

Maori Worldviews and Broadcasting Standards: What Should be the Relationship?

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Contents

1. Introduction	2
2. Broadcasting Standards: Historical and Legal Context	3
2.1 The Public Interest and Freedom of Expression	4
3. What's Wrong with the Portrayal of Maori in Mainstream Media?	6
3.1 Background	6
Summary of Key Points	8
3.2 Coverage of the Foreshore and Seabed Claim	9
Summary of Key Points	11
4. Broadcasting standards vs Maori standards: Irreconcilable Differences?	11
4.1 Are Maori standards different?	11
4.2 Maori Complaints	12
4.3 The Standards and the BSA's Interpretations	13
<i>Holmes</i> , TVNZ (Decision No: 2003-109).....	14
<i>60 Minutes</i> , TV3 (Decision No: 2005-057).....	15
4.4 Balancing Views on the Foreshore and Seabed	15
<i>Sunday</i> , TV One (Decision No: 2004-36-37)	15
<i>Outspoken</i> , Radio NZ (Decision No: 2004-008)	16
<i>20/20</i> , TV3 (Decision No: 2004-140)	17
4.5 Tikanga and Privacy	18
Summary of Key Points	21
4.6 Discrimination and Denigration	21
5. Conclusion: Improving the Picture for Maori	23
5.1 How Far Can Regulation Go?	23
5.2 Other Jurisdictions	24
The Canadian Experience	26
5.3 Improving the Picture	28

1. Introduction

In its 20 years of existence, the Broadcasting Standards Authority (BSA) has dealt with few complaints that have required it to consider tikanga or Maori interests in order to reach a decision. There are several possible, overlapping, reasons for this, including that Maori have tended not to complain to the BSA.

With the advent of iwi radio and, more recently, Maori Television, an increase in such complaints might have been predicted. That has not happened.

Yet there is no doubt that New Zealand broadcasters possess widely varying degrees of knowledge of and respect for Maori values and worldviews.

In that context, the BSA has been concerned to explore the relationship between the broadcasting standards that it enforces and the standards of behaviour that derive from tikanga and Maori interests more generally.

To that end, the BSA commissioned research into the portrayal of Maori and te ao Maori in the broadcast media. In 2003, the Media Research Team led by Te Kawa a Maui (the School of Maori Studies) at Victoria University of Wellington conducted a largely qualitative study of certain broadcasters' coverage, during a set period, of an issue of particular importance for Maori – the government's proposal to change the law on rights in the foreshore and seabed.

The research team evaluated more than 10.5 hours of television and radio news and current affairs items dealing with that issue. In the 2005 publication *The Portrayal of Maori and Te Ao Maori in Broadcasting: the foreshore and seabed issue* they concluded that, for the most part, the relevant broadcasting standards - of balance, accuracy and fairness – were met.

The team raised the question, however, whether the standards as currently framed adequately reflect Maori realities, concerns and interests. Noting the dominance of Western values in New Zealand society, and the broadcasting standards' origins in those values, the team questioned whether the standards protect Maori. In their words: *"The current standards allow Maori to be criticised and misrepresented, which would be considered disrespectful if measured against Maori standards of balance and fairness. ... The broadcasting standards at present are 'one size', and as such do not take account of existing unequal power relations in New Zealand or Maori cultural values."* (p129)

Since the publication of that research, the BSA has reflected on the question it raised and has asked several Maori journalists and broadcasters for their views. It has found that there is no agreement on the matter. Some Maori journalists and broadcasters are firm in their view that the current standards are apt for all New Zealand broadcasts: the skill is in applying the standards sensitively in different contexts, including different cultural contexts. On that view, if particular broadcasts are biased against, or misrepresent, Maori views or values, the BSA can properly find them to breach one or

more of the accuracy, balance and fairness standards, and that is regarded as a satisfactory outcome.

We have written this paper in order to provide a platform for further discussion of the question about the proper relationship between broadcasting standards and Maori worldviews and interests. It is our hope that, by setting out the present context for the BSA's work and outlining the decisions the BSA has made on issues of particular concern to Maori, we will provide a ready resource for everyone who is interested in that discussion.

Although Maori are the focus of this paper, many of the issues highlighted here also apply to the portrayal of other visible minority groups, including Pacific Island and Asian New Zealanders.

2. Broadcasting Standards: Historical and Legal Context

Broadcasting regulation in New Zealand is governed by the Broadcasting Act 1989 (the Act), which established the BSA as a quasi-judicial body to oversee the regulation of radio and television content. The Act provides the legislative framework within which the BSA, an independent Crown entity, must operate; it defines the BSA's powers and functions, as well as the scope of the television and radio standards that make up the codes of broadcasting practice.

The BSA's main functions are to approve the codes, which are developed in conjunction with broadcasters, determine complaints alleging breaches of those codes, and conduct and publish research on standards-related issues. The BSA has approved four separate codes, covering free-to-air television, radio, pay TV and election programmes.

Complaints must allege that a programme has breached broadcasting standards. Section 4(1) of the Act imposes a responsibility on broadcasters to maintain, in programmes and their presentation, standards consistent with:

- (a) the observance of good taste and decency; and
- (b) the maintenance of law and order; and
- (c) the privacy of the individual; and
- (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; and
- (e) any approved code of broadcasting practice applying to the programmes.

Section 21(1)(e) sets out the areas in which these approved codes of broadcasting practice can be developed. They cover:

- the protection of children;
- the portrayal of violence;
- fairness and accuracy;
- safeguards against the encouragement of denigration or discrimination against certain groups on account of “sex, race, age, disability, or occupational status or as a consequence of legitimate expression of religious, cultural, or political beliefs”;
- restrictions on the promotion of liquor;
- presentation of appropriate warnings; and
- the privacy of the individual.

Broadcast content regulation in New Zealand is reactive. While the BSA’s decisions might be said to influence future broadcaster behaviour, the BSA is not a censor. Its role is not to vet programmes pre-broadcast, or prevent the broadcast of any programme. It can consider complaints only after a programme has been broadcast. With the exception of privacy complaints, which can be made directly to the BSA, a complaint alleging a breach of standards must be made to the broadcaster before it can be referred to the BSA for review.

The BSA currently receives on average around 150 complaints a year. The rate of upholds per year varies; in the last three years, it has upheld from around 12 to 30 percent of complaints. More than two-thirds of complaints are made against television. Most allege breaches of balance, fairness and accuracy, followed by good taste and decency.

The BSA imposes sanctions in about half of the complaints it upholds. Depending on the seriousness of the breach, the BSA may order the broadcast of a statement, costs to the Crown of up to \$5,000, and, in privacy cases only, an award of up to \$5,000 to persons whose privacy has been breached. For the most egregious breaches, the BSA has the power to order a broadcaster not to broadcast advertising for up to 24 hours, and to take a broadcaster off air for up to 24 hours.

2.1 The Public Interest and Freedom of Expression

An oft-stated justification for broadcasting regulation is that it serves the public interest in ways too important to be left to market forces alone. As the BSA has stated in many of its decisions, the social objective of regulating broadcasting standards is to guard against broadcasters behaving unfairly, offensively, or otherwise excessively.

The television and radio standards overseen by the BSA are “protective” regulation, intended to safeguard audiences and participants from harm. A key driver is the protection of children from harmful or inappropriate material. Other rules, which protect both audiences (from receiving inaccurate or misleading information) and

participants (from unfair treatment and invasion of privacy) relate to journalistic principles of accuracy and fairness, balance, the right of reply, and privacy.

Inevitably, such regulation creates a tension between competing rights that the BSA, like other broadcasting regulators, must balance in the public interest. On the one hand, there is the broadcaster's right to freedom of expression and editorial freedom, and on the other, the public's right to be protected from broadcasting that is harmful to individuals or injurious to the public good. Of course, there is also the public's right to receive information.

The right to freedom of expression is enshrined in section 14 of the New Zealand Bill of Rights Act 1990 (BORA), which provides that, *"Everyone has the right to freedom of expression, including the freedom to seek, receive and impart information and opinions of any kind in any form"*.

Broadcasting standards, as prescribed by the Act, clearly limit a broadcaster's right to freedom of expression, but as section 5 of BORA makes clear, the application of those standards in individual cases must be "reasonable", "prescribed by law" and "demonstrably justified in a free and democratic society".

Freedom of expression is as fundamental to the BSA's work as it is to broadcasters. It is central to the BSA's deliberations, not only because the BSA is bound by the Bill of Rights, but because its members, past and present, have recognised the vital importance of freedom of expression as the bedrock of a free and democratic society. Indeed, while its powers allow it to limit the right to freedom of expression, the BSA is acutely aware of the role it plays in upholding freedom of expression and acting as a bulwark against undue influence and incursions on broadcasters' freedoms by political or special interest groups.

As the UK regulator Ofcom has stated, *"Broadcasting and freedom of expression are intrinsically linked. The one is the life blood of the other. Nowhere can that tension between the right to freedom of expression and its restriction be more acute than in drawing up a Code which seeks to regulate broadcasting."*¹

¹ Ofcom consultation document on its proposal for a Broadcasting Code, July 2004, section 2, point 2

3. What's Wrong with the Portrayal of Maori in Mainstream Media?

3.1 Background

There is now a considerable body of academic and popular literature that chronicles the failures of the mainstream media to portray fairly and accurately Maori people and culture. Summarising the literature in *The Portrayal of Maori and Te Ao Maori in Broadcasting*, the Media Research Team noted that:

“there is widespread agreement that the portrayals of Maori and te ao Maori confirm negative stereotypes, portray Maori and te ao Maori inaccurately, and fail in various ways to provide balanced, fair and accurate reporting. Whether the media confirm or actually create negative views is less clear”. (p47)

To the extent that it provides useful background, this paper revisits some of the literature outlined in the above research.

For example, in *Maori news is bad news* (2002), Ranginui Walker cites examples of sensationalist media coverage of Maori over the years - from the Haka Party in 1979 to Waitangi Day protests, the Maori Loans Affairs and Tariana Turia's "holocaust" comment - and argues that the media has consistently produced a one-sided discourse about Maori through the way that news about Maori is selected, constructed and presented.

A number of studies cited by the Media Research Team (p48) have documented representations of Maori that at the very least were "unwarranted generalisations" or "stereotypical constructions", and at worst racist.

As the Team noted (p49), mainstream media has not only constructed Maori as an alien and colonised "them" as distinct from "us", but has set up dichotomies of Maori: the "good" or "tame" Maori vs the "bad" or "wild" Maori. For example, analysis of 221 Pakeha submissions to the Human Rights Commission in the wake of the 1979 Haka Party incident² identified several patterns in Pakeha perceptions of Maori, including:

- the Good Maori/Bad Maori pattern, in which "good" Maori are seen as "fine, gentle, dignified", hardworking, happy people who fit into the mainstream, while "bad Maori" are characterised as unreasonable, beneficiaries, demanding and violent; and

² The Haka Party incident was a confrontation in May 1979 between a group of about 20-25 Maori and Pacific Island protesters and Pakeha engineering students at Auckland University during their rehearsal of a mock haka for capping week. Engineering students had been performing the "haka" since 1954, despite complaints from Maori and Pacific communities, and church and student groups who saw the stunt as culturally offensive and insulting. It involved students dressing in grass skirts, and chanting offensive phrases and gestures. One version reported by the Auckland District Maori Council went: "Ka mate! Ka mate/Hori! Hori! [accompanied by actions simulating masturbation]/I got the pox (venereal disease) from Hori! Hori!".

- the “stirrers”, those who disturb otherwise harmonious relations and misinform gullible Maori, are left wing, racist, extremist, and responsible for worsening race relations.³

Sue Abel’s analysis of television coverage of the 1990 and 1995 Waitangi Day events (*Shaping the News, 1997*) found that mainstream television presentations constructed a dichotomy of Maori into “tame Maori”, who could hold radical views but worked in the system, and “wild Maori”, who worked outside the system and threatened it. Although not necessarily deliberate, Abel contended that it was precisely the “unintentional and unacknowledged” nature of this strategy that made the news “so ideologically powerful and supportive of an essentially monocultural status quo”.

Of equal concern is the absence of Maori from the mainstream media. Many researchers have documented the relative invisibility of Maori as sources or interview subjects for news stories, and their absence from programmes where portrayal is positive or neutral rather than negative, sensational or stereotypical. As Ranginui Walker has argued,⁴ Maori struggle for equality of participation within an ethnocentric and monocultural media.

Others have highlighted the lack of respect accorded to Maori in the broadcast media, through, for example, the incorrect pronunciation of Maori names and words.

There is general agreement in the literature about the reasons for this. The ethnic composition of mainstream media organisations and newsrooms ensures that they are run according to Eurocentric conventions and news values. Non-Maori reporters and news editors make up the vast majority of mainstream journalists (Pakeha account for more than 80 per cent of journalists),⁵ and it is they who decide what news stories are selected, and how they are constructed and presented.

The Media Research Team cites a former editor and academic Judy McGregor,⁶ who has argued that “although there is goodwill among journalists in New Zealand towards Maori news coverage, the coverage produced is grounded in Pakeha news values, and most journalists are Pakeha. McGregor draws on her own and others’ work to show that the value systems and cultural definitions of Pakeha and Maori differ. Maori news media show significantly different news values which are grounded in a Maori value system”.⁷ Indeed, this is borne out by the Media Research Team’s findings that, overall, the presentation of by-Maori for-Maori news and current affairs programmes, such as Mana News, demonstrated an understanding and sensitivity in the portrayal of Maori and te ao Maori in broadcasting.

³ Raymond Nairn and Timothy McCreanor, 1991, *Race talk and common sense: patterns in Pakeha discourse on Maori/Pakeha relations in New Zealand*. Cited by Media Research Team, *The Portrayal of Maori and Te Ao Maori*, p51-52.

⁴ *Maori news is bad news*, 2002.

⁵ In the national survey of New Zealand journalists 2006 by the NZ Journalists Training Organisation, 83% were Pakeha, and 8.5% identified themselves as Maori or Maori/Pakeha. A smaller 2007 survey by Massey and Waikato university researchers reported in the *Pacific Journalism Review* Vol 13(2) 2007, identified 86% Pakeha, 4.3% Maori.

⁶ Judy McGregor was a member of the BSA from 2000-2003.

⁷ Judy McGregor in *News values and the reporting of Maori news*, 1991. Cited in *The Portrayal of Maori and Te Ao Maori*, p38-39.

Compounding the problem of negative, stereotypical and inaccurate portrayal is the fact that most journalists have very little knowledge of Maori and te ao Maori, or the socio-historical context of Maori-Pakeha relations. As a senior editor quoted in a 2003 survey of New Zealand journalists observed, “There is a lamentable, ongoing ignorance among Pakeha journalists about things Maori and our colonial history.”⁸

Although the number of Maori reporters and news editors working in mainstream organisations has been increasing, it has been argued that Maori are still too few in number, and often too junior to have a significant impact on the monocultural, Eurocentric worldviews of their employers and organisations.

As the Media Research Team concluded: “Eurocentric conventions and news values are deeply embedded. The different worldviews of Pakeha and Maori impact in the news media notably in relation to: concepts of time with different views of history and historical concepts; appropriate spokespeople; appropriate means of arriving at understanding, Pakeha debate versus Maori discussion/korero; Pakeha focus on events, against Maori focus on issues.” (p58)

A strong Maori response has led to the development of Maori broadcast media – the Maori Television channel and the 21 iwi radio stations. But the dominance and influence of the mainstream media, and its consequent impact on public attitudes and public policy has meant that the portrayal and representation of Maori in the mainstream media remains important.

International research confirms that this is not a problem confined to Maori or to New Zealand. A 2002 report *Multicultural Broadcasting: concept and reality*, commissioned by the BBC among others, found similar concerns among ethnic minorities in the UK about tokenism, negative stereotyping and unrealistic or simplistic portrayals of their communities, and emphasised the need for authentic portrayals.

The report noted that despite the existence of specialist media catering specifically to minority communities, minority ethnic groups want to be “seen” in mainstream broadcasting, which they considered the most influential, and to have increased access into the decision-making hierarchy in broadcasting.

Summary of Key Points

Media coverage of Maori is characterised by:

- negativity, sensationalism and stereotypical depiction
- inaccurate and unfair portrayal of Maori and te ao Maori
- mispronunciation of te reo
- invisibility of Maori as credible sources of news, in positive stories, and from prime-time scheduling

⁸ Geoff Lealand, 2004. *Still young and female: a (modest) survey of New Zealand journalists*, in Pacific Journalism Review Vol 10 (2).

The causes include:

- Ethnocentric and monocultural media
- Too few Maori reporters, editors and programme makers
- Majority of reporters (Pakeha more than 80%) having no knowledge of Maori tikanga, Maori-Pakeha relations and New Zealand history generally

3.2 Coverage of the Foreshore and Seabed Claim

The Court of Appeal's decision to allow a group of Marlborough iwi to test their foreshore and seabed claims in the Maori Land Court, and the ensuing public debate, was arguably the most important story of 2003.

In its examination of the broadcast media's coverage of the foreshore and seabed debate⁹, the Media Research Team of Te Kawa a Maui reached what might appear to be contradictory conclusions. On the one hand, the team's findings were generally positive. Evaluating 10.5 hours of television and radio broadcasts¹⁰ against the broadcasting standards of balance, accuracy and fairness, the team concluded that the programmes were:

- balanced, if not within individual news stories, then over the period of current interest;
- almost always accurate, although some misspellings of Maori names appeared on television; and
- fair, in that most people appeared to be treated fairly and justly.

The research team said the few references to tikanga Maori in the mainstream broadcasts were generally well explained; that tikanga was much more significant in the by-Maori for-Maori broadcasts; that the pronunciation of Maori words and names in mainstream broadcasts was generally very good; that the use and pronunciation of te reo in by-Maori for-Maori programmes was fluent and generally excellent. Almost all of the programmes on National Radio were serious and informative in tone.

However, despite the broadcasting standards generally being met, and nearly two-thirds of stories in, for example, Radio New Zealand's Morning Report (60 percent) and Checkpoint (61 percent) being devoted to commentary regarded as pro-Maori, there were areas of concern.

These included the use of certain words and phrases which portrayed Maori as angry and aggressive, and the characterisation of Maori as "activists" or "protesters",

⁹ *The Portrayal of Maori and Te Ao Maori: the foreshore and seabed issue*, BSA 2005.

¹⁰ Only TVNZ, TV3 and Radio New Zealand were included in the research because of the availability of broadcast material. Data from commercial radio was not available because recordings are destroyed after one month.

engaged in violent, threatening behaviour - consistent with the “Good Maori/Bad Maori” and “stirrer” stereotypes identified by other researchers. The team argued that

“These characterisations were reinforced through repeated descriptions in Morning Report and Checkpoint stories and portray a negative rationale for Maori behaviour, instead of providing an explanation for the underlying causes of Maori grievance or dissent.” (p123)

When not being labelled “activists”, another characterisation was that Maori were unfit or incompetent. While less prominent than the “activist” description, it particularly impacted on the credibility of the Maori MPs involved.

There was also a clear difference in the way some programmes dealt with items about non-Maori individuals or groups, who were presented as rational and logical. More positive terms such as “lobby groups” and “staunch critic” were used in lieu of “activists” and “protester”.

The Media Research Team noted that journalists took some time to appreciate the complexities of the foreshore and seabed issue, as evidenced by continuing and inaccurate references to the Crown “retaining” ownership.

“...broadcasters perceived and told a story of inherent conflict: between Maori rights and non-Maori and Crown rights. That story consistently characterises Maori as unreasonable and aggressive, while non-Maori are portrayed as rational and law-abiding and the Crown as the guardians of the national interest. This is a key and ongoing theme in New Zealand public life and the news media.” (p127)

And although the foreshore and seabed story was both a national and regional/iwi story, news organisations failed to acknowledge unique iwi identities and issues. There was also an over-reliance on interviewing politicians, Pakeha and Maori, despite their clear bias and often limited understanding of the legal and cultural issues, and a noticeable emphasis on the threat of Maori protest, whether any protest occurred or not.

The Media Research Team concluded that the current broadcasting standards allowed Maori to be criticised and misrepresented in ways that would be considered disrespectful if measured against Maori standards of balance and fairness.

In general, notions of universalism work against minority groups: one size of balance or fairness or accuracy (built with the Pakeha mainstream in mind) may not fit all. The broadcasting standards at present are ‘one size’, and as such do not take account of existing unequal power relations in New Zealand or Maori cultural values. (p129)

In fact, the BSA received only three complaints of any significance about programmes that discussed the foreshore and seabed debate. These are discussed in more detail below.

Summary of Key Points

Research by the Media Research Team of Te Kawa a Maui concluded that the broadcast media's coverage of the foreshore and seabed issue:

- was generally balanced, fair and accurate, but
- journalists took a long time to understand the complexities of the issue
- characterised Maori as aggressive and unreasonable “activists” and “protesters”, while non-Maori were presented as rational, law-abiding and logical
- failed to explain the underlying causes of grievance and dissent among Maori
- emphasised protest, whether or not it took place
- inaccurately referred to the Crown “retaining” ownership, and
- was shaped by Pakeha ‘news values’ which perceived and told the story as one of inherent conflict between Maori rights and non-Maori and Crown rights

4. Broadcasting standards vs Maori standards: Irreconcilable Differences?

4.1 Are Maori standards different?

Discussing the Maori approach to balance, Tawini Rangihau, a journalist and senior executive at Maori Television told the BSA's 2006 Balance Symposium:

Before television and radio, there was the marae out there. And our view of balance is we had the right of redress. However long it took to get that right of redress, whether we spoke into the long wee, wee hours of the morning that debate carried on until all points of view had been expressed.

Now what is missing in media – in all forms of media – is the ability to be able to translate that into a public arena. Because the Maori view of balance is, ‘I have my right of redress at any time.’ Whether the comment was made 10 years ago, or yesterday, ‘I have my right of redress’.

Now, when you have a culture that believes that, that is ingrained in our way of life and our worldview, then think about the frustration that some of us feel when there is no Maori worldview expressed in media, and this is not just Pakeha media, this is all forms of media.¹¹

The broadcaster, Hone Edwards, formerly Kaihautu in charge of Maori content at TVNZ, acknowledged that the broadcasting codes were important, but said that there seemed to be no measure in them that protected Maori values:

¹¹ *Significant Viewpoints: Broadcasters Discuss Balance*. BSA, 2006, p103.

We all watch news stories about Maori, and they are accurate nine times out of ten and relatively fair, but as a viewer I always have that knot in my gut thinking, culturally, there's something not quite right about this story, and I can never put my finger on it until I go away and mull it over in my head.¹²

But are Maori notions of balance, fairness and accuracy any different to those enshrined in the standards administered by the BSA? For Claudette Hauiti, an independent television producer, the problem was not so much the standards as the interpretation of them.

In the real world, the Pakeha concept of balance and fairness is not too removed from the Maori. In fact Maori and Pakeha share many core values and morals and make very similar value judgements when it comes to balance, accuracy, fairness, law and order, privacy, children's interests and violence.

But while Maori and Pakeha share similarities, the method by which we arrive at these judgements uses cultural paradigms and processes that are specific and contextual – therefore, often in conflict with one another. And because of these contextually specific paradigms, we sometimes will never meet up in the end.

If this is the case, then perhaps the problem is not in the standards themselves, but rather, the interpretation of the standards and thus the application of the standards is contrary to the original intent, and therefore it appears the standards do not support te ao Maori.¹³

4.2 Maori Complaints

It is difficult to draw any firm conclusions about the way the BSA has interpreted broadcasting standards with respect to Maori issues, given the small number of complaints relating to Maori concerns. Since 1993, around 100 BSA decisions have dealt in any way with a Maori-related issue. Of these, just under 40 related to tikanga, Maori cultural values, te reo or denigration, and an even smaller number dealt with these in any significant way.

This might seem surprising considering the documented and anecdotal level of dissatisfaction with the mainstream media's coverage of Maori issues and culture, but it corresponds with the relatively low number of Maori who make complaints of any kind to the BSA.

There may be several reasons for this. As a group, Maori may be less likely to be aware of the complaints system, less likely to have the time and resources to pursue a complaint through what can be a lengthy and onerous process, and perhaps less likely to feel that a formal complaints system conducted on the papers would provide a culturally satisfying outcome.

¹² *Significant Viewpoints*, p91.

¹³ *Significant Viewpoints*, p88.

It should be noted that not everyone who complains about a broadcast which portrays Maori or te ao Maori negatively is Maori. A significant number of complaints about Maori issues or programming are made by Pakeha complainants. It is fair to say, though, that the BSA experience seems to be marked more by the absence of Maori complaints than an apparent disjunction between the standards and Maori worldviews.

The current membership of the BSA does not include a Maori representative, and it is hoped that this will be rectified in the near future. When a complaint involves a significant issue of tikanga requiring Maori knowledge or expertise, the BSA's approach has been to co-opt a Maori expert to provide advice. The co-opted member has no vote, but the advice he or she gives has a major bearing on the BSA's final decision. In the last five years, the BSA has sought such advice on three occasions.¹⁴

It has been suggested to the BSA that consulting a panel of Maori rather than a single advisor may produce a more equitable outcome for Maori. The BSA is supportive of this approach, but because of the paucity of significant Maori-related complaints it has not had occasion to put the idea into practice since it was first mooted.

4.3 The Standards and the BSA's Interpretations

Most complaints concerning Maori, like the majority of all complaints, have been made under the standards of Balance, Fairness and Accuracy. A few significant Maori-related complaints have alleged a breach of Privacy.

The **Accuracy** and **Fairness** standards are relatively straightforward. Accuracy demands that news, current affairs and other factual programmes get their facts right and do not mislead audiences. Fairness obliges broadcasters to "*deal fairly with any person or organisation taking part or referred to*".

Balance (or **Controversial Issues – Viewpoints** as it is now called in the Radio Code) is probably the most misunderstood of the standards. It takes its wording from section 4 of the Act and requires 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.*"

But it is determining what constitutes "controversial issues of public importance", which views are "significant", and how long the period of current interest is that makes the balance standard more complex.

Discrimination and Denigration, which is a guideline under Fairness in the current Free-to-Air Television Code and a separate standard in the Radio Code, says that broadcasters "*should not encourage discrimination against, or denigration of, any section of the community on account of sex, sexual orientation, race, age, disability, or*

¹⁴ See Decision Nos: 2003-109, 2004-36-37 and 2005-064.

occupational status, or as a consequence of legitimate expression of religion, culture or political belief”.

On the face of it, these standards would seem to offer plenty of protection to Maori, and indeed other visible minority groups. One would expect that if a story about an important Maori issue is not accurate in all material respects, not fair to everyone taking part or mentioned, or has failed to present significant viewpoints with sufficient purpose to ensure its audience is able to reach an informed and reasoned opinion, then there would be no difficulty for the BSA in upholding a complaint against the programme. That was certainly the case in a complaint by the Ngati Pukenga Iwi against TVNZ's *Holmes* programme, which was found to have breached balance, accuracy and fairness standards.

***Holmes*, TVNZ (Decision No: 2003-109)**

In November 2002, the top-rating TV One current affairs programme broadcast an item that was critical of the Ngati Pukenga Iwi for successfully registering the Kopukairoa mountain in the Bay of Plenty as waahi tapu with the Historic Places Trust. The story focused on the anger of four Pakeha landowners who believed their property rights on Kopukairoa had been taken away from them because of Maori spiritual beliefs. The host Paul Holmes introduced the item with the words:

“...wait till you hear this one. Prepare to go ballistic. We’ve had the taniwha in recent weeks, we’ve had the sand on the North Shore beach and now the mountain, a mountain called Kopukairoa, in Welcome Bay, just outside of Tauranga.”

The only person from the iwi to be interviewed was a man who, when asked why the iwi had sought the registration, said: “I can’t answer because it is not my role or my place to answer.”

The item cast doubt on the validity of the waahi tapu registration, implying that the registration was yet another example of a Maori cultural claim usurping the rights of private landowners, and incorrectly reported that registration meant that Maori had the final say over development proposals for that land and that Maori had “suddenly” taken away the landowners’ rights.

Ngati Pukenga complained that the item was unbalanced, inaccurate and unfair. The iwi contended that their view had not been presented on the item because the person chosen by the *Holmes* programme to represent their views had no knowledge of the registration application, and no mandate to speak on behalf of the iwi. TVNZ argued that it had satisfied the requirement for balance by interviewing the man, who had consulted with others on the marae before advising the *Holmes* reporter that he had permission to speak on behalf of the iwi.

The BSA upheld the iwi’s complaint. Whatever the man’s standing, it was “apparent by his own admission that he was not the person to address, comprehensively, the concerns raised by [Pakeha] landowners”. In other words, his contribution did not provide the significant viewpoint from the iwi that was required to balance the story.

The item also lacked informed comment from the Historic Places Trust and local authorities, and the perspectives of the Maori landowners who, in fact, owned the majority of the land that was deemed waahi tapu.

The BSA concluded that the report had breached standards of balance, accuracy and fairness.¹⁵ It also found that the host's introduction was "inflammatory and displayed partiality".

By coupling the item with previous Maori-related issues, the introduction framed the item to evoke negative reaction among viewers. The item's emphasis was anger on the part of the four landowners who believed property rights had been taken away from them because of Maori spiritual beliefs. The Iwi's view was not represented and this perpetuated the partiality of the item. (para 48)

60 Minutes, TV3 (Decision No: 2005-057)

But the fact that a programme presents a critical view of Maori culture does not, of itself, constitute a breach of the standards. Robust debate is essential in a free society, even when it might be unpleasant or hurtful. Fundamental to freedom of expression is the right to voice unpopular opinions, or to challenge accepted orthodoxies. The question for the BSA is the context in which criticism is made.

An example of this was a 2005 TV3 *60 Minutes* item which looked at the possible reasons for the high crime rate among young Maori. The programme advanced the perspectives of three prominent Maori – a theologian and former Parole Board member, an academic, and an entertainer – who were critical of what they saw as the promotion of aggressive male models within Maori culture. Their concern was that aspects of Maori culture that celebrated male aggression, including the haka, had been elevated to "the most deserving position of cultural expression". The BSA declined to uphold a complaint that the item was unbalanced, inaccurate and unfair. It found that, while challenging, the programme had made a legitimate contribution in a constructive way to an ongoing discussion about an important social issue.

4.4 Balancing Views on the Foreshore and Seabed

As noted above, the BSA received only three complaints about programmes that dealt in any significant way with the foreshore and seabed debate. All three were concerned primarily with balance; two were against programmes perceived to have taken a pro-Maori stance, and one was against a programme alleged to have a strong bias against the Maori claim.

Sunday, TV One (Decision No: 2004-36-37)

In July 2003, TV One's *Sunday* programme interviewed the Mayor of Marlborough, who had been outspoken in his criticism of the Court of Appeal decision and of those he called "the bully boys of Maoridom". The mayor made dire predictions about the deterioration of race relations as a result of the decision, suggesting that New Zealand

¹⁵ Peter Addis, a senior lecturer in Maori Studies at Victoria University was co-opted to assist the BSA.

was headed for race riots similar to those seen in Britain. A film clip of a UK race riot was shown to illustrate the mayor's fears.

The report included interviews with Dr John Mitchell, the spokesman for the Marlborough iwi who had taken the case to the Court of Appeal, and two others opposed to the claim, including one "part Maori" man. The item discussed the question of "who is a Maori?" noting that Dr Mitchell was part English.

The two people who complained were concerned at the inflammatory use of the riot clip. They claimed that "the manner of presentation was likely to incite hatred against the Maori claimants in the foreshore case", and that the programme displayed a strong bias against the Maori claim for the foreshore and seabed.

The BSA agreed that the programme was not balanced. It found that while the mayor was entitled to voice his concerns, the programme had failed to examine critically the issues which had been raised by the mayor and two others, including the claims which they had made about the negative effect of the decision on deteriorating race relations, harbour development and aquaculture.

The BSA also noted the difference in the reporter's treatment of the mayor compared to his treatment of the iwi spokesman Dr Mitchell, and concluded that the failure to examine the issues in an impartial, objective and responsible way meant the item was "weighted significantly in favour of the mayor's views". Although the BSA did not find that the race riot film clip had breached the violence standard, it took into account the impact of the dramatic footage in its consideration of the balance standard, and concluded that the clip had added weight to the mayor's claims about deteriorating race relations which the programme had failed to balance.

Outspoken, Radio NZ (Decision No: 2004-008)

A panel discussion in *Outspoken*, on Radio NZ's National Radio, in November 2003, took a very different approach to the foreshore and seabed issue. The discussion was fronted by two journalists, and a panel of four – a constitutional law expert; the chair of Te Ope Mana a Tai, the iwi consortium which took the foreshore and seabed claim to the Court of Appeal; a lawyer representing six of the iwi; and a spokesperson for the Hauraki Maori Trust Board. Dr Michael Cullen, then deputy prime minister, was invited to take part but declined. Callers were also invited to call in, and three did so.

The discussion was introduced in this way: "*... the foreshore and seabed debate, who owns it, should anyone have private title and are Maori ownership claims modern day opportunism or a historical fact?*"

The complainant who took issue with the hour-long programme alleged that the journalists (both Maori) and the entire panel represented "a tiny radical Maori movement" and that National Radio "ought not to have played host to extremist loudmouths". He accused the journalists of being biased for allowing "four Maori bigots to vent their spleen on the foreshore and seabed issue", and argued that "ordinary Kiwis who hold the majority view" should have been included in the panel.

The BSA did not uphold the balance complaint.¹⁶ It did not agree with the complainant's characterisation of the panel as "extremist loudmouths" and "four Maori bigots", or with the implication that the discussion had been framed as a debate between "Maori radicals" and "ordinary Kiwis".

Implicit in the complaint was the assumption that the view of "ordinary Kiwis" must necessarily be in opposition to a "Maori view", and that therefore balance could have been achieved by including an "ordinary Kiwi" on the panel. Taken to its logical extreme, the BSA would have to insist that every future discussion on iwi radio or Maori Television include a Pakeha in order to be balanced. In fact, there were two Pakeha on the panel: the constitutional law expert and the lawyer who was representing some of the iwi.

Of course, the requirement in the balance standard is not to have a balanced representation of ethnicities, but to have a range of "significant" perspectives on important issues during the period when that issue is current. The nature of the discussion and the way in which it is framed are important, as are the audience's expectations and the availability of opposing viewpoints in other media.

It is important to note that the balance standard is not intended to prevent the legitimate exploration of an issue from one perspective, or to require that every discussion on a particular issue must contain every perspective on that issue. What matters is how a programme presents its subject matter, and how the audience perceives it.

Outspoken was a live panel discussion in an open forum. Three listeners, who may or may not have been Pakeha, took the opportunity to have their say. The conversation ranged broadly over the subject matter, and was driven in part by the speakers' experience and area of expertise. The discussion was informative, and despite the introduction, it was not framed as a debate but as an attempt to understand the historical and legal background to the claims; it focussed largely on "the history and motivation behind Maori lodging the claims, and the reaction of some Maori to the Crown's position". The programme did not purport to be a comprehensive examination of the foreshore and seabed debate, which had by then already received widespread coverage in the media; panel discussions seldom are. Rather, they are expressions of the panellists' opinions, and are clearly understood as such by the audience. Listeners were presented with perspectives and background information that had received little attention in the mainstream media. In this case, upholding a breach of the balance standard would clearly have been an unreasonable limitation of the right to freedom of expression.

20/20, TV3 (Decision No: 2004-140)

Similarly, the BSA found that a TV3 *20/20* programme (Decision No 2004-140) did not breach the balance standard, even though it focused on the views of those who marched to Parliament on a hikoi to protest against the foreshore and seabed

¹⁶ This decision is discussed in Steven Price's *Media Minefield: A Journalist's Guide to Media Regulation in New Zealand* (2007), p 37-38 New Zealand Journalists Training Organisation.

legislation. Although the complainant contended that the programme had failed to present a Government or pro-Government viewpoint, TV3 argued, and the BSA agreed, that the programme's limited focus was on the hikoi marchers, whose views had until then received little mainstream coverage. The BSA ruled that the item did not purport either to present the definitive Maori view or to be an examination of all sides of the issue.

Both cases illustrate the importance of interpreting the balance standard in a way that is consistent with the Bill of Rights as well as the intent of the standard – that is, that it should allow the fair and thorough airing of as wide a range of significant perspectives as possible, without being unduly constrained by an artificial requirement to present opposing views at every juncture.

4.5 Tikanga and Privacy

In only a few complaints has tikanga been central to the complaint.

A 2005 documentary ran into trouble¹⁷ when it used footage of a 2004 tangi at the Mokai Kainga marae in Kawhia to illustrate the cultural differences in attitudes to organ donation between Maori and Pakeha. Nick Tuwhangai complained on behalf of the Mokai Kainga marae that the use of the footage was unfair as it had associated the iwi with organ donation. TVNZ admitted that it was unfair to use the archival footage of a fairly recent tangi without consulting the iwi, and apologised, but the iwi sought a public statement so that all Maori would know that the footage had not been provided by the Mokai Kainga marae, and that the views expressed in the documentary did not express the views of the marae.

TVNZ took the view that the marae had not been identifiable and therefore the distress caused by the footage would have been limited, but the BSA ruled that the marae was distinctive enough to have been recognised by many people, and ordered a public statement in a programme with a Maori target audience. The BSA acknowledged that while the item did not make a clear statement about the marae's stance on organ donation:

the use of the archival footage of a tangi, in the context of a programme about organ donation, would have distressed a number of those associated with the marae or present at the tangi, because of their opposition, on cultural grounds, to organ donation. For this reason, the Authority agrees that the use of that material was unfair. (para 18)

TVNZ undertook to tag the programme to ensure the footage of the tangi would not be shown again without appropriate approvals.

Perhaps the only area where there has been significant conflict between what might be termed "Maori standards" and broadcasting standards is in the application of the

¹⁷ Decision No. 2005-101.

Privacy Principles, which provide that “*Broadcasters should maintain standards consistent with the privacy of the individual*”.

The best example of this was in the 2000 complaint¹⁸ from the MP Tariana Turia against an item that described the circumstances and death of a child killed by his mother. The item, broadcast on One News, included footage of the child’s dead body. Mrs Turia complained that the showing of the deceased child was culturally insensitive. She argued that:¹⁹

The events surrounding death, dying and grieving are among the most sacred and important in Maori life. They are steeped with tapu (sanctity) and kawa (ceremony).

TVNZ replied that its decision to show the still pictures had not been taken lightly. It had taken care not to show the boy’s head or face, but to show only the appalling injuries to the boy’s torso and limbs, the only visual evidence of the brutality to which the boy had been subjected. Its extensive editorial discussions had included experienced Maori journalists and producers. TVNZ submitted that the visual depiction of the injuries contributed to the public understanding of the child’s death, and the wider issue of violence against children.

In its decision, the Authority accepted that the footage would have been gravely offensive to the child’s hapu and iwi. While it noted that a dead person was not within the definition of an “individual” and therefore had no legal right to privacy, it nevertheless consulted respected kaumatua, John Tahuparae, on the cultural issues before making its decision. It said:

The Authority acknowledges that, for Maori, responses to dying and the deceased are determined by customs and traditions of the whanau, hapu and iwi. Viewing the body of a deceased person is subject to particular protocols in keeping with the sacred nature of death in Maori life. The Authority accepts that the broadcast of pictures showing the extent of the injuries to the child’s body is not consistent with the respect which would normally be accorded a Maori person in death.

However, the Authority is advised by Mr Tahuparae that, in his view, this was an occasion where, because of the unique circumstances, the wider public interest was paramount. The child had been subjected to a horrific and tragic level of abuse and neglect which led to his death. Both his family and the state agencies which had evidently failed to take responsibility for various aspects of his welfare were found wanting. The item emphasised those failures. By focusing public attention on the seriousness of the abuse the child suffered, and emphasising the community’s collective responsibility, it was Mr Tahuparae’s view that the broadcast would help ensure that other children would not be exposed to similar risk. He was emphatic that the benefit outweighed the potential violation of privacy which is the subject of this complaint.

¹⁸ Decision No 2000-165.

¹⁹ Paragraph numbers were not used in BSA decisions at this time.

The Authority also sought Mr Tahuparae's advice on the Minister's argument that cultural expertise from the child's iwi should have been sought. The Minister questioned the expertise of a TVNZ staff member to make the assessment that the broadcast was appropriate in the circumstances, the Authority was advised that it would have been a courtesy for the broadcaster to have consulted with the child's iwi prior to the broadcast. Mr Tahuparae also advised the Authority that it would be desirable for broadcasters to ensure that independent expert advice is available to assist when significant cultural matters require specialised response.

The Authority is satisfied that the advice it received is both valid and appropriate. It supports the recommendation that broadcasters consider seeking independent and relevant Maori cultural advice when significantly important matters relating to whanau, hapu and iwi are to be subject to such broadcasts in future.

The BSA's research into privacy and informed consent, published in *Real Media, Real People: Privacy and Informed Consent in Broadcasting (2004)*, found that, for many Maori, the invasion of privacy is not confined to "living individuals". Contrary to the present legal position, "a deceased person's place in Maori genealogy meant their privacy might be breached and, by extension, the privacy of his or her whanau, hapu and iwi". As one respondent commented:

Privacy issues that are to do with Maori continue from when you are born to when you die to when you return to what is considered your homeland. Now whether people subscribe to that is irrelevant, but that is the Maori world. We refer to our genealogy and to those who have recently gone on because in a sense we are part of that connection to the past and the future and the present. Therefore we treat a deceased person differently, and so in our eyes that deceased person still retains some dignity and the need for privacy and ritual. (p57)

However, as the research found, Maori were divided as to whether there was a distinct Maori dimension to privacy. One programme maker noted that, "*The concern [with privacy] is about the individual [and] in the legal context in which we live, a whanau could not make a decision for an individual anyway.*" (p56)

Maori Television, in its 2006 submission to the BSA on the Privacy Principles, observed that, "*it is the whanau/hapu/iwi as opposed to individual rights that are really the crux of the issue for Maori. Failure to recognize these institutions as the fundamental tenet of Maori society carries with it a concurrent failure to understand how privacy concerns impact on Maori*".

However, the broadcaster concluded that "*in general, ...the BSA [has] handled Maori privacy cases with due respect and also ha[d] the proper regard to tikanga/protocols by engaging a co-opted Maori member to assist in the deliberation of cases*".

While concerns about privacy remain an issue for some Maori, the BSA's research²⁰ suggests that these take a back seat to the greater concerns about the mainstream media's representation or portrayal of Maori and its treatment of issues relating to Maori society – and to a lesser extent the mispronunciation of the Maori language.

²⁰ *Real Media, Real People: Privacy and Informed Consent in Broadcasting*, 2004, p56.

As the independent television producer Claudette Hauiti has observed:

“At the end of the day, what standards we have here in Aotearoa should be robust, universal, and singular, and allow both signatories to the Treaty of Waitangi to foster their opposing views. It is not that standards are rigid and narrow, but rather the interpretation is defined according to the majority ideology, which has little room for dissenting views. The original intent of the standards, just like the original intent of the Treaty of Waitangi, safeguards Maori and its ideologies as much as it does Pakeha.”²¹

Summary of Key Points

- The BSA receives few complaints about Maori programmes and issues, or from Maori complainants
- Most are made under balance, fairness, and accuracy standards
- Freedom of speech allows Maori to be criticized but also preserves the right of Maori broadcasters to tell Maori stories from a Maori perspective
- There is some conflict between Maori notions of privacy and BSA privacy principles
- Maori broadcasters and journalists may define balance differently, but
- Many agree that the standards should be universal, but interpreted in a more culturally enlightened manner

4.6 Discrimination and Denigration

The standards do not prevent criticism of ethnic or other visible minority groups, or the broadcast of material which might be considered provocative, disrespectful or even offensive. Being respectful is not a standards requirement; being fair and accurate are. In this respect, it is true that the standards allow Maori to be criticised and, to some extent, disrespected.

Almost all regulatory bodies grapple with the difficult challenge of balancing the broadcaster’s right to freedom of expression with the right of citizens to be free from negative or abusive portrayal. This requires a delicate weighing of competing values that may leave Maori and other minority groups feeling exposed and unprotected. It is of little comfort in those instances to be told that free speech safeguards minority speech and ideologies as much as it does that of the majority.

The Canadian Broadcasting Standards Commission (CBSC) notes, for example, that the “human rights” clause in its Canadian Association of Broadcasters (CAB) Code of Ethics, which prohibits programming containing “abusive or unduly discriminatory material or comment” on the basis of race or ethnicity, is one of the most interpreted provisions in the codes it oversees.

²¹ *Significant Viewpoints*, p90.

As the CBSC noted in one decision, the requirement to “balance the right of audiences to receive programming which is free of abusive or discriminatory material...with the fundamental right of free speech in Canadian society” has led to its evolving an “‘abusiveness criterion’ i.e. the establishment of a ‘test’ whereby a comment must not merely be discriminatory to constitute a breach ... it must be abusively so”. It went on to comment in another decision:

*The question, of course, is to determine which “ethnic” jokes or comment will be understood as crossing the boundary of acceptability. There are those which are sanctionable and those which, even if tasteless or painful to some, are not. It would be unreasonable to expect that the airwaves be pure, antiseptic and flawless. Society is not. Nor are individuals in their dealings with one another. Nonetheless, the airwaves are a special and privileged place and those who occupy that territory are expected to play a more restrained and respectful social role.*²²

In its application of the Discrimination and Denigration standard/guideline, the BSA has consistently held that in light of the right to freedom of expression enshrined in the Bill of Rights, the threshold for finding a breach of this standard is necessarily high. The denigration must reach a high level of invective - “a blackening of the reputation” of a class of people. Material which is factual; a genuine expression of serious comment, analysis or opinion; or legitimate humour or satire will seldom breach the standard.

For example, a skit on *Eating Media Lunch* in which the presenter developed stereotypical Muslim characteristics after eating nothing but Middle Eastern food for a month, ultimately ending up as an Islamic terrorist, was clearly satirical and humorous, and intended to satirise *Super Size Me* (a documentary in which the author ate nothing but McDonald’s fast food for a month), as well as the media’s generally negative portrayal of Muslims.²³

A Radio Hauraki skit suggesting Samoan women had the lowest rate of post natal depression in the world because additional children meant an increase in welfare payments, although “potentially widely offensive” and offering a “stereotypically negative portrayal of Samoans” was nevertheless intended to be humorous and did not cross the line into “racist or denigratory abuse” necessary for a breach of the standard.²⁴

However, a Muslim cleric²⁵ was found to have crossed the threshold when he called homosexuals “sick” and “not natural”, described the Islamic position on homosexuality as “death” and called on Muslims “to take a stand – and it’s not enough to call names”. And radio talkback host Michael Laws was judged to have gone too far with his “vitriolic tirade” against the Exclusive Brethren, based largely around “unsubstantiated and denigratory allegations”, including that they were “a nutter sect”, “as ignorant as

²² CAB Code of Ethics, revised June 2002, commentary on Clause 2 – Human Rights.
<http://www.cbsc.ca/english/codes/cabethics/clause2.php>.

²³ Decision No: 2004-152.

²⁴ Decision No: 2004-187.

²⁵ Decision No: 2004-001.

all get out”, “very bad neighbours”, “not normal people”, “You just want to take them outside and de-knacker them so they can’t breed”, and probably guilty of child abuse.²⁶

5. Conclusion: Improving the Picture for Maori

5.1 How Far Can Regulation Go?

The importance of the broadcast media, particularly television, in influencing and shaping public opinion and attitudes has been extensively canvassed by many commentators.

Broadcasting is recognized as playing a vital role in supporting certain core values in society, and shaping a nation’s view of itself. Andrea Millwood Hargrave, a UK media advisor has noted in a 2007 report *Cultural Diversity Practices among Broadcasting Regulators* that:

*The way in which cultural diversity is delivered through [broadcast] media can act as a ‘glue’ for social cohesion as well as protecting national cultures and providing a mirror into one’s own culture and society. It can remove misconceptions and it can add to the understanding of the richness of the world.*²⁷

To that end some broadcasting regulatory regimes incorporate measures intended to protect or advance certain cultural objectives. For example, the UK broadcasting regulator Ofcom is required by its governing legislation, the Communications Act 2003, to fulfil various obligations towards diverse groups and be aware of considerations such as “the different interests of persons in the different parts of the United Kingdom, of the different ethnic communities within the United Kingdom”.²⁸

In New Zealand, the objectives of protecting and promoting the Maori language and culture as well as other communities within New Zealand are reflected in a range of measures across a number of agencies. For example, certain frequencies are reserved for the promotion of Maori language and culture, and these are the responsibility of the Ministry of Economic Development, which issues licences and monitors compliance with their terms.

The charters of state broadcasters, TVNZ and Radio New Zealand, as well as the Maori Television Service, also declare a commitment to, as RNZ’s puts it, “programmes which reflect New Zealand’s cultural diversity, including Maori language and culture”. TVNZ’s charter says it will “promote understanding of the diversity of cultures making up the New Zealand population”. And the Maori Television Service Act 2003 defines its principal function as the promotion of “te reo me nga tikanga Maori”. One of the channel’s key long-term goals is to “contribute to te reo and tikanga being increasingly valued and embraced”. As well, NZ on Air’s mission statement outlines its aim “to

²⁶ Decision No: 2004-193.

²⁷ This report was based on research commissioned by the Broadcasting Regulation and Cultural Diversity Network which consists of broadcasting regulators who seek to promote cultural diversity based on the UNESCO Universal Declaration on Cultural Diversity.

http://www.brcd.net/cac_brcd/AppPHP/index.php.

²⁸ Communications Act 2003, Section 3:(4)(l).

reflect and foster the development of New Zealand culture and identity through broadcasting”.

But the BSA has no mandate to promote or protect Maori culture and worldviews. Unlike its regulatory counterparts in the UK and elsewhere, the BSA’s current legislation limits its purview to oversight of the broadcasting standards regime.

It has been suggested that the broadcasting standards need to be reframed to protect Maori interests and worldviews. In *Racism and the News Media* (1996) Judy McGregor and Joanne Te Awa argued that legislative, structural and journalistic reforms are necessary to “establish normative standards for the news media and reporting news about Maori and other ethnic minorities ... and the codes of broadcasting practice should be strengthened so there is a positive onus on the broadcasters to represent Maori news faithfully”.²⁹

Any efforts the BSA makes to promote positive coverage of Maori, and other minority groups in New Zealand, must be within its legislative reach, which is bordered at one end by the Bill of Rights and at the other by the Broadcasting Act.

Even if the BSA were convinced that introducing new standards would be the most effective way to protect Maori culture and worldviews from unfairly negative and inaccurate portrayal, it could not do so without changes to its current legislation.

5.2 Other Jurisdictions

Maori are not alone in their dissatisfaction with the mainstream media’s portrayal. Ethnic and other visible minority groups (including gay and lesbian groups, and people with disabilities) in the UK, Australia, Canada, and the US have raised similar concerns about both their portrayal and representation. Indeed, all these jurisdictions have broadcasting codes of practice and journalist codes of ethics that include rules against reporting and portrayal that discriminate against sections of the community, particularly on the basis of race or ethnicity.

For example, Canadian broadcasters are prohibited from programming containing “abusive or unduly discriminatory material or comment” on the basis of race or ethnicity, among other things.³⁰ Australian broadcasters must not air programmes that are “likely to incite or perpetuate hatred against or vilify any person or group on the basis of age, ethnicity, nationality, race, gender, sexual preference, religion or physical or mental disability”.³¹ And British broadcasters are obliged by Ofcom to ensure that “material which may cause offence”, including “discriminatory treatment or language (for example on the grounds of age, disability, gender, race, religion, beliefs and sexual orientation)” is justified by the context.³²

²⁹ As cited by Media Research Team, *The Portrayal of Maori and Te Ao Maori*, 2005, p57.

³⁰ Code of Ethics, Canadian Association of Broadcasters (CAB), Clause 2.

³¹ Commercial Radio Codes of Practice 2004, Clause 1.3(e).

³² Ofcom Code, Harm and Offence, Rule 2.3.

There is widespread acceptance of the need for such provisions among both broadcasters and regulators. For example, the BBC's editorial guidelines sets out the media organisation's commitment to:

reflect fully and fairly all of the United Kingdom's people and cultures in our services. Content may reflect the prejudice and disadvantage which exist in our society but we should not perpetuate it. We should avoid offensive or stereotypical assumptions and people should only be described in terms of their disability, age, sexual orientation and so on when clearly editorially justified.

And, in the words of the Canadian Broadcasting Standards Commission, "Every Canadian, regardless of nationality, is diminished by abusively discriminatory remarks which are aimed at any identifiable group."

But however much regulators may want to promote diversity and cultural understanding on the airwaves, there are limits to the extent to which broadcasting regulation can promote positive coverage of minority groups and prevent the kind of negative portrayal that minority groups find hurtful and offensive. For the BSA, as for most comparable regulators, those limits are defined by the right to freedom of expression on the one hand, and its legislated mandate on the other.

That has led in some jurisdictions to a voluntary approach, in which the broadcasters themselves have developed codes and best practice guidelines relating to the portrayal of indigenous peoples and other minority groups. For example, Australia's public broadcaster, the Australian Broadcasting Corporation (ABC)³³ includes in its Code two specific provisions for indigenous programmes and the avoidance of stereotypes:

3.3 Indigenous Programs. Program makers and journalists should respect Aboriginal and Torres Strait Islander cultures. Particular care should be exercised in the coverage of traditional cultural practices such as the naming or depicting of the deceased.

3.4 Avoidance of Stereotypes. Programs should not promote or endorse inaccurate, demeaning or discriminatory stereotypes. Programs will take care to acknowledge the diverse range of roles now performed by women and men. Irrelevant references to physical characteristics, marital status or parental status will be avoided. In programs using experts, interviewees and other talent to present opinions, program makers should ensure a gender balance of commentators and experts where possible.

Similarly, Australia's independent national broadcaster, SBS, which calls itself the "voice and vision of multicultural Australia", deals extensively in its Codes of Practice with issues such as Prejudice, Racism and Discrimination, Indigenous Australians and Language and Diversity.³⁴ It has also issued guidelines³⁵ setting out six principles which programme makers, producers and journalists should follow when making or producing programmes relating to indigenous Australians, including the need to "be

³³ ABC Code of Practice (<http://www.abc.net.au/corp/pubs/codeprac04.htm>). The ABC operates under the Australian Broadcasting Act, 1983. Both ABC and SBS have their own legislation from which they have developed codes separate from those of other Australian broadcasters.

³⁴ SBS Codes of Practice 2006 (<http://www20.sbs.com.au/sbscorporate/index.php?id=1065>).

³⁵ The Greater Perspective, 1997 (www20.sbs.com.au/news/media/4165greater_perspective.pdf).

aware of and challenge their own prejudices, stereotyped beliefs and perceptions about Indigenous Australians”.

Australia’s commercial television broadcasters have also developed specific Advisory Notes intended to provide guidance to reporters and programme makers on *The Portrayal of Cultural Diversity* and *The Portrayal of Aboriginal and Torres Strait Islander Peoples*. These provide, for example, that:

In reporting or portraying events or situations concerning Indigenous peoples, you should be conscious of your own preconceptions, avoid stereotyping, and be aware of the cultural norms and experiences of Indigenous peoples.

And...

Balanced portrayal is particularly important when the reports or programmes deal with negative aspects of the Aboriginal and Torres Strait Islander peoples’ lives. Descriptions of problems should, where possible, be balanced by details of efforts being made by the people themselves to resolve them, and should provide an opportunity for the person or group concerned to comment on the issue.³⁶

All of these provisions go further than New Zealand’s current broadcasting codes of practice.

The Canadian Experience

The Canadian approach may provide the most useful template for New Zealand, particularly as an example of how the broadcasting industry has taken ownership of the challenges of the portrayal of cultural diversity, and determined from within how best to effect change and to hold its members to account.

When Canada amended its Broadcasting Act in 1991, it included provisions to ensure the broadcasting system reflected Canada’s racial and cultural diversity. In addition, the Act stressed that employment practices within the industry should reflect the diversity of Canada’s population. (A 2000 study by Quebec’s Laval University found that 97.3 percent of Canadian journalists across all media were white.)³⁷

The 1991 Act says Canada’s broadcasting system should, “*through its programming and employment opportunities, serve and reflect the circumstances and aspirations of Canadians – including equal rights, the linguistic duality and multicultural and multiracial nature of Canadian society, and the special place of aboriginal peoples within that society*”.

The Act is administered by the Canadian Radio-television and Telecommunications Commission (the Commission), which has developed an Ethnic Broadcasting Policy that “aims to embrace and promote Canada’s many cultural and ethnic groups. It also aims to provide minority groups with equal access to all forms of broadcasting”.

In its 1999 Television Policy, the Commission told all television licensees that it would expect them to “*make specific commitments to initiatives designed to ensure that they*

³⁶ Federation of Australian Commercial Television Stations, *Advisory Notes to the Commercial Television Industry Code of Practice* 1994 (www20.sbs.com.au/news/media/4165greater_perspective.pdf)

³⁷ Cited by Media Awareness Network in *Media Portrayals of Ethnic and Visible Minorities*, 2004, http://diversity.commedia.net.gr/files/more/article/HOW_THE_MEDIA_PORTRAY_www.media-awareness.doc.

contribute to a system that more accurately reflects the presence of cultural and racial minorities and Aboriginal peoples in the communities they serve”.

It added that, “Licensees are expected to ensure that the on-screen portrayal of all minority groups is accurate, fair and non-stereotypical”.

The Commission said the Canadian television system “*should be a mirror in which all Canadians can see themselves. It should be one in which producers, writers, technicians, and artists from different cultural and social perspectives have the opportunity to create a variety of programming and to develop their skills*”.³⁸

In 2001, the Commission asked the Canadian Association of Broadcasters (CAB) to coordinate an industry task force to look at how television portrays cultural diversity. The CAB came up with a comprehensive Cultural Diversity Action Plan that included a strategy for future research, promising quantitative data on the degree of cultural diversity in programming, and qualitative analysis of how viewers perceive and experience the presence and portrayal of minorities, including Aboriginal people.

The task force also committed the industry to putting together a list of “best practices” for minority portrayals, communicating the findings to the industry and monitoring improvements by broadcasters across the country.³⁹

Since then the CAB has developed voluntary industry guidelines on portraying ethnic and visible minorities which require its members to ensure accurate portrayal and reflection of indigenous and other ethnic groups, avoid abusive content, present a balance of perspectives, and be sensitive to material that may be potentially stereotypical. The guidelines also require that broadcasters’ commitment to cultural diversity be reflected in their hiring and training practices.

Although voluntary, the guidelines carry some force since the Commission can limit or deny a broadcaster’s licence if it fails to comply. The guidelines are overseen by the Canadian Broadcast Standards Council (CBSC), an industry-regulated body which was formed by the CAB to hear complaints about programming content. Most complaints are resolved by the CBSC at the local level, through mediation between the broadcaster and complainant, but complainants can also ask the CBSC to decide whether a broadcast has breached the guidelines, or refer their complaint to the Commission for a ruling.

It will take some time to assess the success of these initiatives but the fact that they have been designed and driven by the broadcasting industry, which had acknowledged the serious issues of minority portrayal in the media after conducting its own research, must enhance the chances of bringing about real change. In its 2004 report *Reflecting Canadians: Best Practices for Cultural Diversity in Private Television*, the industry Task Force for Cultural Diversity in Television emphasized that:

it neither supports nor recommends the establishment of regulatory targets or quotas in order to rectify problem areas in the reflection of cultural diversity on Canadian television.

³⁸ (*Public Notice 1999-97, Building on Success: A Policy Framework for Canadian Television*), cited in *Reflecting Canadians: Best Practices for Cultural Diversity in Private Television* July 2004. A report by the Task Force for Cultural Diversity in Television (p8-9) <http://www.cab-acr.ca/english/social/diversity/taskforce/report.shtm>).

³⁹ *Reflecting Canadians: Best Practices for Cultural Diversity in Private Television* July 2004. A report by the Task Force for Cultural Diversity in Television

Targets or quotas that are imposed from above, rather than designed and implemented from the ground up on an internal basis, are not an effective means of bringing about change.

The reality is that effectively changing and improving the dynamic of cultural diversity on Canadian television requires deep, long-term commitment. Imposed targets provide at best an artificial band-aid, and as a result cannot bring about effective, lasting solutions.

5.3 Improving the Picture

Improving the portrayal of Maori society and te ao Maori in the mainstream media requires a multi-pronged approach.

The problem, as noted in Section 3 above, can be boiled down to two broad issues:

- Negative, inaccurate and stereotypical portrayal of Maori and Maori culture in mainstream broadcasting; and
- the invisibility or absence of Maori people, culture and issues from mainstream media.

The two are connected. Stereotypical and negative portrayal is more damaging if there is little other coverage to provide a more balanced picture. As an Ofcom guidance note on discrimination states:⁴⁰

*There is a relationship between **representation** – the presence and inclusion of a diverse range of people on screen – and **portrayal** – the roles involved and the way that minority groups are presented in programmes. In standards regulation, the latter is assessed by **context** (as defined in the Code).*

Research suggests that viewers and listeners appreciate programmes that are representative of the diverse society in which they live. If there is an under representation, the use of stereotypes and caricatures or the discussion of difficult or controversial issues involving that community may be seen as offensive in that it is viewed as creating a false impression of that minority

The BSA has no authority to influence representation; our remit is confined to issues concerning portrayal: whether that portrayal is fair, accurate, balanced; and whether it gives rise to denigration or discrimination.

Our mandate does not extend to the underlying causes, the factors which contribute to a broadcast environment in which fair and informed coverage of Maori and te ao Maori continue to be problematic.

⁴⁰ Guidance Notes, Issue Eight 27 May 2008: *Discriminatory treatment or language (for example, matters relating to age, disability, gender, race, religion and sexual orientation).*

As noted earlier in this paper, that environment is still largely ethnocentric and monocultural. Although newsrooms have become more diverse in recent years, Maori journalists are still under-represented in the mainstream media, particularly in positions of authority. As well, there continues to be too little knowledge and understanding of Maori society and culture, even of New Zealand history, among the country's journalists.

This suggests that part of the fix lies in the recruitment of more Maori journalists, and education and training to ensure that all journalists are sufficiently well-versed in tikanga and New Zealand history to handle Maori stories competently.

Although outside the BSA's jurisdiction, there is no doubt that these factors impact on broadcasting standards, and, by perpetuating misunderstanding and disadvantage for Maori – consequences felt by other visible ethnic minority groups in New Zealand – they also contribute to a less cohesive society.

As we have noted earlier, the current Broadcasting Act limits the BSA's ability to frame new broadcasting standards in order to promote and protect Maori culture and worldviews. The Canadian experience, where broadcasters have taken responsibility for setting and implementing a course of action, including developing "best practices" for the portrayal of minority groups, offers perhaps the best way forward, but it is noted that the foundation for this strategy was laid with changes to Canada's Broadcasting Act in 1991.

Absent a similar change here, the BSA may still have a role to play in persuading broadcasters to voluntarily agree to guidelines which, while carrying no legal force, can still go some way to raising awareness and changing attitudes among broadcasters.

Clearly, there is more that could be done. The question for broadcasters and those who care about broadcasting in New Zealand is whether that change should be the result of legislative change or a voluntary move from within the industry to examine itself and seek ways to improve the picture for Maori – and, indeed, for all New Zealanders.