

Denigration and Discrimination as Broadcasting Standards

Background

The guidelines to both the Radio and the Free-to-Air Television Codes prohibit encouraging the denigration of, or discrimination against, sections of the community. These guidelines read:

Free to Air Television Code: Guideline 6g

Broadcasters should avoid portraying persons in programmes in a manner that encourages denigration of, or discrimination against, sections of the community on account of sex, sexual orientation, race, age, disability, or occupational status, or as a consequence of legitimate expression of religious, cultural or political beliefs. This requirement is not intended to prevent the broadcast of material which is:

- i) factual, or
- ii) the expression of genuinely held opinion in news, current affairs or other factual programmes, or
- iii) in the legitimate context of a dramatic, humorous or satirical work.

Radio Code: Guideline 7a

Broadcasters will not portray people in a manner which encourages denigration of or discrimination against any section of the community on account of gender, race, age, disability, occupational status, sexual orientation; or as the consequence of legitimate expression of religious, cultural or political beliefs. This requirement does not extend to prevent the broadcast of material which is:

- i) factual, or
- ii) a genuine expression of serious comment, analysis or opinion, or
- iii) by way of legitimate humour or satire.

Comment

Denigration

The BSA has consistently defined denigration to mean the blackening of the reputation of a class of people. The use of this definition goes back at least as far as 1992, and has been followed in numerous subsequent decisions ([2005-112](#)).¹

The BSA has also consistently stated that in light of the right to free expression contained in s14 of the New Zealand Bill of Rights Act, a high threshold must be crossed before a breach of the standard will be found.

¹ Cited by year and the number of the complaint.

In practice, the BSA has found that a broadcast encourages denigration when it:

- contains a high level of invective directed against a section of the community (2004-193)
- portrays a section of the community as inherently inferior, or as having inherent negative characteristics (2004-129)
- portrays a section of the community in a highly offensive way (2004-104)
- encourages negative racist stereotypes (1996-133, 1999-193).
- amounts to hate speech or vitriol (2004-001).

Comments will not breach the prohibition against denigration simply because they are critical of a particular group, because they offend people, or because they are rude; the BSA recognises that allowing the free and frank expression of a wide range of views is a necessary part of living in a democracy. It is only where the expression of these views goes too far that the guideline will be found to have been breached.

In assessing whether a broadcast has gone too far, the BSA will consider a number of factors, including:

- the language used
- the tone of the person making the comments
- the forum in which the comments were made; talkback radio, for example, is recognised as a “robust” forum
- whether the comments appeared intended to be taken seriously, or whether they were clearly exaggerated hyperbole
- whether the comments were repeated or sustained
- whether the comments made a legitimate contribution to a wider debate, or were gratuitous and calculated to hurt or offend.

Broadcasts that the BSA has concluded have gone too far include:

- a Muslim cleric attacking homosexuality in a television lecture, making statements that homosexuals are “sick” and “not natural”, “AIDS is caused by the filthy practices of homosexuals”, “the Islamic position on homosexuality is death” and “Muslims are going to have to take a stand [against homosexuals] and it’s not enough to call names” (2004-001)
- a talkback radio host mounting a sustained attack against the Exclusive Brethren, labelling them “not normal people”, “as mad as hatters, not very bright people as well”, and probable child abusers (2004-193)
- a current affairs item that implied that grossly dysfunctional attitudes to child sexual abuse ran right through Sri Lankan society (2004-129)
- a radio host who suggested that some women who were raped had brought it upon themselves (2004-104)
- a very unpleasant joke directed specifically at Pakistanis (1999-193)
- a radio host reading from a letter which alluded to racist stereotypes of Africans (1996-133).

Broadcasts which the BSA has concluded did not reach the high threshold required to breach the guideline, include:

- a radio host labelling people with mental illness “loco and loopy” ([2006-030](#))
- the portrayal of scantily clad dancers in music videos ([2005-062](#))
- a guest on a radio show suggesting, tongue in cheek, that women who suffer domestic violence deserve to be hit ([2004-159](#))
- a performer on a comedy programme describing disabled athletes as “munted” ([2004-198](#))
- a sports presenter’s reference to “filthy Dutchmen” ([2006-075](#))
- the use of “gay” as a derogatory term to mean “lame” or “stupid” ([2006-069](#))
- a disrespectful reference to Christian practices ([2005-001](#)).

The guidelines state that the prohibition against denigration is not intended to prevent the broadcast of material which is factual, a genuine expression of opinion, or which forms part of a dramatic, satirical or humorous work.

A programme’s overt satirical or humorous intent will often be a key factor for the Authority. The BSA did not uphold complaints about the following programmes:

- a programme satirising the media’s generally negative portrayal of Islam in which the host equated Islam with terrorism ([2004-152](#))
- a cartoon lampooning the Catholic Church ([2005-112](#))
- a joke saying that Samoan women had children only so as to be able to claim additional welfare benefits ([2004-187](#))
- a clip in a current affairs item lampooning Jesus and Christianity ([2006-012](#))
- radio hosts telling jokes about Chinese people’s English pronunciation ([1998-002](#)).

Recent decisions of the Authority indicate that the protection afforded to factual material, opinion, and dramatic, satirical and humorous works is not unlimited. Where a broadcast amounts to vitriol or hate speech, the BSA has found that it encourages denigration ([2004-001](#), [2004-193](#)).

Section of the community

Several BSA decisions limit the interpretation of “section of the community”. In the context of the denigration guideline, the phrase does not include:

- individuals, even if they are attacked on the grounds listed in the guideline; the treatment of an individual is a matter of fairness, not denigration
- corporate entities ([2006-056](#))
- recreational groups ([2004-021](#)).

A “section of the community” based on “occupational status” extends to protect people of a specific occupation; doctors, for example ([1996-076](#), [2004-135](#)).

Discrimination

The great majority of cases decided by the BSA under these guidelines focus on the denigration aspect, rather than discrimination. For this reason, the Authority is yet to frame definitively its understanding of the discrimination part of the guideline.

Encouraging discrimination means to encourage the different treatment of the members of a particular group, to their detriment.

It is likely that any broadcast that encouraged denigration of an identifiable group would also encourage discrimination. It is possible, however, that a broadcast that does not encourage denigration might nevertheless encourage discrimination if it encourages the different treatment of an identifiable group.

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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.