives of the patient who knew the facts to be rather different from the broadcast comments. She also considered the



comments inaccurate and irresponsible, particularly since she was in a position to know that it would be "an impossibly difficult feat" for the patient concerned to take off his artificial limb and to assault someone with it.

### Radio Pacific's Response to Mrs Early's Complaint

Following an interim acknowledgement, Mr Derek Lowe, the Managing Director of Radio Pacific, wrote to Mrs Early forwarding a copy of Mr Dick's response to the allegations and commenting that:

It seems to me that Allan made every effort to encourage you to go to air to present a different point of view and to rebut any allegation you felt was unfairly made about your son. Of course he had not been named by Allan during the interview with Mr Thorpe but for that matter Allan could equally have put you to air, without naming you. Either way, it is clear to me that you were adamant that you would not take advantage of that offer ...

If you are not happy with this reply and you have other suggestions to make, please feel free to write to me again. It is not always easy to draw the line between what is in the public interest and what infringes the privacy of the individual or family ...

### Mrs Early's Referral of the Complaint to the Broadcasting Standards Authority

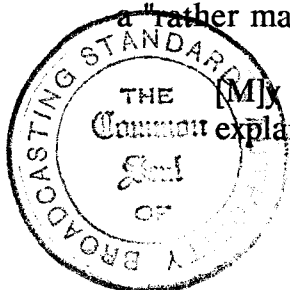
On 21 September, being dissatisfied with Radio Pacific's decision, Mrs Early referred her complaint to the Authority pursuant to section 8(a) of the Broadcasting Act 1989. She reiterated her allegation that the comments breached the Radio Standards in that they were inaccurate and inflammatory as well as unjust and unfair to the patient, his family and the general public. She continued:

During my second telephone call to Mr Dick, I described the type of amputation John has, which would or should have shown that to use that limb to "bash" someone would be a feat of physical impossibility ... I believe it is grossly irresponsible to use [the story] in a public radio broadcast for any reason at all, let alone under the circumstances it was used ...

It sounded as if Carrington was carelessly allowing a dangerous and violent person to "escape", go to pubs regularly and "attack" people with an artificial leg. None of which is true, but the inference was there ...

After questioning the reliability and integrity of the "news sources" used by Mr Dick, Mrs Early referred to the references to the attempts made to persuade her to go on air as a "rather manipulative red herring":

[M]y telephone calls to the announcer concerned were only for one purpose - to explain a few facts and give him the chance to reconsider whether his claims were



accurate and fair - and I strongly believe my explanation ... should have shown Mr Dick that he was broadcasting information that did in fact ridicule the "patient" concerned, repeating unsubstantiated stories over air during a serious broadcast.

Following the receipt of a completed Complaint Referral Form, Mrs Early's letter and its enclosures were referred to Radio Pacific on 16 October for a response.

### **Radio Pacific's Response to the Authority**

On 17 October, Mr Lowe responded as follows to the various allegations of breaches of the Radio Standards:

#### **Standard 1 - Balance, impartiality and fairness**

Numerous stories in other media and countless talkback calls led to this particular interview. It was just one further effort which Radio Pacific was making to present significant points of view within the period of current interest ... [T]he general policy of health authorities to place people with a history of mental illness back into the community ... is a contentious issue and it would be unreasonable to expect Radio Pacific not to look at it from every point of view.

... Allan Dick had advised me that he had made every effort to encourage Mrs Early to go to air to present a different point of view. It would have been possible to have introduced Mrs Early ... without mentioning her name.

#### **Standard 1.1 (k) - Privacy**

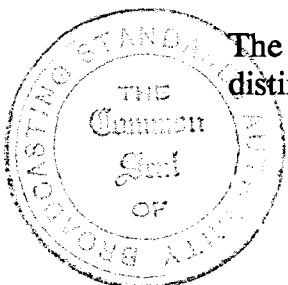
It was out of respect for the privacy of John Early that Allan Dick did not name him ... it is not always easy to draw the line between what is in the public interest and what infringes the privacy of the individual or the family. In this case Allan Dick clearly judged the safety and welfare of the public to be of paramount interest and broadcast the information he had received after he had made enquiries.

#### **Standard 5.2 (a) - Distinction between factual reporting and comment, opinion and analysis**

It was not part of a news broadcast involving factual reporting. It was comment, opinion and analysis ... this was a programming interview, backgrounding a news event and other matters of public concern ...

#### **Standard 5.2 (b) - News must be presented accurately, objectively and impartially**

The broadcast was not news but was a news background and as it was easily distinguishable, Radio Pacific submits that 5.2 (b) is not relevant to this enquiry.



**Standard 5.2 (c) - Integrity and reliability of news sources**

Mrs Earlyly ... questions the integrity and reliability of the news sources ... [T]he fact is that Allan Dick did speak to Dr Crozier of Carrington, took a call from a person who claimed that he was a relative of John Earlyly's, spoke to the manager of a Ponsonby hotel, also to a group of patrons at the same hotel and also to a patron at the Gables Hotel in Jervois Road ... Allan Dick states that a day or two later after the incident concerning John Earlyly on July the 19th he had an anonymous phone call to say it wasn't the first time John Earlyly had "escaped". ... the caller claimed John Earlyly was out regularly and was a drinker at pubs in Ponsonby ... he would get drunk and on one occasion used his artificial leg to hit someone. Allan Dick claims to have further discussed this matter with the people from both the Gluepot Hotel and the Gables Hotel.

There is no way to vouch for the integrity or the reliability of these sources ... The writer is not in a position to say that Mrs Earlyly is right or wrong or that Allan Dick is right or wrong ...

I am certainly satisfied that it would be physically extremely difficult, if not virtually impossible for her son to take off his artificial leg and assault people in a public place. Despite the fact that Allan Dick claims that at least two people confirmed those stories I accept Mrs Earlyly's explanation and I can therefore understand her concern and her annoyance at that particular allegation being broadcast.

**Standard 5.2 (d) - News should not be presented in such a way as to cause panic, alarm or distress**

[T]his rule is not relevant. The public in general were not panicked, nor were listeners unnecessarily alarmed or distressed.

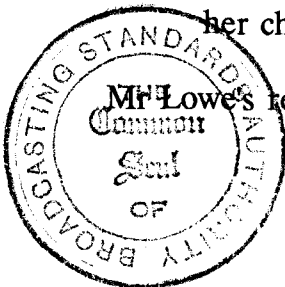
**Standard 5.2 (e) - Editing of programme material**

This interview was pre-recorded for broadcast but it was not edited in any way.

In conclusion, Mr Lowe alluded to Mrs Earlyly's charge that Mr Dick's attempts to persuade her to go on air were a "rather manipulative red herring":

[T]here is certainly an unarguable obligation on media to provide those who feel aggrieved with an opportunity to put over the other side of the story ... [Mrs Earlyly] was of course at liberty to decline Allan Dick's invitation on this occasion but the fact that she decided not to present another significant point of view was her choice, not Radio Pacific's.

Mr Lowe's response was referred to Mrs Earlyly for a brief, final comment.



### Mrs Early's Final Comment to the Authority

In a letter dated 29 October, Mrs Early commented that she could not accept any of Mr Lowe's defences to her allegations, with the exception of standard 5.2 (e). She continued to maintain that there was a difference between John Early's being seen in Ponsonby from time to time and to his being "in pubs boozing and attacking people". To broadcast rumour as fact was not, in her view, balanced, impartial or fair. She has also felt strongly that the broadcast could hardly have been other than alarming and distressing to the general public.

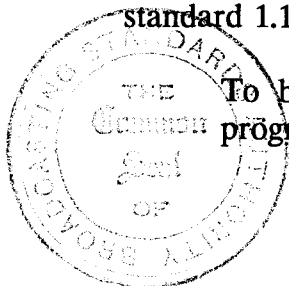
### Decision

It has been noted in the Introduction that the comments which gave rise to Mrs Early's complaint were made during the course of an interview broadcast on Radio Pacific between Mr Allan Dick and Mr Peter Thorpe. The purpose of the interview was to background concern at the policy of releasing psychiatric patients back into the community, a policy which generated numerous media reports last year of incidents involving the mentally ill. One such incident was the stabbing of four children at Kadimah College and Kindergarten, the Jewish school in Auckland attended by Mr Thorpe's two young boys.

Before addressing the substance of the complaint, the Authority would comment that since the interview was not "news" in the accepted sense of the term, its broadcast was not bound by standards 5.2 (b), (c) and (d) of the Codes of Broadcasting Practice for Radio, standards which are stated to apply specifically to "news". The fact that the Codes do not currently apply to "current affairs" is an issue to be addressed when the Codes are reviewed. To the extent, however, that the comments in dispute may have sought to parade rumour as fact - as Mrs Early has claimed - the non-applicability of at least one of those standards, standard 5.2 (b), is of little moment given that its general import is covered by standard 1.1 (a), which requires broadcasters, in the preparation and presentation of programmes to be truthful and accurate on points of fact in both news and **current affairs** programmes. As a news backgrounder incorporating comment, opinion and analysis, the interview with Mr Thorpe falls clearly into the "current affairs" category of programme and thus must meet the requirements of truth and accuracy on points of fact. As to standards 5.2 (c) and (d), the Authority notes that as Mr Lowe addressed Mrs Early's allegations concerning breaches of these standards, the Authority will also do so briefly at the conclusion of this Decision.

The Authority's practice is to rule on the alleged breaches of the standards as listed by a complainant. Although Mrs Early did not mention standard 1.1(a) specifically, the correspondence alleges "inaccuracy" on several occasions and Radio Pacific responded to this point. Thus, to assess the complaint in full, the Authority will consider whether standard 1.1(a) was breached. This requires broadcasters:

To be truthful and accurate on points of fact in news and current affairs programmes.



Mrs Early's first formal allegation is that the broadcast of the offending passage showed a lack of balance, fairness and impartiality (standard 1.1 (i)). The Authority is unable to agree. The policy of placing mental patients back into the community had, by the time of the broadcast, become a controversial issue. Mr Lowe informed the Authority that the policy had been the subject of countless talkback calls to Radio Pacific and he considered the broadcast of the Thorpe interview to be one more effort to present significant points of view within the period of current interest. Although Mrs Early maintains that the question of her going on air to present a different point of view was never an issue, the fact remains that she could have done so on this occasion - as the broadcaster notes she had in the past - to challenge Mr Dick's comments and to restore any perceived imbalance, unfairness or partiality.

In determining whether the broadcast of the offending passage evidenced a failure to respect the privacy of John Early (standard 1.1 (k)), the Authority is required to strike a balance between Mr Early's interest in individual privacy and the public's "right to know" about events of interest to it. Because of John Early's past history, and bearing in mind that he was not in fact named as the patient being referred to, the Authority is prepared to accept that the public's right to know what Allan Dick had "found out" about the supervision (or lack thereof) of John Early's activities, especially in public places, took precedence over any individual interest in ensuring that these activities not be publicised.

As already noted, the interview with Mr Thorpe was a news backgrounder and the Authority is in no doubt, having heard the tape and read the transcript, that listeners would have been able to distinguish clearly between factual reporting on the one hand and comment, opinion and analysis on the other (standard 5.2 (a)). There was thus no breach of this standard.

The thrust of standard 5.2 (b) is, as earlier noted, subsumed by the general requirement in standard 1.1 (a), which applies to both news and current affairs programmes. The question which therefore arises is whether, in the preparation and presentation of comments about "this other fellow" (i.e. John Early), Allan Dick was truthful and accurate on points of fact.

As explained by Mrs Early, the "facts" at issue revolve around whether her son was regularly being allowed to "escape" from Carrington, to go drinking in pubs and to "attack" people with his artificial leg. An examination of the transcript shows that references were made to the patient's regularly going out (from Carrington Hospital) going to hotels, drinking to excess, getting involved in fights and assaulting people with his artificial leg. As there seems to be no dispute that the patient, John Early, was regularly leaving the hospital (rather than "escaping"), the facts narrow down to whether he was a regular and aggressive drinker in pubs in Ponsonby and whether, on at least one occasion, he used his artificial leg to hit someone. In determining these issues, the Authority has been told of the contents of telephone calls received by Allan Dick - one anonymous and one from someone describing himself as a relative of John Early - and of the steps he had taken to check the information he had been given with the Manager of one hotel in Ponsonby and with patrons of that and another hotel in the area. The Authority has also taken note of the steps taken by Mrs Early to source the rumours or



substantiate the stories which formed the basis of Mr Dick's comments.


In assessing whether or not a breach of standard 1.1 (a) occurred, the Members of the Authority have considered whether the research undertaken by Mr Dick in the preparation of his comments was reasonable and adequate in the circumstances. With regard to alleged breaches of the truth and accuracy standard, the Authority accepts that there may be circumstances where the broadcast of an untrue statement does not breach this standard. For this situation to occur, the broadcaster must make reasonable efforts to ascertain the truth of a matter and make the statement believing it to comply with the truth and accuracy standard. The Authority appreciates that there may be a fine line separating "research" from what is essentially pub gossip, but in regard to the specific comment that Mr Dick had " ... found out subsequently that this particular person was in fact regularly going out, going to hotels ...", it accepts that Mr Dick's preparation was reasonable and that there is nothing to suggest that he was being anything other than truthful and accurate. No breach of the standard arose, therefore, from the broadcast of these specific comments.

The present complaint is different, however, with the remainder of the disputed comment, namely that the patient, John Early, was drinking to excess, getting involved in fights and assaulting people with his artificial leg. Had Mr Dick's enquiries focussed more on these aspects he would undoubtedly have at least qualified the statements broadcast. Indeed, with regard to the artificial leg, he would have come to the same conclusion as Mr Lowe, namely that " ... it would have been extremely difficult for her son to take off his artificial leg and assault people in a public place." In these respects the Authority considers that before broadcasting this particular story, Mr Dick should have either researched it more thoroughly in order to determine its truth and accuracy or made it very clear that he was unable to vouch for its veracity.

**For the foregoing reasons, the Authority upholds the complaint in that there was a breach of standard 1.1(a) of the Radio Standards.**

Turning to the alleged breaches of standards 5.2(c) and (d) - standards which, as earlier noted, are not strictly applicable to the broadcast since the interview was not a "news" broadcast - it need only be said that first, the Authority has doubts about the integrity and reliability of those persons who supplied and/or confirmed the story about John Early drinking to excess and assaulting people with his artificial leg and secondly, the Authority is not convinced that the broadcast of the comments in dispute was presented in such a way as to cause panic, alarm or distress.

Signed for and on behalf of the Authority

  
Iain Gallaway  
Chairperson

15 March 1991

