

Controversial Issues - Viewpoints (Balance) as a Broadcasting Standard in Television

Background

Section 4(1)(d) of the Broadcasting Act 1989 requires broadcasters to maintain standards consistent with 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.

Prior to 1 July 2009, the relevant standard was Standard 4 (balance), and it was worded as follows:

Standard 4 Balance (in force until 30 June 2009)

In the preparation and presentation of news, current affairs and factual programmes, broadcasters are responsible for maintaining standards consistent with 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.

Guidelines

- 4a Programmes which deal with political matters, current affairs, and questions of a controversial nature, must show balance and impartiality.*
- 4b No set formula can be advanced for the allocation of time to interested parties on controversial public issues. Broadcasters should aim to present all significant sides in as fair a way as possible, it being acknowledged that this can only be done by judging each case on its merits.*
- 4c Factual programmes, and programmes shown which approach a topic from a particular or personal perspective (for example, authorial documentaries and those shown on access television), may not be required to observe to the letter the requirements of Standard 4.*

The new Standard 4 (controversial issues – viewpoints) came into effect on 1 July 2009 after a review of the Free-to-Air Television Code of Broadcasting Practice. The standard was given a new heading and the guideline information was simplified, as follows:

Standard 4 Controversial Issues – Viewpoints (in force since 1 July 2009)

When discussing controversial issues of public importance in news, current affairs or factual programmes, broadcasters should make reasonable efforts, or give reasonable opportunities, to present significant points of view either in the same programme or in other programmes within the period of current interest.

Guidelines

- 4a *No set formula can be advanced for the allocation of time to interested parties on controversial issues of public importance. Significant viewpoints should be presented fairly in the context of the programme. This can only be done by judging each case on its merits.*
- 4b *The assessment of whether a reasonable range of views has been presented takes account of some or all of the following:*
- *the programme introduction;*
 - *whether the programme approaches a topic from a particular perspective (e.g. authorial documentaries, public access and advocacy programmes);*
 - *whether viewers could reasonably be expected to be aware of views expressed in other coverage.*

The purpose of this Practice Note is to provide guidance to complainants and broadcasters about the way these standards have been interpreted by the BSA with respect to television programmes.

Comment

General

The controversial issues/balance standard only applies to news, current affairs and factual programmes.

It is intended to ensure that audiences are presented with all significant viewpoints when controversial issues of public importance are discussed, to enable them to arrive at an informed and reasoned opinion (*Rt Hon Helen Clark et al and CanWest TVWorks, 2003-055; Commerce Commission and TVWorks, 2008-014*).¹

The objective of this standard – a well-informed public – is of vital importance to the operation of a free and democratic society.

The BSA takes a common-sense approach to this standard. It acknowledges the practical reality of broadcasting that programmes cannot be perfectly balanced.

While there is an overriding obligation to provide balance, it would be unrealistic to expect that every current affairs or factual programme will be mathematically balanced, and every perspective covered.

What is important is that the viewing public is presented with competing arguments on matters of importance, in as fair a way as possible.

In determining whether programmes breach this standard, the BSA takes particular note of the way in which a programme or item is presented (did it purport to be a balanced examination of an issue, or was it clearly signalled as a personal perspective, or narrowly focused on one

¹ Decisions from 1995 can be viewed on the BSA website www.bsa.govt.nz

aspect of a larger, complex debate?); the type of programme (if factual, was it presented as a documentary, a travelogue, or an entertaining reality programme?); and the nature of the discussion (was it a serious examination of an issue, or was the issue raised in a brief, humorous or peripheral way?).

The question for the BSA is how viewers would reasonably have perceived or understood the programme in question, and whether they were likely to have been deceived or misinformed by the omission or treatment of a significant perspective.

Standard only applies to news, current affairs and “factual programmes”

Programmes which are wholly opinion-based and are clearly presented as such – for example, religious sermons – are not expected to meet the requirements of this standard (e.g. *Banks et al and TVNZ*, 2003-141).

In *ACC and TVNZ* (2006-126), which involved an accuracy complaint, the BSA defined “factual programmes” as being “those which present themselves, and are reasonably understood by the audience, to be authoritative sources of information”. It said that “the important criterion is whether a reasonable viewer or listener is entitled to expect that the information given in the programme will be truthful and authoritative, and not just opinion or hyperbole.”

What is a "controversial issue of public importance"?

The requirement to present significant perspectives only applies to programmes which discuss “controversial issues of public importance”. There are two elements to this concept: first, the issue must be of “public importance” and, second, it must be “controversial”.

The BSA has typically defined an issue of public importance as something that would have a “significant potential impact on, or be of concern to, members of the New Zealand public” (*Powell and CanWest TVWorks*, 2005-125).

A controversial issue will be one which has topical currency and excites conflicting opinion or about which there has been ongoing public debate (e.g. *Dewe and TVWorks*, 2008-076; *PHARMAC and CanWest TVWorks*, 2006-127).

In most cases, human interest or personal stories will not be considered controversial issues of public importance (e.g. *Egg Producers Federation of NZ Inc and TVWorks*, 2009-053; *Armstrong and Schaab and TVNZ*, 2003-160). But if a personal story is used to frame a larger debate, it may be regarded as discussing a controversial issue of public importance (e.g. *Ministry of Health and CanWest TVWorks*, 2007-012; *Humanity Publishing Society and Catholic Communications and TV3 Network Services*, 1995-112).

The following issues were found to be controversial issues of public importance in television programmes:

- whether the actions of the police and the Armed Offenders Squad were reasonable on the day of a fatal shooting (*Kenny and TVNZ*, 2009-024)
- whether judges in New Zealand should be handing down longer sentences (*Brooking and TVNZ*, 2009-012)

- why the Minister of Health had not made a decision on an application for proposed pig cell trials for diabetes sufferers (*Cunliffe and TVNZ*, 2008-097)
- whether the Commerce Commission had brought an unwarranted prosecution against a company allegedly making false representations about a product it was selling in the New Zealand market (*Commerce Commission and TVWorks*, 2008-014)
- an examination of the differences in breast cancer treatment in Australia and New Zealand, and whether PHARMAC should fund a drug called Herceptin (*PHARMAC and CanWest TVWorks*, 2006-127).

The following issues were found not to be controversial issues of public importance in television programmes:

- the rating of products or the evaluation of services provided by a particular business (*Green Cabs and TVWorks*, 2009-071)
- concerns about one farming couple's alleged practice of allowing their cattle to graze in a river (*Riddell and TVWorks*, 2009-038)
- one woman's personal experience with adopting ex-battery hens (*Egg Producers Federation and TVWorks*, 2009-053)
- poll results showing an increase in support for New Zealand becoming a republic (*Ryan and TVNZ*, 2009-022)
- one couple's experience of being banned from Samoa (*Lubinska and Rowland and TVNZ*, 2008-046)

What is a "discussion" of a controversial issue of public importance?

The BSA has found that the controversial issues/balance standard will not apply where issues are raised in a brief, humorous or peripheral way, and so are not "discussed" (e.g. *Egg Producers Federation and TVWorks*, 2009-053; *Young and TVNZ*, 2009-001; *Seymour and TVNZ*, 2007-101; *CTFA and CanWest TVWorks*, 2006-100).

While a controversial issue of public importance may be touched on during a programme, this will not necessarily amount to a "discussion" for the purposes of the standard unless the programme goes on to discuss the issue in more depth (e.g. *Saxe and TVNZ*, 2009-165). Further, if an issue was once controversial, but over time a position has been generally accepted (e.g. smoking has harmful effects) or it is no longer a controversial issue of current interest, the presentation of significant viewpoints will not be required (e.g. *Tobacco Institute and TVNZ*, 2000-036; *Boyce and TVNZ*, 2006-121).

A programme or news item that simply reports information about a controversial issue of public importance, for example, where there has been a newsworthy development in an ongoing controversy, is not considered to be a discussion requiring balancing perspectives (e.g. *Grieve and TVNZ*, 2009-003).

The BSA has distinguished between programmes which purport to present a serious and even-handed examination of an issue – and so are subject to the controversial issues/balance standard – and those which are unambiguously opinion-based (e.g. *Bennachie and TVWorks*, 2008-094).

The following television programmes were found not to have "discussed" a controversial issue of public importance:

- a news item providing an update on the current status of the future roading options for Wellington (*Williams and TVNZ*, 2009-057)
- a news item concerning the release of previously suppressed evidence from the re-trial of David Bain (*Halliwel and TVNZ*, 2009-091)
- presenters' banter regarding the Pope's recent activities (*Clancy and TVNZ*, 2008-042)
- a human interest piece that involved a reporter accompanying a particular group of duck hunters on private property for their annual shooting excursion (*Cotsilinis et al and TVNZ*, 2009-069)
- a hidden camera trial of six taxi companies in Auckland (*Green Cabs and TVWorks*, 2009-071).

Significant viewpoints

The controversial issues/balance standard states that broadcasters must make reasonable efforts, or give reasonable opportunities, to present "significant points of view" on the controversial issue under discussion.

Determining which viewpoints are "significant" depends on the focus of a particular programme and the way in which the controversial issue of public importance has been framed – in other words, a significant viewpoint is one which is essential to the audience's ability to reach a full and informed view of the information presented (e.g. *Ministry of Health and CanWest TVWorks*, 2007-012).

A programme which is narrowly focused on an aspect of a wider controversial issue of public importance may not be required to present the full range of competing viewpoints on the wider issue. For example, in *Cronin and CanWest TVWorks* (2004-140) the BSA considered that the focus of the programme had been clearly presented as the motivation of those who marched on a hikoi to protest government legislation on the seabed and foreshore. Given its legitimate focus on the hikoi participants, the BSA held that it was sufficient for the programme to acknowledge the alternative perspectives on the wider debate.

As noted in *The Auckland Jewish Council et al and TVNZ* (2003-028), programmes that explore an issue from a particular perspective are not necessarily unbalanced, as long as significant opposing viewpoints are sufficiently acknowledged.

The BSA has also held that, where an item touches only briefly or superficially on a controversial issue of public importance, it will be sufficient to provide an overview of or acknowledge the significant viewpoints involved (e.g. *Animal Rights Legal Advocacy Network Inc and TVWorks*, 2007-134).

The Authority found the following to be "significant points of view":

- input from the Institute of Environmental Science Research responding to concerns about the integrity, accuracy and validity of a dioxin serum study it conducted on the residents of Paritutu (*Ministry of Health and CanWest TVWorks*, 2007-012)
- a judge's findings that were in direct conflict with the information being put forward by an interviewee whose actions were the main focus of an item (*Commerce Commission and TVWorks*, 2008-014).

The following were found not to be "significant points of view":

- the opinion of the New Zealand Big Game Fishing Council on the science surrounding whether fish feel pain (*Blue Water Marine and CanWest TVWorks*, 2004-220)
- the views of the Catholic Church in relation to the Civil Union Bill which gave legal recognition to same-sex couples (*Trimble and Shierlaw and CanWest TVWorks*, 2004-175).

Reasonable efforts and reasonable opportunities

The question of whether a broadcaster has made “reasonable efforts” or given “reasonable opportunities” to present significant points of view has been discussed in television complaints where an individual has been invited, but has refused, to participate in a programme.

In some cases, a decision by an interested party not to participate in a programme may not absolve a broadcaster of the responsibility for ensuring balance (e.g. *Cunliffe and TVNZ*, 2008-097), particularly where balancing information is reasonably accessible through other sources. The BSA has noted that significant points of view can be provided:

- by the host of a programme explaining the other points of view, or adopting a “devil’s advocate” approach (*Kiro and CanWest TVWorks*, 2006-105)
- by the presentation of information gathered through the broadcaster’s own research (*Smith and TV3 Network Services*, 2003-006)
- by acknowledging the existence of other significant perspectives (*Butler et al and TVNZ*, 2009-063).

Where the participation of a particular individual or organisation is essential to achieving balance, the BSA will assess the reasonableness of the broadcaster’s efforts on the circumstances of each case. Generally, the more serious the issue and the potential consequences for the individual or organisation involved, the more strenuous and persistent the efforts of the broadcaster must be. The BSA will need to be satisfied that genuine attempts have been made to contact the relevant person or people (e.g. *Ministry of Health and CanWest TVWorks*, 2007-012)

An assessment of “reasonable efforts” will also take into account the information that a participant is given when a request is made for an interview. It is essential that the person whose view is being sought is fully informed of the issue to which he or she is being asked to respond.

Guideline 4a states that no set formula can be advanced for the allocation of time to interested parties on controversial issues of public importance. The Authority has said in previous decisions (e.g. *NZFGC and TVWorks*, 2007-126) that balance is not achieved by the “stopwatch”, meaning that the time given to each competing party or viewpoint does not have to be mathematically balanced. However, the Authority will take into account the way in which a programme’s presentation of an issue may give more credence to one side of a debate (e.g. *PHARMAC and CanWest TVWorks*, 2006-127).

Guideline 4b is aimed at programmes that approach a controversial issue of public importance from a particular perspective, such as authorial documentaries or advocacy programmes. These types of programmes do not require the same degree of balance as programmes which purport to provide an objective examination of a particular issue.

For example in *Anderson et al and TVNZ* (2003-028), the Authority noted that while there is an overriding obligation to provide balance, absolute neutrality on every issue is not achievable. While the programme was not “mathematically” balanced, the Authority was satisfied that adequate opportunity had been given to the presentation of opposing viewpoints.

The Authority has set out the requirements for balance in authorial documentaries in *The Auckland Jewish Council et al and TVNZ* (2003-028) and *Anderson and TVNZ* (2004-224).

The period of current interest

If a broadcaster has not complied with the requirements of Standard 4 within a particular programme, the standard still allows for significant viewpoints to be presented “within the period of current interest”. This acknowledges that it is not always possible for broadcasters to canvass all sides of a controversial issue of public importance within one programme.

The length of the period of current interest depends very much on the issue under discussion. Long running “moral” issues, such as euthanasia or abortion, tend to have an ongoing period of current interest. It is accepted that such controversies are open-ended, that the broad issues in the debate are well known to the public, and that different perspectives from both sides of the debate will be offered from time to time.

On the other hand, urgent matters will typically shorten the period of current interest. This includes situations where allegations of a serious nature are made or the issue discussed will only be topical for a short period of time (e.g. *PHARMAC and CanWest TVWorks*, 2006-127; *Broughton and Rikys and TVNZ*, 2009-097).

Decisions in which the BSA has had to consider whether significant perspectives were provided within the period of current interest include:

- whether the process of choosing a Māori flag to fly on the Auckland Harbour Bridge on Waitangi Day was a waste of time and money (*Broughton and Rikys and TVNZ*, 2009-097)
- a discussion concerning the proposed mandatory fortification of bread with folic acid and whether there were health risks involved (*NZORD and TVNZ*, 2009-131)
- allegations that during his time as a teacher, Cabinet Minister David Benson-Pope was “sleazy” and made female students stand outside in their nighties as punishment at a school camp (*Benson-Pope and TVNZ*, 2006-023)
- a news item about the Israeli-Palestinian conflict that focused on two specific Israeli attacks in Gaza (*Hart and TVNZ*, 2003-099).

Recommended further reading:

Significant Viewpoints: Broadcasters Discuss Balance (Proceedings of a symposium convened by the Broadcasting Standards Authority, Auckland, May 2006), Broadcasting Standards Authority. Available for download through the “Publications” link on the BSA’s website www.bsa.govt.nz

Media Minefield: A Journalists Guide to Media Regulation in New Zealand, Steven Price, New Zealand Journalists Training Organisation, Wellington, 2007.

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Disclaimer: Nothing in this Practice Note binds the BSA in determining the outcome of any future complaint. Each complaint is determined on the particular facts surrounding a broadcast.