

Privacy: Interpreting the Broadcasting Standards Authority's Decisions

Michael Stace, Dunmore Press, 1998, 103 pages. Recommended retail price \$19.95. ISBN number 0-86469-333-8 (available from The Federation Press, Sydney)

This slim book provides a useful review of the New Zealand Broadcasting Standards Authority's decisions about privacy between 1990 and 1998. The author is the authority's executive director. The period 1990-1998 covers the authority's development of Privacy Principles for broadcasters and their subsequent interpretation and application.

Section 4(1)(c) of the *Broadcasting Act 1989* (NZ) requires broadcasters to maintain standards which are consistent with the privacy of the individual. Complaints about privacy can be made directly to the authority, which has the power to order a broadcaster to pay compensation of up to NZ\$5,000. In a 1992 Advisory Opinion, the authority set out three privacy principles, based in part on American privacy jurisprudence. The principles cover:

- disclosure of private facts, or public facts which have over time become private again, if the facts released are highly offensive and objectionable to the ordinary person;
- intentional interference with an individual's private affairs or an individual's interest in solitude; and
- defences of disclosure of facts in the public interest and consent of the individual to invasion of privacy.

In 1994, a broadcaster challenged the validity of the principles in the High Court, in particular the adoption of American privacy jurispru-

dence. The High Court upheld the validity of the principles, saying that the legislation gave the authority a role in formulating standards on privacy in broadcasting that was not to be confined by reference to legal principles of privacy as developed by courts in New Zealand.

In 1996, a further two principles were added in response to complaints involving radio broadcasters dealing with privacy disputes on air and disclosing details such as the names, addresses and telephone numbers of individuals on air.

The author adopts a linear framework to trace the progression of the authority's interpretation of the principles. The early period (1992-93) is described as a period of consolidation following the laying down of the principles. Decisions during this period explored issues of identification, what was a private place and what disclosures amounted to invasion of privacy, but there was little exploration of the defences of consent and public interest. Cases in this early period also raised the issue of the overlap between privacy and dealing fairly with people, for example, as in the practice of "door stepping". Interestingly, more complaints related to radio broadcasters than television broadcasters. The author suggests that the reason may be the greater interactivity of radio with listeners.

Between 1994-96, there were many complaints about disclosure of listeners' names and abuse of individuals on air. Again, this raised the issue of whether such complaints were about privacy or fairness. Complainants did not always distinguish between privacy, which is concerned with disclosure of facts, and abuse, which is usually a matter of opinion and therefore more relevant to fairness. The authority encouraged broadcast-

ers to assess privacy complaints on both grounds so that complainants would not be disadvantaged. Two new privacy principles were added, covering disclosure of private facts to abuse, denigrate or ridicule personally an identifiable person, and disclosure without consent of the name, address or telephone number of an identifiable person, subject to a public interest defence.

Throughout 1997 and 1998, there was a marked increase in complaints about privacy. This was attributed to audiences' heightened awareness of privacy, and the growing number of reality-based programs raising concerns about breach of privacy. In a 1998 decision involving the identification of a child, the authority signalled its intention to develop a principle dealing with the privacy interests of children, similar to one laid down by the Broadcasting Standards Commission (UK), even though few complaints since have raised this issue.

Although the chronological approach to discussion of the authority's decisions is somewhat dull, this book highlights the value of gathering together, analysing and publishing decisions of this type. The reader gets a sense of the ongoing development and interpretation of the privacy principles; the formation of a body of precedent; the application of the principles to different fact situations; and trends in complaints and the situations giving rise to them.

This is a useful resource for both students and practitioners exploring the balance between the public's right to know and the individual's right to privacy and the application of that analysis to practical situations.

Jenny Mullaly