The 35th report of the

2007

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NEW ZEALAND PRESS COUNCIL

Tourism and Travel House, Ground Floor, 79 Boulcott Street, Wellington
P O Box 10-879, The Terrace, Wellington
Tel.04 473 5220 Fax 04 471 1785
Email: presscouncil@asa.co.nz
Website: www.presscouncil.org.nz

OFFICERS FOR 2007

Barry Paterson, CNZM, OBE, QC	Independent Chairman, Retired High Court Judge
Mary Major	Secretary

Representing the public:

Aroha Beck	Lawyer and mother, Upper Hutt
Ruth Buddicom	Barrister, Christchurch
Keith Lees	Teacher, Christchurch
Denis McLean	Retired diplomat, Wellington
Lynn Scott	Company director, Wellington

Representing the Newspaper Publishers Association (NPA)

John Gardner	Assistant editor *New Zealand Herald*, Auckland
Clive Lind	Editorial development manager FairfaxNZ, Wellington

Representing Magazine Publishers

Kate Coughlan	Editor, *NZ Life & Leisure* (from April)

Representing the NZ Engineering, Printing and Manufacturing Union (Media Division)

Penny Harding	Freelance journalist
Alan Samson	Lecturer, Massey University School of Journalism

Chairman's Foreword

The Council considered 40 complaints during the year and upheld in full or part 12 of them. A comparative table on page 37 of this report gives details of the disposition of complaints during the year and comparative figures for the three previous years.

As in previous years, the majority of complaints alleged a breach of the principle requiring publications to be guided at all times by accuracy, fairness and balance. There were also complaints about opinion pieces where the Council's policy is that if the article is clearly an opinion piece and the facts upon which the opinion is given are accurately stated, a complaint will generally not be upheld. Similarly, a complaint about photos of Saddam Hussein's execution was not upheld when the Council balanced the proposition that the right to freedom of expression could have been exercised with less graphic pictures less prominently displayed against the argument that the public has the right to see for itself the true horror of such an event and come to its own conclusions. The Council concluded that the public's right to know the whole picture of one of the most momentous events of recent history prevailed.

In another case the Council upheld complaints against a newspaper for its coverage of allegations that bullying at colleges had led to youth suicides. The newspaper had breached accuracy, balance and the principle that editors should have particular care and consideration for reporting on and about children and young people.

There were two cases determined where the local territorial authority had made complaints against the local newspaper. It was evident from both cases that considerable tension can arise, particularly in a regional area, where the local newspaper takes issue with actions of the Council. A newspaper should be free to criticise and comment on the affairs of a local authority provided that its criticism is based on established facts.

In another case, the Council declined to uphold a complaint on the breaching of an embargo. The Council would normally uphold such complaints, but on the facts of this case did not do so.

During the year under review, an independent review of the Council was undertaken by Hon. Sir Ian Barker and Professor Lewis Evans. The Council suggested to its stakeholders that such a review be undertaken and the stakeholders agreed and funded the review. Most industry-led regulatory bodies are subjected to independent reviews at regular intervals. This is good governance and it seemed appropriate to the Council that such a review be undertaken.

At the time of writing, the recommendations made in the Review are under consideration by the Council's stakeholders. Some of the matters raised in the review can be implemented by the Council at this stage but it has considered it appropriate to await the stakeholders' decisions on some of the wider matters referred to in the review.

The review made recommendations under the headings of Function, Independence, Process, and Management.

The New Zealand Press Council 2007: From left, Alan Samson (Wellington); John Gardner (Auckland); Keith Lees (Christchurch); Barry Paterson (Chairman Auckland); Denis McLean (Wellington); Mary Major (Secretary): Lynn Scott (Wellington); Penny Harding (Wellington); Ruth Buddicom (Christchurch); Clive Lind (Wellington); Aroha Beck (Heretaunga). Absent: Kate Coughlan (Auckland).

Barry Paterson, formerly a judge of the High Court, is the independent chairman. The members representing the public are Ms Buddicom, Ms Beck, Ms Scott, Mr McLean and Mr Lees. Mr Lind and Mr Gardner represent the Newspaper Publishers' Association and Ms Coughlan represents magazines on the Council. Ms Harding and Mr Samson are the appointees of the Media Division of the New Zealand Engineering, Printing and Manufacturing Union.

The additional functions suggested are:

(a) promote freedom of expression through a responsible and independent print media and through adherence to high journalistic and editorial standards;
(b) conduct limited research into media freedom issues and utilise its consideration of these issues in its decisions;
(c) sponsor an annual public lecture on a media-related topic and an annual prize of one or more journalism schools;
(d) produce occasional papers on media freedom issues.

The Council is generally in agreement with these recommendations but notes that greater funding would be required before it could extend its functions in the manner suggested.

There are recommendations as to the process, which would reduce the number of submissions made in respect of a complaint, without infringing the principles of natural justice. These would speed up the resolution of complaints and the Council generally endorses them. There was also a suggestion of a "fast-track" complaints committee to handle urgent complaints and this suggestion seems sensible. The Council, in both national and local body elections has, in recent years, appointed such a committee to consider urgent complaints arising during the electioneering period.

The full review is available on the Press Council's website www.presscouncil.org.nz.

During the year, the Council made submissions to select committees on the Electoral Finance Bill, the Land Transport Amendment Bill (No 4) and the Births, Deaths, Marriages and Relationships Registration Amendment Bill. It strongly opposed certain provisions in the Electoral Finance Bill as being an undue restriction on the freedom of expression. Its submissions on the other Bills were in respect of provisions, which in the Council's view had the potential to restrict freedom of expression. It opposed the proposed inability to search the births, deaths and marriages registers and notes that this proposed amendment is not proceeding.

In the foreword to last year's annual report, I noted that Terry Snow, the representative of the Magazine Publishers, had concluded his term on the Board. I paid tribute to Terry in that report and repeat that tribute. He has been replaced on the Council by Kate Coughlan.

The day-to-day running of the Council and the management of it have, as in the past, been efficiently conducted by Mary Major, the Secretary. The Council is greatly indebted to her for her efforts. She is employed on a part-time basis but works well beyond the hours for which she is employed.

Finally, I express my appreciation to the other members of the Council for their dedication and contribution during the year. As noted in last year's foreword, decisions are not always unanimous, but a lack of unanimity at times does not derogate from the manner in which the Council efficiently carries out its tasks.

Official inquiries and the public interest

What is a legitimate role for the press in reporting official inquiries? When things go wrong – by way of accidents, near misses or systemic failures – any organisation can be expected as a matter of course to institute proceedings to determine what happened and why. Government agencies, there to deliver services of all kinds to the public – across the full face of society – have a special responsibility to be open about their operations and about how they propose to rectify procedures if fault is found.

The public obviously has an interest when the effective or safe delivery of public services can be called into question. Major failures in important public systems will accordingly, almost by definition, be seen by the media to be newsworthy. Newspapers see themselves as guardians of the public interest. The press can be expected to work to the principle that the public has a right to know about what comes to light during the course of investigations into apparent breakdowns in systems.

Many government agencies – particularly those responsible for public safety or regulation of safety procedures – might be required under the Statute establishing the role and purposes of the organisation to conduct inquiries when problems arise and to report conclusions to the public. Statutory provisions for such proceedings are likely to lay down rules as to how inquiries should be conducted, including a requirement in certain circumstances to collect evidence *in camera*.

But where does a free press fit into all this? The Official Information Act, 1982, establishes a broad prescription of openness in the conduct of public business. Moreover, Section 14 of the New Zealand Bill of Rights Act 1990, which lays down the freedom to seek, receive and impart information of any kind, clearly authorises the same principle of free access. In the Press Council's view, there can be no doubting that the media have a fundamental right to "seek, receive and impart" information of the kind that is dealt with in official inquiries.

Nevertheless the Official Information Act recognises several good reasons for confidentiality in circumstances relevant to the conduct of official inquiries. For example, it is specified that information may be protected: which was given in confidence; or which, if released would be likely to endanger safety or to prejudice the supply of similar information in the future; or which would be likely otherwise to damage the public interest.

Official inquiries into failures in government systems will have to tease out issues of judgment or incompetence or faults in procedures. Remedial action will usually be needed. Individual officers might have to be disciplined, even sacked; professional qualifications and standards might need reviewing. At the least it can be expected that established practices will be subjected to serious scrutiny.

In many official inquiries, expert testimony or testimony critical of professional behaviour, could be central to an examination of what transpired. Witnesses qualified to offer such testimony might well be reluctant to come forward if they or the views they offer are not to be protected. Opinions that have not been tested against the views

of others, or unprocessed information might give an inaccurate or skewed view of the whole picture.

From all this it is plain that although there is no overriding prescription denying the freedom of the press to investigate and report on information gathered in the course of an official inquiry, there can be good reasons why in some circumstances, such information might be protected.

The Office of Ombudsmen is responsible for adjudication of disputes regarding access to information held by public agencies. That Office's function, however, is not to find fault or attribute blame but to promote openness in government. The Ombudsmen would thus be unlikely to be drawn into adjudication of questions relating to the confidentiality or otherwise of material submitted in evidence to an official inquiry. Without the benefit of systematic research, the Office had no recall of any case similar to that discussed below. Nevertheless the Ombudsmen's Office has an overriding responsibility for the determination of what is in the public interest in making its rulings – not unlike the Press Council.

In a recent case (Case 2010) the Press Council was asked to adjudicate on a complaint against *The Dominion Post* newspaper brought by Maritime New Zealand, the agency responsible, among other roles, for upholding safety standards at sea. The newspaper obtained a leaked copy of a preliminary report of an inquiry into an incident when a Cook Strait ferry rolled so violently that many feared the ship had been in danger of capsizing. This document was clearly marked as a draft, and as private, confidential and preliminary. Regardless, the newspaper published several extracts, which painted an alarming picture of danger to the ship and passengers. Maritime New Zealand complained about the breach of confidentiality, which it maintained compromised its ability to conduct balanced inquiries into incidents of this kind: expert witnesses might in future be unwilling to come forward; confidentiality in the preliminary investigation processes was necessary to encourage free and frank discussion; and full disclosure by witnesses and interested parties was clearly in the public interest. The final report had been less alarmist.

The Press Council saw the issue of public interest from a different perspective. The Council understood the case made by Maritime New Zealand. Nevertheless there was a wider issue to do with the public interest at the heart of this case. Several months had elapsed since the incident; many thousands of people made use of the ferries and had good cause to be concerned about their safety in doing so. Public safety was the paramount issue. The Council by a clear majority (9:1) did not uphold the complaint against publication of material from the preliminary report. It was judged that the conclusions as set down in the preliminary report were of sufficient public interest to override any presumption of confidentiality.

This was an exceptional and unusual case and the Press Council's decision should not be regarded as a setting a precedent. Indeed the Council also ruled (again by a split decision – 6:4) that the newspaper had acted unfairly in failing to make it sufficiently clear to its readers that the report in question was a preliminary, private and confidential draft and subject to possible change.

Many agencies (including the Press Council) circulate preliminary draft reports or

adjudications for consideration by other interested parties so that the widest possible judgment can be applied before final conclusions are reached. Most will be concerned if such first efforts are presented as anything approaching a final judgment. It might be necessary in some circumstances to take extra care to protect such draft documents.

There is clearly tension between the public's broader right to know and the public interest of getting to the root causes of accidents or other systemic failures. Media will often see an interest in publication while government agencies will wish to ensure that the conclusions from any inquiry are based on a balanced and fully informed examination of the issues.

In the Press Council's view, the instinct of newspaper editors to search out information and to make proper use of it in informing and, even, warning the public is fundamental to the freedom of the press. Though government agencies will naturally see the public interest as being served by confidentiality in the conduct of their inquiries, they should be aware that in a free society there is no embargo against press scrutiny. There can be cases where there is a wider public interest at stake. It is – as always – a matter of balance and judgment.

In the public interest versus *of the* public interest

In the public interest... it's a justification for publishing that rightfully rolls off the tongues of journalists performing their proper role in a democracy of seeking truths and passing them on to their audiences. The phrase, enshrined in journalism codes of ethics not just in New Zealand but around the world, is a necessary expression of a responsibility to hold those in power to account. As American journalism educator Melvin Mencher puts it:

> The journalist knows that democracy is healthiest when the public is informed about the activities of captains of industry and chieftains in public office. Only with adequate information can people check those in power … the central purpose of journalism is to tell the truth so that people will have the information to be sovereign.

In its role as watchdog for the public, the press is relentlessly scrutinised and attacked, Mencher reminds us. "Journalists understand that the path of the truth teller is not always smooth, that people are sometimes disturbed by what the journalist tells them."

At its noblest, the "public interest" justification is a wonderful expression of journalistic purpose and courage. It has occasionally, in extreme circumstances, been held to justify breaking the law. It was public interest, for instance, that recently saw *New York Times* reporter Judith Miller spend 85 days in jail for refusing to reveal the identity of a CIA source. Few would argue its use in exposing tyranny should New Zealand ever slip from its democratic path, or in bringing to light significant crime or public peril.

Far more difficult to judge, however, is its expression in cases involving private lives, whether of those in high office, celebrities or ordinary citizens. Can the blanket paparazzi attention of troubled pop singer Britney Spears be justified, for instance? Does some news media's insatiable thirst for celebrity news cross the line? Or do celebrity and power bring an expectation of greater scrutiny?

As far as the law goes in New Zealand, media law expert John Burrows interprets "public interest" as meaning of "public importance". He points out that "public interest" is different from "what the public is interested in", and should be taken as covering matters of public concern. The judgment arising out of celebrity broadcaster Mike Hosking's objection to photographs taken of his twin daughters in a shopping mall included:

The line is to be drawn when the publicity ceases to be the giving of information to which the public is entitled, and becomes a morbid and sensational prying into private lives for its own sake, with which a reasonable member of the public, with decent standards would say that he had no concern. The limitations, in other words, are those of common decency, having due regard to the freedom of the press and its

reasonable leeway to choose what it will tell the public, but also due regard to the feelings of the individual and the harm that will be done to him by the exposure.

But where is the line to be drawn in dealing with people in power, or celebrities before the public as a role model? Which of their behaviours is important or reasonable for the public to know about, which not? As difficult as it is for the courts to make such judgments, how much more difficult for rulings based entirely on ethical considerations, especially when clear definitions are thin on the ground. Australian journalism ethicist Ian Richards refers to the dilemma as, "the uncertain boundary between the public's right to information and the individual's right to privacy".

The British Press Complaints Commission's Code of Practice makes a brave attempt at dealing with the issue. Its Principle 3 reads:

> Everyone is entitled to respect for his or her private and family life, home, health and correspondence. A publication will be expected to justify intrusions into any individual's private life without consent.

It goes on to provide the following:

1. The public interest includes:
   i. Detecting or exposing crime or a serious misdemeanour.
   ii. Protecting public health and safety.
   iii. Preventing the public from being misled by some statement or action of an individual or organisation.

Where public interest is invoked by a news organisation, the Commission requires a full explanation by the editor demonstrating how the public interest was served. In cases involving children, editors must demonstrate an *exceptional* public interest to over-ride the normally paramount interest of the child.

Though not as clearly defined, judgments of the New Zealand and Australian Press Councils give currency to the British interpretation, particularly in stories concerning children and the vulnerable. The New Zealand Press Council's third principle, on privacy, reads:

> Everyone is entitled to privacy of person, space and personal information, and these rights should be respected by publications. Nevertheless the right of privacy should not interfere with publication of matters of public record, or obvious public interest.

Its Principle 5 adds to the mix:

> Editors should have particular care and consideration for reporting on and about children and young people.

The Council's principles also recognise the place of clear public interest in the use of reporter subterfuge. But in a climate of growing awareness of the rights of individuals to choose to stay out of the public eye, it is in the area of privacy that the defence is likely to be increasingly tested. In a recent judgment the New Zealand Press Council upheld a complaint over the naming of a 14-year-old son of a public

figure, for having posted material deemed homophobic on an Internet Bebo website. The judgment included: "The Press Council maintains that a public figure has every right to expect the privacy and self-respect of his or her young children to be protected, especially when there is no demonstrable justification for drawing the young person into the limelight." Recent Australian Press Council judgments have been notable for, like the British, placing the onus on the *newspaper* to justify its infringement of the right of privacy.

Press Council debates on such issues are particularly difficult for the lack of precise boundaries in what is a complex ethical arena. There can be no doubt that the agonising over right and wrong has been just as great for news media practitioners. Some extreme commentators argue that the right of the public to know outweighs an individual's right to privacy in all cases, unless direct physical harm is threatened. Another common call is that those entering into public life surrender their rights to personal privacy. A more reasoned resolution might be that journalists have a duty to report private detail – but only where such detail has relevance to the subject's public performance. This makes decision-making no easier.

Paradoxically, in the context of such turbulent waters, precise, rigid definitions might render decision-making even more problematic. Every case before the Council throws up more grey areas and a different set of variables to ponder. It is also the case, however, that justifications of genuine public interest should be defended with vigour. Stories in true public interest are often controversial which means that, in many such cases, private interests are also affected. Provided legal rules and ethical precepts of fairness, accuracy and balance are met, these will not be the stories for journalists to back down on.

Off-site editing, centralised production and sub-editing

The continuing trend for newspaper and magazine publishers to cut costs by reducing staff and centralising production seems certain to raise questions of editorial control. Recent developments include the tendency of magazines to move away from the practice of each publication having an editor, to the appointment of an editor-in-chief overseeing several titles.

In newspapers there is the accelerating development of shared production centres, sometime in-house but producing pages for newspapers at remote sites or, as in the case of APN newspapers, using contracted-out sub-editing and lay-out services.

These practices are not new. Regional newspapers have for many years in New Zealand and elsewhere been produced and distributed centrally. Community newspapers are often edited by comparatively inexperienced staff and supervision, particularly in production matters, is often in the hands of senior editorial personnel.

But traditionally there was usually a strong and identifiable local editorial presence. The diminution of this influence has consequences.

The Press Council this year indicated the potential difficulties that can occur (Case 2004). The newspaper concerned, *The Oamaru Mail*, published an article linking a local council employee to the conviction of her son on a minor charge.

In response to public reaction, the newspaper's general manager, who is locally based, wrote and had published an apology for publishing the story. The manager also contacted the council and said "I believe it [the article] should never have been published and that our editor made an error of judgment by publishing the story".

In the course of dealing with the complaint, the editor explained he was based in Christchurch and was also the editor of a twice-weekly Christchurch publication. *The Oamaru Mail* sub-editors were based in Christchurch and reporters in Oamaru. But the editor made it clear that he, and not the locally based manager, was responsible for editorial content.

So in this case the editor was unambiguous about where editorial responsibility lay. It seems likely, however, that will be other cases where responsibility is less clear. The convention of "the editor" being totally accountable might need greater definition.

In the case of centralised or outsourced production, the responsibility for pages is typically explicitly defined as being in the hands of the title's editor and pains are taken to spell out that no editorial autonomy is lost. But in practice in the case of shared pages, particularly where editorial content is not locally generated, as in business or foreign news pages, or where deadlines are tight, that oversight might be only nominal.

In the case of larger groups of magazines, for example, the editor-in-chief role carries the risk that the person occupying that chair never sees much of the material for which they are held legally responsible. It can be argued this was always the case for larger single titles where the editor was not, in reality, expected to see every word

published. Nevertheless the implications of the increasing use of such roles do not seem to have been thoroughly examined with regard to accountability.

In small centre newspapers, in particular, reduced local oversight would appear to inevitably bring an increased risk of simple factual errors being overlooked and of offending local sensitivities.

The greater use of centralised production also has consequences for editorial diversity. Although the difficulty of recruiting production staff in small centres is a factor, the aim of these rationalisation processes is efficiency. It is clearly of cost-benefit to maximise the use of shared content. It is also obviously advantageous to standardise lay-out, typography and editorial styles.

Though individual mastheads keep their idiosyncrasies in theory, hard-pressed production staff tend to ignore such niceties so repeatedly that they fall into disuse. 'One size fits all' is a useful economic maxim. This loss of identity might be resented by readers to the publications' long-term cost.

There is no doubt that newspaper and magazine managements are aware of the value of preserving reader loyalty but the cost savings might prove even more tempting. The consequences of the process to the vitality of the media, particularly at a local level, will deserve close attention.

Local authorities and the Press

The Press Council regularly receives complaints from local authorities about the reporting of council affairs in their local newspapers. Their frequency does not necessarily indicate an unhealthy state of affairs. Reasonable tensions between the news media and local government and public institutions are healthy for democracy. At best, they mean newspapers are playing a critical watchdog role reporting the conduct of vital public institutions.

With such complaints, the Press Council's Statement of Principles applies as usual but, as the Council has reported in past decisions, public figures have to withstand scrutiny at a higher level. That means public figures and the institutions themselves might have to endure comments they regard as hurtful for the larger good of a better informed public. Nevertheless, reports from such scrutiny have to be accurate and fair.

Local authorities are mainstream news – there are a lot of them. Tensions rise when what is reported is not what local authorities think ought to have been. Newspapers and local authorities both have objectives of serving the public but they see the same issues through different eyes. A good example of that occurred in the year under review when the Queenstown Lakes District Council complained about a report in the weekly newspaper, *Mountain Scene*, dealing with the council's finances (Case 1098).

The disagreement between the parties revolved around the use of council funds, the terminology to describe such funds (eg, profits or surpluses) and whether funds designated for one purpose could be used to alleviate rates. The complaint was not upheld, but the larger debate between the parties, particularly through letters to the editor from council representatives and responses from the editor, would have been of interest to readers, particularly the nuances of council funding and its specific uses.

This was, in fact, the second complaint the local body had made to the Press Council in a year. In September 2006, the Press Council had upheld a complaint by the council against *Mountain Scene* about a commentary piece relating to a community plan and likely rates rises, a complaint notable for the feisty exchanges of both parties. The complaint was upheld on the grounds of inaccuracy and failure to correct an error promptly. Again, however, readers benefited, largely through the willingness of both parties to engage publicly. Queenstown Lakes District Council 1, *Mountain Scene* 1.

The year under review was also a local body election year. That means it can be a time of sensitivity for councillors seeking re-election. Wellington city councillor Helene Ritchie complained to the Press Council about three articles in *The Dominion Post* concerning to her attendance record and remuneration while on sick leave, mainly related to treatment for breast cancer. In one article, the deputy mayor, Alick Shaw, accused Cr Ritchie of perpetuating a "rort" in that she missed council meetings, from which she was granted sick leave, but turned up for work at her other constituent body, Capital and Coast District Health Board, which did not have sick leave provisions for elected representatives.

The Press Council did not uphold Cr Ritchie's complaints about issues including lack of balance, corrections and malice, but it did uphold a complaint about inaccu-

racy about her meeting attendance percentages, a mistake perpetuated by repetition. The Council said in its decision: "Any member of a public body who appears to be absent from a large number of meetings deserves to be held up to scrutiny, and the paper cannot be criticised for investigating Cr Ritchie's performance, even in the context of her experience with cancer. But in its scrutiny of a public figure, the newspaper should have been scrupulously accurate." In the event, the Council notes, when the election votes were counted, Cr Ritchie remained on the council, Cr Shaw did not (Case 2003).

Another complaint where scrutiny of a public body was a critical part of a newspaper's justification for publishing was brought by Bay of Plenty District Health Board against the *Bay of Plenty Times* (Case 2013). For many years, the level and adequacy of public health services have rightly been matters of concern. But scrutiny requires a demonstrable pursuit of all available facts and the Council, in upholding the complaint, found the newspaper's article wanting in that respect.

In bold fashion – the headlines took up almost half of the front page – the paper reported how an elderly patient admitted to Tauranga Hospital with a broken arm had died four weeks later from septicaemia. The article was based largely on information and opinions from the man's family and, even though no medical investigation or coronial inquest had been held, the article made a clear link between his death and his care in hospital. In the view of the Council, this was a story that called for the newspaper to seek direct responses from the hospital, but information came largely from emails between the two organisations and there appeared to be confusion. The Council believes that a journalistic practice of emailing questions and accepting the answers is a very low level of scrutiny and investigative practice on matters of public importance.

But when does scrutiny reach a degree of unfairness? The issue of fairness was raised in a complaint against *The Oamaru Mail* by Waitaki District Council, which was not upheld by a majority (Case 2004). The *Mail* had published a front-page article about the court case of a teenager charged with littering, whose mother was the council officer responsible for, among other things, the prevention of littering. It named the youth and his mother. All of the Council held that the newspaper was entitled to link the pair, distressing though that would be, because it was directly relevant. But a minority of three members felt that the front-page treatment, the naming of the officer in the headline and repeated references to her were not fair, and would have upheld on the grounds of lack of fairness.

The complaint raised another issue. Waitaki District Council withdrew its advertising from the *Mail* as a result of the story, although it was subsequently reinstated. It was, of course, entitled to place its advertising where it saw fit, although in the Council's view, withdrawal was a crude weapon when, from other comments made, the district council appeared to want to encourage a higher standard and a more community-engaged style of journalism in the local paper.

There have long been tensions between local authorities and their newspapers. Democracy and good newspaper practice are better served by such separation. Both are attempting to better serve the public, but their roles are quite separate.

Visit of the Korean Press Arbitration Commission

The Press Council welcomed three members of the Korean Press Arbitration Commission in November.

Cho Joon Hee, Chairman of the Press Arbitration Commission, Yeo Woon Kyu, Manager of the Busan branch of the PAC and Yang Jae Kyu, director of the legal counselling and education team of the PAC were accompanied by Monica Kang of the embassy of the Republic of Korea. Ms Kang's skill at interpreting facilitated a useful exchange of views and we were indebted to her.

The Korean PAC is statutory, but independent of government. It is a semi-judicial body and is able to impose financial penalties, though these are not at the same level as would be imposed if a case went through a court procedure. The public and the press both view the PAC positively as it is a cheaper and faster process than taking legal action.

There are 16 branches of the PAC (six in Seoul) and each branch has five commission members who come from a variety of backgrounds – retired judge, lawyers, senior journalists (though not currently working in the field), journalism academics.

Press Council Submissions 2007

The Press Council was particularly engaged in 2007 in making submissions to parliamentary select committees in an effort to stem several regulatory encroachments on freedom of information and thence on freedom of the press.

In May there was a submission on the Births, Deaths, Marriages and Relationships Registration Amendment Bill; in September on the Electoral Finance Bill; in December on the Land Transport Amendment Bill (No 4).

Additionally in November the Press Council made a submission to the Law Commission's Review of the Law of Privacy: Stage 2 Public Registers.

The submissions are set out below.

Submission to the Government Administration Committee on the Births, Deaths, Marriages and Relationships Registration Amendment Bill

Introduction

1. The proposed Births, Deaths, Marriages and Relationships Registration Amendment Bill, introduced by the Government in February, has an intent to tighten access to public records, reportedly in large part because of Government concerns that unrestricted access is easing identity fraud.
2. The Press Council's submission relates to those clauses concerning access to information.
3. Under current law, any member of the public can obtain the registered information to these categories about virtually anyone. The Registers of Births, Deaths and Marriages are open to public inspection; upon request the Registrar will authorise a search and permit the applicant to inspect any entry and have a copy. This freedom of access has significant relevance to journalists – as well as historians, authors, researchers and private investigators – in pursuit of legitimate information about figures of public interest.
4. Under the Bill, people would have the right to access their own records, those of an immediate family member, or someone born more than 100 years ago. But for anyone else's details, authorisation would have to be sought and received from the person or family concerned.
5. Special provisions would allow the police, the Security Intelligence Service, and some other officials, access. Provisions would be in place to protect the identities of police officers, witnesses, and people associated with the SIS.
6. Journalists and others would no longer be able to order certificates over the telephone.

Reasons given for the Bill

7. The Bill is reportedly aimed at preventing identity theft. Internal Affairs Minister Rick Barker has identified the crime as costing New Zealand $400 million a year. The law change was called for last year by Prime Minister Helen Clark after Israeli agents Eli Caro and Uri Kelman were convicted

for attempting to obtain a passport in the name of a cerebral palsy sufferer.

8. An Internal Affairs spokesman (Dominion Post, 17.4.07, page 8) defended the Bill on the grounds people want the information that Government collects about them to be kept secure. "To make it more difficult for fraudsters, the proposals place greater restrictions on access to personal information. However, most people consider these facts to be private or family information."
9. According to Mr Barker, as well as the identify theft and fraud issues, it was important "to strike a balance between access to records and the privacy of those required by law to give information" (Dominion Post, 28.4.07, page 6).

Press freedom and responsibilities

10. The legislature has hitherto recognised the crucial role of the news media in preserving and furthering freedom of speech. The Privacy Act clearly exempts the news media – when it is reporting matters of public interest – from its provisions. Freedom of expression, it should be noted, is clearly identified in the New Zealand Bill of Rights Act. Section 14 of the Act says: "Everyone has the freedom to seek, receive and impart information and opinion of any kind and in any form".
11. Freedom of speech and, by extension, the right of journalists' access to information of public interest, is fundamental to the workings of a free democracy. A significant role of the journalist – its watchdog or "Fourth Estate" function – is to seek out and render important information public.
12. Within that democracy, the transparency of institutions and matters of public interest is a hallmark. "Public interest" is defined by Media Law in New Zealand author John Burrows, QC, as meaning "public importance".
13. The "freedom of speech" banner is easily glossed over in a benevolent democracy. But democracy is a tenuous privilege. Bills working against the freedom of the press have been proposed in the past (the 2001 Electoral Amendment Bill, which would have made it a criminal offence to make untrue statements defaming candidates with intent to influence votes, for example). There can be no guarantee that erosions of our freedom will not be attempted in the future.
14. Journalists' ethics codes, and the Press Council's Statement of Principles, clearly reflect recognition that, in the normal state of things, people's privacy is paramount. But they also recognise the importance of the journalistic role in a democracy, commonly drawing a line between the private and public spheres by applying the test of "public interest".
15. "Public interest" is not defined in the Council's Statement of Principles. Nevertheless, Burrows' account of "importance" is routinely taught in all journalism schools and, significantly, in regular seminars to working journalists. The industry's – and news media legists' – understanding is largely drawn from him. The Australian Press Council defines public interest as

"involving a matter capable of affecting the people at large so they might be legitimately interested in, or concerned about, what is going on, or what might happen to them or to others".

16. Journalism codes of ethics all recognise and respect legitimate public rights to privacy. For example:
    16.1 Fairfax New Zealand's Code of Ethics calls on its journalists to bear in mind "the privacy and sensibilities of individuals as well as the public interest".
    16.2 Journalism union the New Zealand Amalgamated Engineering, Printing & Manufacturing Union's (EPMU) Code of Ethics requires its members to respect personal privacy, but also to strive "to disclose all essential facts and by not suppressing relevant available facts or distorting by wrong or improper emphasis".
    16.3 The Broadcasting Standards Authority Radio Principles include: "In programmes and their presentation, broadcasters are required to maintain standards consistent with the privacy of the individual ... broadcasters shall apply the privacy principles developed by the Broadcasting Standards Authority ..."
17. The Press Council's Statement of Principles (Principle 3) reads: "Everyone is entitled to privacy of person, space and personal information, and these rights should be respected by publications. Nevertheless the right of privacy should not interfere with publication of matters of public record, or obvious significant public interest".

Discussion

18. Accepting principles of public interest and of public right to information, the effective limiting of access to personal or family records can be seen to place a severe blinker on press investigation. Cases of curriculum vitae and other fraud could conceivably be put beyond the reach of journalistic research.
19. By extension, the transparency of public institutions related to research into an individual's background could also be obscured.
20. The proposed Bill does allow for access to records with authorisation, but the work of a journalist, even ignoring the fact that they might be dealing with an antagonistic individual, generally requires expedition. It is the nature of the beast.
21. If passed as phrased, the Bill could allow individuals to become censors of their own past, able to cover up what they believe to be embarrassing or unpalatable, even when there is a larger public interest for that information to be made public. It could also enable an individual or family member to allow wrong information to remain undetected, thereby adding a mischief as well as preventing one.
22. The Bill's explanatory note reads: "A policy review of public access to the registers concluded that the public access provided by the [present] Act is

inappropriate in light of current attitudes towards privacy and protection of personal information". But this note does not make clear whose attitudes are referred to, nor explain the scope of its survey. The review was apparently undertaken by the Ministry of Justice, the Office of the Privacy Commissioner, and the Department of the Prime Minister and Cabinet without public input.

23. Traditionally, newspapers have run daily columns of births, deaths and marriages, as well as of engagements and anniversaries. These are, of course, entered voluntarily. But the papers have frequently conducted their own research from the material, generating further research to produce in-depth feature articles or produce obituaries. This valid outlet for producing public information might also be hindered under the Bill.
24. People with concerns that their privacy has been unfairly eroded in any sphere, currently have recourse to complaints to the New Zealand Press Council. The Council has, on many occasions, upheld such complaints, requiring the offending news organisation to publish, in a prominent position, the substance of its judgment. Such judgments are properly themselves subject to public scrutiny, open to be reported on by the news media at large. Where applicable the Council will remove personal detail from its judgments.

Conclusions

25. The stated concern about identity theft and fraud is a looming and valid one. But blanket restrictions eroding long-established principles of freedom of access to what are essentially public records appear to be a dangerous tool for plugging occasional criminal acts. Fairfax's Stuff website news service (1 May 2007) reported there to have been just eight cases of identity fraud last year.
26. The news media have an important and continuing role as watchdog, both of the country's key institutions and of matters and records of public interest. This is a long-established role within a democracy that should not be tampered with lightly.
27. New Zealand already has a raft of legal and regulatory measures in place to protect the privacy of the individual, where privacy is warranted. The courts have also now accepted a tort of privacy.
28. The implementation of blanket restrictions to stop a type of criminal activity raises a new set of problems; impinges on current freedoms in an unacceptable way; and is in conflict with Section 14 of the Bill of Rights Act.
29. The Press Council believes that specific measures to plug the gaps that have allowed the criminal activity would be more appropriate than measures encroaching on legitimate press endeavour.

Submission to the Justice and Electoral Committee on the Electoral Finance Bill

The Press Council wishes to record that while it does not oppose the intent of the Bill it has deep concern at what appears to be an infringement of freedom of expression.

The Press Council takes as one of its principal objects

> To promote freedom of speech and freedom of the press in New Zealand

The Preamble to the Council's Statement of Principles states:

> There is no more important principle than freedom of expression. In a democratically governed society the public has a right to be informed, and much of that information comes from the media. ... Freedom of expression and freedom of the press are inextricably bound. The print media is jealous in guarding freedom of expression not just for publishers' sake but, more importantly, in the public interest.

These freedoms have been laid down in statute in s14 of the Bill of Rights Act 1990, which states:

> Everyone has the right to freedom of expression, including the freedom to seek, receive, and impart information and opinions of any kind and in any form.

We consider that s5(1) in combination with subpart 5 so seriously inhibits the right of individuals or groups to take part in the democratic process it appears to be in direct contravention of s14 of the Bill of Rights Act (BORA).

Legitimate expressions of opinion would in many circumstances appear to be within the definition "electoral advertisement". Such expression of opinions may be for or against any particular political party.

We note that press releases, from groups with interests in an issue in the political arena, form part of the normal workings of the media and the political process. Yet, one year in three, such releases could well be considered to come within the definition of "election advertisement" were this bill to pass.

If passed, this bill will inhibit freedom of expression in the most important year of the electoral cycle. The Press Council has always advocated more discussion, not less, as fundamental to a well-informed democracy.

We note that the overall intent of the bill relates to the secret funding of political parties and the influence of third parties in an election year. We also note that the Prime Minister is on record as saying that changes to the Bill can be expected.

We therefore look forward to a revised bill which takes better account of s14 of BORA, and would suggest that it would be appropriate in this instance for the revised bill to be subject to further public consultation.

Oral Submission to Parliamentary Select Committee on Electoral Finance Bill
27 September 2007

My name is Denis McLean. I am standing in today for the Hon Barry Paterson, Chairman of the New Zealand Press Council. I am Deputy Chairman. The Chairman and I are both public members. That is to say we do not represent any media interest, but were selected by balanced panels reflecting media and wider public concerns.

The Press Council is a self-regulatory body set up and paid for by the industry. Its role, as set out in our accompanying statement, is to adjudicate on complaints against the print media and to uphold the freedom of the press and of freedom of expression, as well as to promote the highest standards of journalism.

As set out in our written submission "the promotion of freedom of speech and freedom of the Press is one of the principal objects of the Press Council." The Council's Statement of Principles goes so far as to state:

> There is no more important principle than freedom of expression. In a democratically governed society the public has a right to be informed and much of that information comes from the media .... Freedom of expression and freedom of the press are inextricably bound. The print media is jealous in guarding freedom of expression not just for publishers' sake, but, more importantly, in the public interest.

The Council does not question the basic intent of the Electoral Finance Bill – to establish fair and balanced provisions for the conduct of Parliamentary elections. It is the detail which concerns us – in particular the apparent clash of interest between the effort to establish new rules for the conduct of elections and the democratic imperative that citizens' rights to freedom of expression must not be compromised and that there should be no abridgement of the free flow of information during the electoral process.

The classical statement about freedom of expression is contained in the first amendment to the United States Constitution drafted by Thomas Jefferson himself:

> Congress shall make no law respecting an establishment of religion or prohibiting the free exercise thereof; or abridging the freedom of speech or of the press or of the right of the people peacefully to assemble and to petition the government for a redress of grievances.

Having lived in the United States for many years I must admit to being heavily influenced by that prescription, its clarity and unfettered commitment to personal freedoms.

Section 14 of our own Bill of Rights Act in many ways recapitulates those sentiments in so far as concerns freedom of expression:

> Everyone has the right to freedom of expression, including the freedom to seek, receive and impart information and opinions of any kind and in any form.

The Press Council in its submission respecting the Electoral Finance Bill has

found that s5.1, in combination with sub-part 5, so seriously inhibits the right of individuals or groups to take part in the democratic process that it appears to be in direct contravention of this section s14.

Of course our own Bill of Rights, under s5, establishes that the rights and freedoms set out in the Bill may be constrained – made subject to "such reasonable limits prescribed by law as can be demonstrably justified in a free and democratic society". It is noted that in other jurisdictions, not dissimilar to our own, similar – if carefully balanced – prescriptions are in place. Even so there is a question whether the parallel between other jurisdictions, larger and with more complicated societies and issues to balance, is entirely relevant to the situation in our own small and remarkably open democracy.

The Press Council would contend that the limitations on freedom of expression inherent in s5.1 in combination with sub-part 5, of the Electoral Finance Bill as presently drafted cannot be demonstrably justified in this free and democratic society.

In particular it appears that the definition of candidate advertisements, ie "any form of words or graphics that can reasonably be regarded as encouraging or persuading voters" to vote in a particular way, is an extraordinary extension of power to regulate freedom of expression. The Bill recognises the right of editors through their newspapers to inform or entertain. But what if a newspaper chooses to embark on a sustained campaign against a proposal advanced during the electoral process by one or other political party? Is that to be deemed political advertising? If so it would be a gross interference with the role of a free press to stimulate debate, expose issues and inform the public.

This seems all the more serious a limitation of freedom of expression when the period during which the restrictions are to apply extends out to almost 12 months in respect of the regular election cycle. It can surely not be tolerated that in the New Zealand democracy any such "chilling" effect on public debate would apply one year out of every three.

It appears too that the rights of individuals and interest groups to contribute to public debate on issues espoused by one or other political party are compromised by the introduction of a separate regulatory system for electoral advertising for persons or groups other than a party or candidate. If third parties or individuals spend more than $5000 on a broad campaign or $500 in respect of a campaign in one constituency they will have to register to make their case. This could have the effect of turning an important aspect of the electoral process over to political parties alone. It should be obvious that elections are about an expression of popular will based on informed public opinion – not about protection of a special right of the established political parties to contribute to the political process.

The present draft Bill accordingly appears to raise serious issues to do with freedom of expression. What is to be the role of newspapers during the political season? An expression of opinion seems to be provided for. But the role of editors to take up issues, question the established views of political parties, could well be compromised. What, too, of the rights of individuals to contribute to debate?

The requirement to register if expenses are more than $500 in any one constitu-

ency can only be interpreted as a limitation on freedom of expression.

The particulars of s5 of the draft bill appear – in the words of the US Bill of Rights – not only to allow Parliament to abridge freedom of speech and of the press but to limit the capacity of the people to petition the government for a redress of grievances. There can be no justification for even the hint of such powers. Seeking redress of grievances by making representations, putting out press releases or posters or statements in support of this or that issue are at the heart of the democratic process. Yet any or all of such activities on the part of individuals or groups not registered under the present provisions of this Bill could apparently be deemed illegal if more than $500 was spent in any one constituency or $5000 nationwide.

It appears from the opinion submitted by the Crown Law Office that the implications of the Bill in respect of freedom of expression have not been thought through. The role of a free press in contributing to political debate has not, it seems, been factored in, nor the rights of individuals or non-party groups. Freedom of expression is clearly constrained by the requirements for registration. This in turn gives rise to the extraordinary thought that the registration process itself and the associated requirement that all financial details be submitted could be used by an unscrupulous future government to control – or even muzzle – the press.

Submission to the Transport and Industrial Relations Committee on the Land Transport Amendment Bill (No 4)

Introduction

1. The Press Council wishes to record its strong opposition to the proposal to restrict access to the name and address details on the register of motor vehicles. This information has been available to the New Zealand public for over 80 years. It is public information.
2. The Council objects to the new prescriptive and limiting purposes of the register set out in s235.
3. We record our concern at the encroachment, on the grounds of privacy, on rights to freedom of information contained in section 14 of the New Zealand Bill of Rights Act 1990.
4. We further record our surprise that, in its advice to the Attorney General on consistency of this bill with the Bill of Rights Act, the Office of Legal Counsel did not even take into account s14.
5. We note that in its consultation with various groups prior to the drafting of the bill no attempt has been made by the Ministry to consult with media organisations or those concerned with freedom of information.
6. The Press Council does not believe the case for arbitrarily restricting access on the advice of the Privacy Commission, whose task it is to promote and protect privacy, and the concerns of a very few members of the public has been properly made out by the Ministry of Transport.
7. We would point out that it is a stretch to say that owning and driving a car is a private act. It is one of the most public things we do.

The privacy issues against freedom of information

8. The privacy issues which have led to the proposed changes are documented as
   a. The personal safety concerns of a sector of the community
   b. Concern, by unidentified number of people, that vehicleowners may be traced for the purposes of harassment or theft of the vehicle.
   c. Some vehicle owners feel aggrieved that information is used by marketing companies.
9. With regard to a) it is interesting to note that the bill "continue[s] the current provision for vehicle owners to apply for confidential status on the same (limited) grounds that currently apply". In this regard the new bill is therefore unnecessary.
10. With regard to b) the Council notes that no numbers are given of actual cases where this has occurred. The problem may be more perceptual than real. On the other hand 38,000 ordinary New Zealanders accessed information over-the-counter in 2006, together with 130,000 commercial vehicle resellers.
11. The resellers will presumably still be able to access the information using the authorisation provision, but the 38,000 casual users will not be so fortunate. That they are now denied access to this information the Ministry calls "a minor inconvenience".
12. The greater good needs to be considered if miscarriages of justice are to be avoided, such as when there is a blanket ban on details which could help others gain redress for wrongs. Legislation should not proceed on the basis some people simply want to avoid their details being made public.
13. While recognising the special need for privacy of name and address for some vulnerable individuals, the Council considers that compared to the total number of requests, those used inappropriately under the personal safety issues, must be infinitesimal.
14. With regard to c) we note that the number of Motochek disclosures for 2005-2006 was 10.8 million. There are 2.2 million registered vehicles in New Zealand. The biggest group using the information was direct marketers. At a minimum of 23 cents for each disclosure (maximum $11.25) the ministry would appear to have been making substantial sums of money from releasing this information.
15. Concerns about the use of the register in the acquiring of information by data marketing companies should be dealt with specifically, without "disenfranchising" other legitimate users. Just as computer technology has led to this problem, so it could be used to solve it. "Do Not Call" lists could be better publicised and infringements targeted.
16. For the record, the Council does not view the receipt of direct marketing mail or phone calls as a breach of privacy, merely a nuisance.
17. Furthermore, the Council does not regard names and addresses as private facts. One look at the White Pages would show that the majority of the population agrees.

The media position

18. News media and the gathering of news are exempt from the Privacy Act 1993. Implicit in this is the acknowledgement that in gathering news the media are acting in the public interest and bringing to the public attention matters of importance. In this regard even the Privacy Act places a higher importance on the public interest than individual privacy.
19. Journalists currently use the register of motor vehicle registrations for legitimate news-gathering reasons. They might be trying to find a person in whom there is wider public interest but who, for reasons unknown, is difficult to contact. They might be wishing to draw to the public's attention that, for example, a bankrupt, failed property developer, or builder of leaky homes who has folded his company, owns (and drives) cars of considerable value while the creditors wait.
20. The register also allows journalists to investigate criminal activities and other matters of great public importance. Shutting down the register could produce journalistic imbalance. It is conceivable that a reporter may have no means of contacting a person whose views could contribute to a report other than tracing them through their car ownership. Restricting access will certainly hinder journalistic endeavour.
21. The public register is an accurate and reliable source of information.
22. Those who are most likely to complain are those who wish the information never to see the light of day because they do not want their wrongdoing to be exposed. The committee should take this into consideration before abetting this situation.
23. None of the provisions for access contained in the Bill would seem to be of use to the media.
24. Media interests are not represented in any of the purposes contained in the prescriptive s235.
25. There is provision under s 241 of the Land Transport Amendment Bill for the Minister, after consultation with the Privacy Commissioner and the Chief Ombudsman, to authorise specified persons or classes of person to have access to the names and address register. The information may be released only when the registrar is certain the information will be kept secure by that person or his agent.
26. It is not the media's usual role "to keep information secure" and the Privacy Commissioner's views are frequently diametrically opposed to those of the media and a free flow of information to the public.
27. The confirmation provision contained in s239 relies on information matching. The writer of this submission is on various data bases, under seven different versions of her name. This is in no way unusual. A data match is likely to be a random and fortuitous event rather than the rule, and many false negatives are likely.

Summary

28. The Press Council can find no good argument for the restrictive access proposed in the bill.
29. On behalf of the public of New Zealand we urge the select committee to consider s14 of the Bill of Rights Act and the freedom of information issues, so far ignored in the promotion of this bill.
30. On behalf of the media we ask that the status quo be retained with public access to all information on the register. If the Committee does not see fit to maintain the status quo then we would ask that special provision be made so that journalists may continue with an unfettered right of access to all the details contained in the register.
31. The Press Council wishes to be heard in support of this submission.

Submission on The Law Commission's Review of the Law of Privacy
Stage 2: Public registers

1. Thank you for the opportunity to make a submission on this matter. The New Zealand Press Council was established in 1972 by newspaper publishers and journalists to provide the public with an independent forum for resolution of complaints against the press. It has other important objectives, as noted below. The present constitution of the Press Council comprises six independent members and five industry members.
2. The Press Council has as its second and third objects:

   "To promote freedom of speech and freedom of the press in New Zealand"

   And

   "To maintain the New Zealand press in accordance with the highest professional standards"

3. Additionally the New Zealand Bill of Rights Act 1990 provides at section 14:

   "Everyone has the right to freedom of expression, including the freedom to seek, receive, and impart information and opinions of any kind and in any form."

   Section 14 confirms and reinforces the above objectives of the Council.

General Observation on Stage 2 Paper

4. The Council accepts from the information contained in Issues Paper 3 that the law as applied to public registers is inconsistent. There is obviously a need to tidy up the position. However, any reform should not, in the view of the Council, undermine the tangible benefit the contribution of open access to state records gives. It supports the statements of Raul in paragraph 178 of the Paper and the comments made in paragraph 179. Section

14(1) of the Privacy Act 1993 requires the Privacy Commissioner to have due regard to the general desirability of a free flow of information. In the Council's view, this principle is being undermined in statutes for no good reason.

5. The Council notes, with approval, and adopts the following statements made in paragraphs 318 and 319 of the report:

> "If there is a valid reason to collect and hold information on a register, and to allow members of the public to have access to it, then in our view, the grounds on which the information can be withheld should be strictly construed.
>
> The same rationale applies to a number of uses of the Register; if the registers are to operate properly, suppression of detail should be the exception, not the rule."

6. The Council accepts that there are valid reasons for restricting unlimited access to public registers. Examples are given in the report. These include protection orders under the Domestic Violence Act 1995 and protection against stalking. However, in the Council's view, and examples are given below, there has been a tendency in recent years for Parliament to limit access to public information, without adequate reason. The right granted under s14 of the Bill of Rights is being eroded. Denial of access to public records is becoming the rule, rather than the exception.
7. The Council notes the Commission's preference for Option 4. It does not have a strong preference as to which of the four options should be followed, except to say that whichever option is followed, suppression of detail should be the exception, not the rule. Restrictions which presently apply because of the provisions of the Privacy Act and the manner in which they have been applied should, in the Council's view, be removed unless there is a very strong and valid reason for their retention.
8. The Council makes two general observations on Option 4:
   (a) if it is to be recommended and adopted, Parliament should give a commitment to applying it across the board. This will involve amendments to many Acts. Experience suggests that such wholesale amendments may not receive priority in the legislative programme; and
   (b) any alterations should, as a matter of course, provide that the right of access to public registers is not to be limited or restricted without valid reasons. The Council agrees that the reasons should not be left to the discretion of the decision-maker. Parliament should lay down the reasons and these should be specific and restricted.
9. The Council notes the experience in New South Wales arising from its Privacy and Personal Information Protection 1998. As noted in paragraph 271 of the report, the increased focus on the protection of personal information in that State means that generally the registers are no longer simply

accessible as of right. Any legislative changes in this country should ensure that such a position does not arise here. Any amendments should include suitable provisions to ensure that such a position does not arise.

Freedom of speech and the Press

10. The Council considers that the above objects have the potential to be compromised if access by journalists to public registers is restricted.
11. Public registers are used by journalists to verify and give accurate detail, and to provide important information in the course of investigative journalism. This has been the case for centuries.
12. As the issues paper notes in quoting the Danks report at 174 the participation in public affairs and accountability of those in office relies on an *informed* public (italics added). This is the role of the press and journalists.
13. Concerns now expressed are of recent origin and relate to the use of data collected and now more readily available through the use of electronic technology. While acknowledging these concerns the Press Council wishes put on record its belief that some of the measures considered in response to these concerns are for the most part heavy-handed and out of proportion to the perceived problem.
14. The Council also notes that the Privacy Commission is statutorily tasked to "promote and protect individual privacy". To accomplish this it has a budget of more than $3 million and a large staff. There is no comparable body set up to "promote and protect" freedom of expression and access to information for individuals or journalists, or to provide a countervailing opinion. Instead this is largely done on an ad hoc basis, and usually as a reaction to proposed changes to legislation.
15. It could be argued that the attorney general, in reviewing proposed legislation for consistency with the Bill of Rights Act 1990, fulfils this role. However, the Council has concerns whether this role was fulfilled in the cases of the Electoral Finance Bill and the Births Deaths Marriages and Relationships Registration Amendment Bill.
16. The Council submits that there is insufficient evidence to warrant the wholesale revision of access to public registers, except to remove some of the restrictions to access, such as those that are currently proposed. The Council's view is that, in the absence of such evidence, the presumption should be that there is no further restriction of access to such registers.
17. Secondly, the Council submits that, in the event of restrictions being applied to access to public registers that journalists, the media generally and researchers and others with genuine public interests deserve special provisions to enable them to access the information, on behalf of the public they serve.
18. Two Bills currently before Parliament demonstrate the Council's concern. First, the Births Deaths Marriages and Relationships Registration Amendment Bill. You note at 213 the reasons given by the Department of Internal

Affairs for the proposed restrictions on access to BDM records. You also note, tellingly, that despite such restrictions having been in place for several years in Australia, the incidence of identity theft has not declined.

19. The Council in its submission to the select committee on this Bill noted in part:

> "If passed as phrased, the Bill could allow individuals to become censors of their own past, able to cover up what they believe to be embarrassing or unpalatable, even when there is a larger public interest for that information to be made public. It could also enable an individual or family member to allow wrong information to remain undetected, thereby adding a mischief as well as preventing one."

And

> "The stated concern about identity theft and fraud is a looming and valid one. But blanket restrictions eroding long-established principles of freedom of access to what are essentially public records appear to be a dangerous tool for plugging occasional criminal acts. Fairfax's Stuff website news service (May 1, 2007) reported there to have been just eight cases of identity fraud last year.
>
> "The news media have an important and continuing role as watchdog, both of the country's key institutions and of matters and records of public interest. This is a long-established role within a democracy that should not be tampered with lightly.
>
> "New Zealand already has a raft of legal and regulatory measures in place to protect the privacy of the individual, where privacy is warranted. The courts have also now accepted a tort of privacy.
>
> "The implementation of blanket restrictions to stop a type of criminal activity raises a new set of problems; impinges on current freedoms in an unacceptable way; and is in conflict with s14 of the Bill of Rights Act.
>
> "The Press Council believes that specific measures to plug the gaps that have allowed the criminal activity would be more appropriate than measures encroaching on legitimate press endeavour".

20. Secondly, the Land Transport Amendment Bill (No 4). Journalists currently use the register of motor vehicle registrations for such purposes as to make public that a bankrupt, failed property developer, or builder of leaky homes who has folded his company, owns (and drives) cars of considerable value while the creditors wait.
21. The current legislation already contains the following provision at s19 (5): Where the [Registrar] certifies that the supply of any particulars under this section in respect of any specified motor vehicle would be likely to prejudice the security or defence of New Zealand, the international relations of the Government of New Zealand, the maintenance of the law, including the prevention, investigation, or detection of offences, the right to a fair

trial, or the privacy or personal safety of any person, the particulars specified in subsections (1) and (2) of this section shall not be supplied to any person unless the [Registrar] approves the supplying of the particulars to that person, or that person is one of a class of persons to whom the [Registrar] has approved the supplying of the particulars".

22. Notwithstanding that provision, privacy and personal safety concerns are given as reasons for the proposed restrictions on the release of the names and addresses of vehicle owners. Legislation should not proceed on the basis some people simply want to avoid their details being made public. The greater good needs to be considered if miscarriages of justice are to be avoided, such as when there is a blanket ban on details which could help others gain redress for wrongs.
23. It is a stretch to say that owning and driving a car is a private act. It is one of the most public things we do.
24. There is provision under s 241 of the Land Transport Amendment Bill for the Minister, after consultation with the Privacy Commissioner and the Chief Ombudsman, to authorise specified persons or classes of person to have access to the names and address register. This would be of little use to the media since the information is made available on the basis that the name and address will be kept secure. Presumably this has been set up for Motor Vehicle Dealers.
25. The General Policy Statement notes that the bill allows those who fall outside the scope of an authorisation to make application under the Official Information Act. The time an OIA request takes makes this impractical for journalists.
26. We note from the Issues Paper that the Ministry of Transport received 9.4 million requests for vehicle records in 2006, and in addition 36,000 requests were received "over-the-counter" at agents. Of these two million were requests from two large data marketing companies.
27. The LTA Bill at pg 23 notes that in addition to the over-the-counter requests (which they put at 38,000) there are 130,000 from various commercial resellers. It also advises there are 2.2 million registered vehicles. Concerns about the acquiring of information by data marketing companies, who would appear on the basis of the above statistics to be by far the biggest user of the register, should be dealt with specifically, without "disenfranchising" other legitimate users. Just as computer technology has led to this problem, so it could be used to solve it.
28. For the record, the Council does not view the receipt of direct marketing mail or phone calls as a breach of privacy, merely a nuisance.
29. Furthermore, the Council does not regard names and addresses as private facts. One look at the White Pages would show that the majority of the population agrees.
30. While recognising the special need for privacy of name and address for some vulnerable individuals, the Council considers that compared to the

total number of requests, those used inappropriately under the personal safety issues, must be infinitesimal.

31. Again, as with the BDM Bill, the proposed legislation is misdirected and out of proportion to the supposed concerns.

Summary

32. You have suggested that all Bills amending or establishing public registers should go to the Privacy Commissioner. But as noted in paragraph 14 of this submission there is no body comparable to the Privacy Commission to vet proposed legislation for inroads and encroachments into current freedoms and rights. There should be such a safeguard.
33. We note you record at 289 that there can be "other legitimate uses which have developed over time, which are considered to be in the public interest". We would consider the media's interest in public registers to fall squarely within this category.
34. As the two examples given above show, media and broader public-access rights, freedoms and interests were not taken into account when drafting the new legislation and consequently media and public access to these registers is in jeopardy.
35. We strongly recommend that, in the public interest, they must be taken into account.

Decisions 2007

Complaint name	*Publication*	*Adjudication*	*Date*	*Case No*
K R Bolton	*Stuff*	Not Upheld	20.02.07	1093
FreeLife	*Spasifik*	Not Upheld	9.03.07	1079
Alan McRobie	*The Press*	Not Upheld	20.02.07	1080
Beverley Clark	*The Press*	Not Upheld	5.04 07	1081
Kiwis for Balanced Reporting				
On the Mideast (KBRM)	*Sunday Star-Times*	Not Upheld	8.04.07	1082
Sheila McCabe	*Otago Daily Times*	Part Upheld	5.04.07	1083
Kapiti College	*Kapiti News*	Upheld	18.04.07	1084
Paraparaumu College	*Kapiti News*	Upheld	18.04.07	1085
Freda Briggs	*The Press*	Upheld	17.05.07	1086
Denise Dalziel	*N Z Listener*	Upheld with dissent	19.05.07	1087
T F W Harris	*New Zealand Herald*	Not Upheld	17.05.07	1088
Jon Stephenson	*NBR*	Part Upheld	18.05.07	1089
Tze Ming Mok & others	*North & South*	Upheld	11.06.07	1090
Asia New Zealand Foundation	*North & South*	Upheld	11.06.07	1091
Grant Hannis	*North & South*	Upheld	11.06.07	1092
Peter Attwooll	*Otago Daily Times*	Not Upheld	6.07.07	1094
Allan Chesswas	*Sunday Star-Times*	Not Upheld	8.07 07	1095
Egg Producers Federation	*Manawatu Standard*	Not Upheld	6.07.07	1096
Anne Henderson	*The Dominion Post*	Not Upheld	06.07.07	1097
Queenstown Lakes D C	*Mountain Scene*	Not Upheld	5.07.07	1098
Pat Timings	*NZ Listener*	Not Upheld	14.07.07	1099
Maureen Mildon	*Waikato Times*	Not Upheld	28.08.07	2000
Joy Downes & Bob Syron	*New Zealand Herald*	Not Upheld	28.08.07	2001
West Coast District Health Board	*Westport News*	Not Upheld	28.08.07	2002
Helene Ritchie	*The Dominion Post*	Upheld	15.09.07	2003
Waitaki District Council &				
Alison Banks	*The Oamaru Mail*	Not Upheld with dissent	5. 10. 07	2004
Michael Gibson	*The Dominion Post*	Not Upheld	5.10.07	2005
Jenny Kirk	*North Shore Times*	Not Upheld with dissent	4.10.07	2006
NZ Qualification Authority	*North & South*	Not Upheld	15.10.07	2007
Salient & VUWSA	*Sunday Star-Times*	Not Upheld	7.10.07	2008
Thijs Drupsteen	*Herald on Sunday*	Not Upheld	25.11.07	2009
Maritime New Zealand 1	*The Dominion Post*	Not Upheld with dissent	11.12.07	2010
Maritime New Zealand 2	*The Dominion Post*	Part Upheld with dissent		
Ulli Weissbach	*New Zealand Herald*	Not Upheld	23.11.07	2011
Allan Golden	*Stuff*	Not Upheld	28.12.07	2012
Bay of Plenty DHB	*Bay of Plenty Times*	Upheld	28.12.07	2013
R Lavën	*Bay of Plenty Times*	Not Upheld	28.12.07	2014
Tom & Teresa Lewis	*Otago Daily Times*	Not Upheld	28.12.07	2015
Michael Morris	*FMCG*	Not Upheld	28.12.07	2016
Liam Nolan	*The Dominion Post*	Not Upheld	28.12.07	2017

An Analysis

Of the 40 complaints that went to adjudication in 2007 eight were upheld in full; one was upheld with dissent; two were part upheld; one was part upheld with dissent; three were not upheld with dissent and 25 were not upheld.

Twenty-one complaints were against daily newspapers; eight were against magazines (three complaints related to the same article); four against Sunday newspapers; four against community newspapers; two were against *Stuff* website and one against the *NBR*.

Most complaints going to adjudication are considered by the full Council. However, on occasions, there may be a complaint against a publication for which a member works or has some link. On these occasions the member leaves the meeting and takes no part in the consideration of the complaint. Likewise, occasionally a Council member declares a personal interest in a complaint and leaves the meeting while that complaint is under consideration. There were 13 complaints in which one or more members declared an interest in 2007.

Debate on some complaints can be quite vigorous and while the majority of Council decisions are unanimous, occasionally one or more member might ask that a dissent be simply recorded (Case 2006); or written up as a dissenting opinion (Cases 1087, 2004, 2010). Sometimes a difference of opinion among the Council members can be accommodated by writing it into the decision (eg Case 1097 – "By a slim margin the Press Council did not uphold the complaint".)

Occasionally the findings can become quite complicated as in *Maritime New Zealand against The Dominion Post* where the Council did not uphold the main complaint of breach of confidentiality 9:1, upheld the complaint of lack of fairness 6:4 and unanimously declared the complaint of lack of balance to be not upheld.

The Statistics

Year ending 31 December	*2004*		*2005*		*2006*		*2007*	
Decisions issued		45		41		32		40
Upheld	9		4		6		8	
Upheld with dissent					1		1	
Part upheld	3		4		2		2	
Part upheld with dissent					2		1	
Not upheld with dissent							3	
Not upheld with dissent on casting vote of Chairman					1			
Not upheld	33		33		19		25	
Declined					1			
Not adjudicated		30		39		23		38
Mediated/resolved	3		3				1	
Withdrawn	1		5		2		2	
Withdrawn at late stage	1		1		1		2	
Not followed through	12		11		6		13	
Out of time			2		2		3	
Not accepted	2		2				4	
Outside jurisdiction	3		7		2		4	
In action at end of year	8		8		10		9	
Total complaints		75		80		55		78

Adjudications 2007

Additional link added to website – Case 1078

Introduction

Dr K R Bolton complained about an article *Google accused of harbouring NZ racist*s published on October 26, 2006 on the website stuff.co.nz which is a subsidiary news source owned and operated by Fairfax New Zealand Ltd.

Dr Bolton's complaint was a wide ranging one and much of it was beyond the ambit of the adjudication process of the Press Council. On the parts that were relevant to our adjudication process, Dr Bolton claimed that the article breached the principle requiring accuracy, that there had been insufficient distinction between the reporting of comment and fact and that the editor had failed to make corrections to information that Dr Bolton asserted was materially incorrect.

The complaint is not upheld.

The Article

The article, first published in the *Sydney Morning Herald*, reported on claims made by an anti-racism group that Google was hosting sites with racist, fascist or Neo-Nazi content, but that Google was impervious to complaints about those sites. The group claimed that it had reported a number of discriminatory blogger journals to Google but that Google, unlike some of its competitors, had failed to respond by removing two of the offending blogger journals from the web.

The article went on to report on these two particular blogger journals including some of their content as well as reporting comment on that content from a representative of the anti-racism group. A significant portion of the article then explored whether the two named blogs might violate either Google's blogger-user agreement or Australian law. The article reported legal opinion from the president of the Australian Lawyers for Human Rights organisation on those aspects.

The Basis of the Complaint

Dr Bolton complained that because no information about the anti-racism group whose complaint was being reported was included in the article, the article offended the principle requiring accuracy, fairness and balance. Additionally, by having the sole link associated with the report to the website of the anti-racism group, the article lacked balance.

He complained when he sent "correcting information" to the news editor that the news editor failed to make "corrections". This information was largely about the anti-racism group. Lastly he complained that there was insufficient distinction in the reporting between comment and fact.

Dr Bolton referred his complaints to the editor by a series of emails and phone calls.

The Website's Response

The news editor asserted that the article was an accurate and fair summary of the

views of the anti-racism lobby group. Having viewed the websites the group complained of, he was satisfied that the reportage of those was also accurate and fair. The report was about racist blogs relating to New Zealand and Australia being hosted on Google's blogger.com. The source of that information was not the particular focus of the report.

He stated that the website was not a stand-alone news organisation but rather an aggregator of news taken from Fairfax NZ and Australian publications and news wires. The article about which Dr Bolton complained was originally published in the *Sydney Morning Herald*.

Following discussion with Dr Bolton, the news editor of the website referred Dr Bolton's comments about the particular anti-racism group to a Fairfax NZ newspaper for it to investigate if it wished. The website does not have its own resources to investigate any follow-up story.

The news editor regretted that he did not appear to have seen all of the emails that Dr Bolton had forwarded. He observed that it was possible, given the "rather intemperate comments" within them, that they might have been deleted without being referred to him. He had, however, now taken steps to ensure that this could not happen in the future. Despite this "glitch", the news editor maintained that had he read all of the emails, he would have simply responded to Dr Bolton that he had passed the concerns on to a Fairfax newspaper.

The news editor acknowledged that having a link solely to the website of the anti-racism group might have contributed to the suggestion of a lack of balance. This was rectified and the story posted on the Stuff website now also linked to one of the websites complained about. The second website complained about had since been removed from the web so no link to that website could be included.

Finding

The Press Council did not uphold the complaint.

The article was intended to be a reflection of the views of the anti-racism group. It reported on the content of the websites the group complained about and reported legal opinion about the content of the two sites. The intent of the article was clear and the story accurate within that intent. Further, the Council was satisfied that comment and fact were clearly distinguishable.

The news editor acknowledged a lack of response to some of the complainant's emails that were not seen by him but had put in place complaint processes to ensure this did not recur. The Council was satisfied, however, that the news editor's position would not have materially changed, had he seen and responded to those emails, from the view that he had already communicated and discussed with Dr Bolton.

The Council agreed with Dr Bolton and the news editor's view that the placement of only a sole link with the story could contribute to a perception of a lack of balance. However, given that this had already been rectified, the Council did not find it necessary to uphold this aspect of the complaint.

Press Council members who considered this complaint were Barry Paterson (Chairman), Aroha Beck, John Gardner, Penny Harding, Keith Lees, Clive Lind, Denis McLean, Alan Samson, Lynn Scott and John McClintock.

Goji juice promoted to Tongans – Case 1079

Introduction

The general manager of FreeLife, Pacific Area, Christopher Cooper, complained to the Press Council about an article published in Issue No. 15 of *Spasifik*. The article, headlined *Buyer Beware*, was about a FreeLife product, Goji Juice, that was advertised and sold to the Tongan community in Auckland as a medicinal treatment for a host of diseases and health problems, including cancer, high blood pressure and diabetes.

The Article

The two-page feature article was published by *Spasifik* in July 2006 after a television news report that remarkable health claims were being made by several distributors marketing Goji Juice to the Tongan community in Auckland. It is sold around the world as a dietary supplement with unique nutritional benefits. However, at issue here were advertisements claiming that Goji Juice had therapeutic properties, including the ability to improve or cure diabetes, high blood pressure and cancer.

The article was about two people in particular who were associated with the distribution, and promoted the health benefits, of Goji Juice. Both were Tongan and both were health professionals. One was a doctor, the other had worked in the health sector as a health promotions advisor. [The Press Council was later advised she had subsequently resigned her position to work full-time as a distributor of Goji Juice]. Goji Juice was promoted for its health benefits in the Tongan language, both on Access Radio and in newspapers directed at the Tongan community in Auckland.

The article was built around a Tongan woman who had bought Goji Juice on the basis of the therapeutic claims made by the distributors, only to find that it appeared to react adversely with her blood pressure medication. Disapproving comments were included from Medsafe, the Food Safety Authority and a Tongan health service in Auckland. The article included a photograph of a bottle of Goji Juice.

The Complaint

Mr Cooper raised a number of objections to the article on the basis of alleged breaches of principle 1 (accuracy, fairness and balance), principle 3 (comment and fact) and principle 6 (headlines and captions). However, the crux of his complaint was that, particularly in light of the prominence of the picture, the article was unfair and lacked balance.

In particular, Mr Cooper complained that the article:

- Gave the impression that FreeLife had illegally promoted Goji Juice as a medicine, whereas those claims were made by an individual distributor without sanction from FreeLife.
- Unfairly reported that Auckland's Tongan community was targeted by the Tongan language promotions and some members of that community had now fallen ill after drinking the juice.
- Reported a medical opinion that Goji Juice was harmful to diabetics because of the natural sugar levels as if it were fact.

- Included a headline and standfirst that suggested that readers should beware of the product pictured.

He argued that comment was required from FreeLife and/or satisfied customers and endorsing professionals by way of balance.

Mr Cooper also raised other objections not dealt with in this ruling. Some of those matters relate to third parties and appear to be unsupported by any evidence. They have accordingly been put to one side.

The Magazine's Response

The editor denied any inaccuracy, unfairness or lack of balance. In response to the specific points raised by Mr Cooper, he said:

- The article was based on a complaint by a widow who bought Goji Juice after it was promoted on Access Radio and in Tongan newspapers. From the advertisements she believed it would prevent her from getting cancer, which her husband had died of. It identified the two New Zealand distributors that made those claims. FreeLife was not mentioned.
- The Tongan community was the target of the advertising campaign. The advertisements were made in the Tongan language in media directed at the Tongan community.
- A doctor working in the Tongan community was quoted on an increase in the number of diabetics seeking help after taking Goji Juice as a medicine, in the erroneous belief that it would cure their diabetes, as claimed in the advertisements.
- Goji Juice was harmful to diabetics because it had high natural sugar levels (citing another doctor in support of the factual accuracy of the medical opinion quoted in the article), particularly when consumed in large and regular amounts at the expense of regular medication.
- The headline and picture were not unfair.

The editor argued that the article was based not on the benefits or otherwise of Goji Juice, but the medical claims made by the New Zealand distributors in the Tongan advertisements. There was therefore no need to seek favourable comment about Goji Juice by way of balance from any person, consumer or professional.

Further submissions and responses

In his final submission to the Press Council, Mr Cooper reiterated that the tone of the article was such that most reasonable people would beware of drinking Goji Juice, and that the use of emotive words in the article and in headlines and standfirst reinforced this. The editor responded that the article reported facts, all of which were properly attributed.

Conclusion

The Press Council was not persuaded that the article was inaccurate, unfair or unbalanced. Nor was there any blurring of the line between fact and comment.

Mr Cooper had not provided any evidence of factual inaccuracies whereas the magazine had been able to point to undisputed facts and a further medical

opinion as evidence to counter Mr Cooper's objections.

The article was about the promotion of Goji Juice in the Tongan community of Auckland as a medicine and the effects on one person in particular who bought and used Goji Juice as a medicine in reliance on those advertisements. It was quite clear that the therapeutic claims were made by two New Zealand promoters, both of whom were identified in the article, not the manufacturer. The article had its origins in a television report and appeared to rely heavily on that source. A comment from FreeLife might have been worthwhile but was not imperative, given that the company was not the subject of the complaint.

The use of a photograph of a bottle of the Goji juice was illustrative and its publication did not sway the reader one way or another.

The reference to an increase in diabetics ailing after using Goji Juice as a medicine was the clearly attributed diagnostic opinion, of a named doctor, based on anecdotal evidence of patients presenting at the health centre where she worked.

The complaint was not upheld.

Press Council members considering this complaint were Barry Paterson (Chairman), Aroha Beck, John Gardner, Penny Harding, Keith Lees, Clive Lind, Denis McLean, Alan Samson, Lynn Scott and John McClintock.

Error remedied by publication of letter – Case 1080

The New Zealand Press Council did not upheld a complaint by Alan McRobie of Rangiora against *The Press,* Christchurch about the consequences of an abridgement of an opinion piece he wrote for the newspaper and subsequent treatment of his efforts to correct the position.

Background

Mr McRobie offered to submit an article to *The Press* about issues arising out of a representation review process conducted by Environment Canterbury. *The Press* agreed. Mr McRobie's first effort was judged too long by the assistant editor; a second was withdrawn by Mr McRobie when the parameters on which he had argued his case were changed by the announcement of Environment Canterbury's final proposals for the representation review. A third submission was accepted by *The Press* and published on November 8, 2006 with a paragraph cut out in the editing process — due to a lack of space.

The excised paragraph contained references to the Local Electoral Act and the right of appeal to the Local Government Commission. The article as published, with Mr McRobie's suggestions for new arrangements, thus left the impression that he was not familiar with existing procedures nor with where his proposals would fit with the role of the Local Government Commission. The point was promptly taken up by a correspondent to the newspaper noting that the article had a "serious omission" and was accordingly "misleading" since it failed to note that a right of appeal to the Local Government Commission already existed. That letter was published on November 10, under the heading *You can appeal.*

The Complaint

Mr McRobie that morning (a Friday) submitted a letter to the editor by email. He agreed that the correspondent was right and – to put the record straight – repeated the wording of the paragraph from his original article, which he noted had been edited out. On Monday when his letter had not been published in either the weekend or the Monday editions of the paper he wrote a personal email (Dear Paul) to the editor. Since the "serious omission" sprang from an editorial decision by the newspaper, the newspaper should have taken steps to put the record straight by prompt publication of his letter "in a prominent position".

The letter submitted on the Friday was duly published on the following Tuesday (November 14) under a different heading – *Point Covered*. Mr McRobie sent a further "Dear Paul" letter that day complaining that the newspaper had avoided making any formal acknowledgement that the paragraph in question had been excised in the sub-editing process. He asked that the newspaper "acknowledge formally and publicly that it was your staff decision that resulted in the omission of what was a critical paragraph". The editor replied the next day that he believed the matter had been handled correctly, readers, were now aware that the article had been edited and a paragraph deleted: as far as he was concerned the matter was closed.

Alan McRobie does not dispute that newspapers might be obliged to make editorial amendments of this kind. His complaint to the Press Council on December 4 centred on the claim the editor had failed to deal adequately with the "aftermath" of his original article as published. He thought it not unreasonable to ask that the paper acknowledge that the omission which had led to his article being labelled "misleading" stemmed from an editorial decision.

The Newspaper's Response

The editor of *The Press* contended in his letter to the Press Council of December 21, that Mr McRobie's article and letter had been handled in a standard journalistic manner. Publication of his letter of November 10, on the third publication day after receipt did not represent an unusual delay. Because of various pressures to do with weekend publication, the Letters for the Saturday and Monday editions had to be selected on Thursday evening and processed on Friday morning. Mr McRobie had been contacted on the Monday morning [actually in the afternoon] about the apparent omission of a verb from the opening sentence of his letter. When this point had been cleared up the letter was published the next day. The editor also suggested that the criticism of Mr McRobie's article from the correspondent would have been valid, even if the paragraph in question had not been omitted. Mr McRobie had advocated the need for an independent body to review local authority boundaries and had mentioned the role of the Local Government Commission as an appeal authority without noting that it also had the power to make reviews.

The Complainant's Reply

Mr McRobie disputed the point made by the editor in relation to the actual powers of the Local Government Commission and raised a number of other issues on which the Press Council is unable to form an opinion. His central contention remained:

The Press had failed to make readers aware that the point raised in the correspondent's letter had been dealt with in the paragraph excised for the newspaper's editorial purposes.

The Press Council's Finding

It is indisputable that the newspaper acted promptly and in a responsive way to publish Mr McRobie's letter. On the other hand it is evident that Mr McRobie believes that the way the complaint was handled failed to clarify the issue. His article had been held up as "meaningless" – through no fault of his own.

The Press Council accepted nevertheless that by printing Mr McRobie's letter in full and as soon as practicable the newspaper had implicitly acknowledged to its readers its own role and responsibility.

The Press Council believes that newspapers do themselves and their readers a service by owning up to mistakes, editorial slip-ups, or errors of omission. The Council is pleased to note that *The Press* intends to introduce such a feature.

The complaint was not upheld.

Press Council members considering this complaint were Barry Paterson (Chairman), Aroha Beck, John Gardner, Penny Harding, Clive Lind, Denis McLean, Alan Samson, Lynn Scott and John McClintock.

Keith Lees took no part in the consideration of this complaint.

Publication of Saddam Hassein execution photos legitimate – Case 1081

The Press Council has not upheld a complaint by Beverley Clark against *The Press* over its front page publication of a series of pictures showing masked Iraqi executioners preparing Saddam Hussein for his hanging.

Background

On January 1, 2007, *The Press* ran a frame-by-frame series of Reuters-sourced pictures of the former Iraqi dictator being attended to just before his execution. The pictures, close-up and run across six columns above the story, show the executioners placing the noose around Hussein's neck and adjusting it before the moment of hanging. The sequence stops short of the actual hanging.

The pictures were presented under a relatively small-print catch line, *Saddam Hussein execution*. A caption reads: "Last moments: frame grabs from al-Iraqiya television show masked executioners preparing to hang Saddam Hussein. The footage was shown throughout the Arab world." The headline and story follow below.

The Complaint

Beverley Clark complained that the illustrations broke two of the Press Council's Statement of Principles:

> Principle 10, which requires that headlines, sub-headings and captions accurately and fairly convey the substance of the report they are designed to cover, and

Principle 11, which says that in respect of photographs, situations involving grief and shock are to be handled with special consideration for the sensibilities of those affected.

In the case of the latter principle, Ms Clark said the affected were those with suicidal vulnerabilities. The illustrations, she said, had given "a powerful illustration" of a suicide method. People bereaved by suicide would also have been affected. Under Principle 10, Ms Clark said the lack of an adequate headline above the pictures to "pre-inform" meant that readers had no forewarning of the illustrations. *The Press's* main headline was below the pictures, above the story.

"The series of six photographs covering the top half of the page were very compelling," she said. "The title above was so insignificant that it could not warn the reader that they may prefer not to view the images. This eliminated reader discretion."

In a letter to *The Press*, she added that the illustrations were irresponsible, outside acceptable publishing standards, and "certainly not within the spirit of suicide reporting guidelines of which I am aware your organisation disapproves".

The Newspaper's Response

In response, *The Press* deputy editor Andrew Holden said he could not accept the premise that images of a state-organised execution would encourage young New Zealanders to commit suicide by hanging. Nor did he believe that the [Health Ministry] reporting guidelines had any connection to the decision to publish the images. Mr Holden further said that video footage of the preparation for the execution was shown on free-to-air and cable television – as well as repeated a number of times during the week – and that the images *The Press* used were also carried in the *NZ Herald* and *The Dominion Post,* though not on the front page.

In a letter to the Press Council, *The Press* editor Paul Thompson said that papers could not hide the brutality that characterised such events. "To do so would disqualify a paper from claiming to be a medium of news and to report accurately what is occurring in the world". The paper was aware that considerations of relevance and taste impinged on how it reported violent events but, in this case, had decided to publish because the images had already been shown on television and would appear in other newspapers; they dealt with an event of major public interest; were not gratuitously violent; and did not depict the most brutal elements of the execution.

Mr Thompson said that running the photographs less prominently would have merely delayed their viewing; that a prominent headline above them would have done little, if anything, to soften their impact; and that it was far-fetched to think that a person contemplating suicide would not know how hanging occurred or would have been guided in how to carry it out. The newspaper was aware of the constraints on reporting suicide and abided by them.

Further Correspondence

In later correspondence with the Press Council, Ms Clark said that the distress arising out of the photographs was exacerbated by the fact that the top of the front page was visible for the whole of the day, in sales outlets, as well as in homes. The

assertion that the images had already been shown on television was misleading as both TVNZ and TV3 had resiled from graphic coverage.

She reiterated that she believed the photographs were informative to the vulnerable as to the means of carrying out a suicide, and stressful. To make her point she enclosed two overseas newspaper reports of copy-cat suicides said to have occurred after seeing video footage of the Hussein hanging, including by children trying to re-enact the event.

In his final response, Mr Thompson said the fact that the two main New Zealand television networks did not show the images did not alter the fact that they were widely available to New Zealanders in the electronic and printed media. *The Press* should not be held accountable for not conforming to some other newspapers' handling of the execution.

Conclusion

Ms Clark's complaint about headlines and captions (Principle 10) was a difficult one to support. The wording was clear and accurate, and fairly conveyed the report of the death. The issue before the Council was therefore sensibly the larger one: whether the paper behaved ethically in putting such images so strongly before the public, in a manner that could affect the vulnerable.

The Press had broken no clearly defined rules in publishing pictures leading up to the hanging of Saddam Hussein. The death of the dictator was not a suicide and the coverage therefore was not subject to Coroner's Act stipulations that largely preclude the publishing of details about the manner of a death by suicide. However, Ms Clark sincerely raised the larger and vexed question of whether depictions of the hanging – a common choice of suicide method – should be, at the least, played down in their manner of presentation to avoid the possibility of copy-cat suicides. In effect, was there an ethical imperative on the newspaper not to put the pictures before the public to prevent the possibility of an adverse influence on the vulnerable?

This Council has previously noted (Annual Report, 2005, p.24) that the press, health professionals and the community at large are all concerned about the tragic problem of suicides in New Zealand. But it also found that blanket judgment about causality in copycat suicides was problematic, and the research sometimes conflicting. Though leaning towards the benefits of greater openness of reporting, it urged editors to keep in mind the complexity of the issue, recognising the widespread effects that reportage can have on many people. Ms Clark's concern was, of course, one removed from the norm, suggesting copycat behaviour from an execution rather than another suicide. But the principle involved would appear to be the same.

The news media generally took a conservative approach and did not cover suicides in detail. But a dilemma arose for them when there were large public interest issues at play. The news media were legitimately guided by a "public interest". Media law expert Professor John Burrows has noted that "'public interest' … does not mean 'of interest to the public': public curiosity is not enough. The matter must be such that there is legitimate public *concern* in knowing about it; it must be of public *importance".* (Burrows' italics)

Some would argue that that right could have been upheld equally with less graphic pictures less prominently displayed. But the counter argument is that the public has the right to see for itself the true horror of such an event and to come to its own conclusions. The case has been put elsewhere that over-concern about viewer sensibilities could in some circumstances be clouding understanding of the horrific reality of many areas of human suffering – and therefore the chances of amelioration. Putting the pictures so powerfully on the front page above the fold ensures the picture has maximum impact.

It must also be said that the likelihood of copycat deaths after seeing images of the execution is far from proven. Some of the most disturbing of the supplied overseas examples – assuming they are substantiated – appeared to be cases of children not committing suicide, but coming to grief while re-enacting the execution in play. Stopping publication of pictures from such a big international event to prevent the risk of tragedy would be a difficult line to draw.

In this case, the Press Council accepted the argument for legitimate publication. *The Press* appeared to have weighed the issues carefully before making its decision to publish. Its decision to highlight the reality was bound to upset many: the images were disturbing. But the Council places weight on the side of public interest – the public's right to know the whole picture of one of the most momentous events of recent history.

The complaint was not upheld.

Press Council members considering this complaint were Barry Paterson (Chairman), Aroha Beck, Ruth Buddicom, John Gardner, Penny Harding, Clive Lind, Denis McLean, Alan Samson, Lynn Scott and John McClintock.

Keith Lees took no part in the consideration of this complaint.

'The one that got away'– Case 1082

Introduction

In its edition of December 10, 2006, the *Sunday Star-Times* (SST) printed an article by Anthony Hubbard under the headline *The one that got away*. A group calling itself Kiwis for Balanced Reporting on the Mideast (KBRM) complained to the Council about the contents of the article.

The complaint is not upheld.

The Article

The subheading of the article read:

"The case of an alleged Israeli war criminal visiting New Zealand ended in a bitter political row. Critics say Moshe Ya'alon should have been tried and arrested, but the Government let him go. Anthony Hubbard reports."

The article commenced with the reference to the Government's claim 6 years ago that it would prevent war criminals finding a bolt hole in New Zealand. This statement was made by the Minister of Justice when legislation was introduced allowing war criminals to be prosecuted in New Zealand for crimes committed elsewhere.

The tone of the lengthy argument was set by the following paragraph:

"Six years on, critics say these claims are hollow. New Zealand gave safe haven to Israeli war criminal Moshe Ya'alon they said, because Attorney-General Michael Cullen stepped in to prevent his arrest."

The implicit theme of the article was that the Government's claim six years ago had been shown to be hollow because of failure to arrest General Moshe Ya'alon while he was in the country.

The article contained statements critical of the Attorney-General's action and claimed that the Government had intervened for political reasons. There is a statement that both the Prime Minister and the Attorney-General denied that the decision was made for political reasons. The article cast doubt on this statement but noted it was harder to dismiss the statement by the Solicitor-General that the decision was made on purely legal grounds. The article noted the "integrity and general high-mindedness" of the Solicitor General.

The article then dealt at some length with the alleged crime, namely the dropping of a one-tonne bomb on the house of Salah Shehadeh, the leader of the military wing of Hamas, in Gaza in 2002, which killed not only Shehadeh and his wife but 13 other innocent bystanders in a tightly packed Gaza slum.

The article noted by way of background that an Auckland District Court Judge after considering an application for an arrest warrant over a weekend decided there was *prima facie* evidence that Ya'alon was a war criminal and issued an arrest warrant under the relevant legislation. However, the Attorney-General, who is not a lawyer, accepted the Solicitor-General's advice that there was no *prima facie* case and stepped in to prevent the arrest.

The Complaint

KBRM in its complaint alleged:

- The newspaper did not make a proper distinction between reporting of facts and conjecture, passing of opinions and comment (principle 6).
- The newspaper was not guided at all times by accuracy, fairness and balance and did deliberately mislead or misinform readers by commission or omission (principle 1).
- The headlines, subheadings and captions did not accurately and fairly convey the substance of the report they were designed to cover (principle 10).

KBRM summarised its complaint in these words:

"We believe that the SST published an unfair and unbalanced article that gave the impression that an Israeli General has committed a 'war crime'. He 'got away with it' because of legal or political reasons that stopped the New Zealand Government from arresting him. The overall space and balance given to the article by the SST was overwhelmingly on the side of the charges against Ya'alon, with very little space given to any defence, or even to the facts involved. No reasonable reader could come away from this article without believing that in all likelihood the General Ya'alon was indeed a 'war criminal who got away'.

"Yet this impression was based only on opinions, comments, conjecture, innu-

endo and guilt by association, with a complete lack of fairness, balance and facts. We also believe that the SST's refusal to publish any counter-balancing material submitted by us was a violation of the NZPC principles of fairness and balance."

The Newspaper's Response

The newspaper's position was that the article was a piece of comment and analysis that was clearly signalled by its placement under the Comment and Review section masthead. SST stated it was "… a by-lined opinion-analytical piece, not a news story". It showed that there were serious charges against Ya'alon and that these had not been properly considered by the Solicitor-General. The focus of the piece was to question the reasons for the Solicitor-General's decision (after two- hours' consideration) to overturn the District Court Judge's findings (after two-days' consideration), that there was a *prima facie* case that Ya'alon was a war criminal.

SST's stance was that the case against Ya'alon had been modestly stated and could have been much harsher. According to the SST, Ya'alon approved the dropping of an enormous bomb on an apartment building in a crowded residential area of Gaza, itself one of the most densely populated places on earth. The newspaper acknowledged that the facts made Ya'alon "a figure of the most intense international controversy since the day of the bombing; and it is, in the writer's view, *prima facie* evidence of a war crime. That fact is rightly highlighted in the break-out quote". That quote, from a London solicitor who instructed the Auckland solicitor to obtain the arrest warrant said:

"This is one of the most densely populated areas on earth, and they set off a one-tonne bomb in it."

SST acknowledged that the article sought to discover why the Government was so keen to dismiss this extremely serious and well-documented charge. It denied that it attempted to stifle debate on the article and said it ran a letter to the editor the following week. It rejected KBRM's complaint as "it simply chose not to publish another lengthy article from a newly-formed pressure group with no established reputation but with an obvious agenda".

Discussion

In an opinion piece the writer has the opportunity to present a point of view. Provided the basic facts are accurate, the writer is entitled to express his or her view and to draw conclusions from those facts. The journalist has the right of free speech.

The article does pose the question as to which, of the District Court Judge who had decided that was a *prima facie* case that Ya'alon was a war criminal, or the Attorney-General who accepted the Solicitor-General's advice that there was no *prima facie* case, was right. It noted this was a hard question to answer because the Government had not given detailed reasons for its action and the lawyers for the other side said they could not divulge all their client's case. It was then noted that the central issue was the dropping of the bomb in Gaza.

The article quoted extensively from those who endeavoured to obtain the arrest warrant including two solicitors who act for the Palestinian Centre for Human Rights and the father of one of those killed in the bombing. There is implied criticism that a

government could make its decision within two hours and asks "what was the big rush?". There was a quotation from a law professor who had seen the evidence and believed it provided a strong *prima facie* case for arrest. It was clearly the opinion of the author that there were serious charges against Ya'alon, which had not properly been considered by the Solicitor-General.

There was no discussion in the article of the complexities of the issues in bringing cases about alleged war crimes before the courts. General Ya'alon was simply described as a war criminal – no allegations – no ifs or buts. The clear implication was that he committed a war crime and that he got away with it because of legal or political reasons that stopped the New Zealand Government from arresting him.

As the article was one of comment and opinion, SST was entitled to express the views it did provided the article had a reasonable basis in fact and proper distinction was made between the reporting of facts and the passing of opinions and comment. An opinion piece must be based on fact but does not need to be balanced. In the Council's view the article was clearly an opinion piece evidenced both by the fact that it was in the Comment and Review section of the newspaper and by the contents itself, notwithstanding that "reports" was used in the sub-heading. The thrust of the opinion was that the Solicitor-General's decision might have been politically motivated and that the New Zealand Government had welshed on its commitments. The particular complaints made by KBRM were aimed not at any factual errors but at the opinions expressed in the article.

Though the Council did not go as far as the complainant, it accepted that the article questioned and was critical of the Solicitor-General's decision that there was not prima facie evidence that Ya'alon was a war criminal. By the use of the headline, *The one that got away,* and other comments in the article, there was a clear suggestion that Ya'alon was fortunate not to face charges in this country. In an opinion piece SST was entitled to take this view provided it was not based on incorrect facts. In the Council's view, most of the statements were clearly comment or opinion. The basic facts were the issuing of the arrest warrant, the stopping of it, and the facts of the actual event on which the warrant was issued. As there was no suggestion that the essential facts were not correct and in the Council's view there was a clear distinction between facts and opinion and comment in the article, the complaint was not upheld.

It was part of the complaint that an article submitted by KBRM should have been published to have given balance. In the Council's view there was no obligation on SST to publish the article. It had, on December 17, 2006, published a letter criticising it for the way it handled the legal issues. The proposed article was reasonably lengthy, albeit somewhat shorter than the original article. This part of the complaint was also not upheld.

The complaint about the headlines and captions was also not upheld. In an opinion piece, headlines and captions often are indicative of the opinion expressed, as these were.

The Council, in declining to uphold the complaint, is not endorsing the opinions expressed in the article. It is recognising the right of a newspaper and a journalist to express an opinion.

Press Council members considering this complaint were Barry Paterson (Chairman), Aroha Beck, Ruth Buddicom, John Gardner, Penny Harding, Keith Lees, Clive Lind, Denis McLean, Alan Samson, Lynn Scott and John McClintock.

No pre-sale agreement on Otago Courthouse – Case 1083

Introduction

In its edition of December 5, 2006, the *Otago Daily Times* (ODT) published an article, on the front page, under the headline *Sale of old court building dismays group*. Sheila McCabe complained to the Council that that article was inaccurate, unbalanced and unfair and that a follow-up article published on December 7, 2006 failed to remedy the problem and was itself inaccurate, unbalanced and unfair. She also complained about the newspapers refusal to publish an apology.

The complaint was upheld on grounds that the original article was inaccurate, unbalanced and unfair. The remaining grounds of complaint were not upheld.

The Article

The article concerned the sale of an old courthouse in Otago. It reported that a community group that had been fund-raising for more than two years to buy the historic building "had its hopes dashed after the Auckland owner sold the building to another buyer". It continued:

"The group believed it had a verbal agreement with the owner that stipulated she must inform the trust if she received another offer for the property … Two previous offers had been made, but fell through and the trust had been informed beforehand. … In a bitter twist, [the chairman of the group] had contacted the owner to confirm to her the trust had raised the required amount of money needed to secure the building. However, she firmly told him the building had been unconditionally sold, leaving [him] feeling disappointed and in a state of disbelief."

Complaint to the Editor

By letter to the editor dated December 6, 2006, sent by facsimile and by email, Ms McCabe complained that the article was inaccurate and lacked fairness and balance. Her express purpose for writing was to provide the editor with the facts to "correct the errors in the article".

In her letter, which was four pages long, Ms McCabe explained that she was the previous legal owner of the Courthouse, as trustee for a family trust. It had been on the market since April 2005. Some time in the past, before the courthouse was put on the market (late 2004 or 2005) she was contacted by the chairman of the community group. From then until the courthouse was sold in October 2006, Ms McCabe spoke with the chairman many times, including in September 2005 when the group negotiated to buy the courthouse but were unable to settle the purchase. Apart from that, the group had never had any right to purchase or "buy back" the courthouse. All discussions about possible sale were conducted with Ms McCabe as trustee for the beneficial owners; her duty was to them, not the community group or the chairman.

Ms McCabe complained that the article contained two factual inaccuracies:

There was no verbal agreement to notify the community group of offers on the property. She said that there had been a temporary undertaking in August 2005 to refrain from professionally marketing the courthouse in order to give the community group the opportunity to purchase it. During the currency of that undertaking she had informed the community group that she had received an expression of interest but was not pursuing it because of the undertaking. The chairman was not informed of expressions of interest made after the undertaking expired. The courthouse was sold in October 2006, well over a year after the undertaking had expired.

Although the chairman had contacted her in October 2006, there was no mention of any particular sum having been raised; rather, he tried to negotiate a price lower than that previously discussed. In any event, she said, there was no definite commitment from the owners to sell the courthouse to the community group for a particular sum.

Ms McCabe also complained about a lack of balance and unfairness. She said that the article implied that she had not been straightforward in her dealings with the community group – in particular that she had not honoured a verbal agreement. In light of that implication, she argued, the newspaper ought to have checked the facts or at least contacted her before publication for comment.

By way of remedy Ms McCabe sought "an immediate retraction of the inaccurate statements published in the article and an apology".

Follow-up Article

In the afternoon of December 6, 2006, the editor of the ODT responded by email to Ms McCabe's complaint:

"In response to your email and fax of this afternoon, I apologise for the newspaper not contacting you before the original article was written. My reporter should have done so. Apparently, it was difficult to ascertain your name and contact details, but that is insufficient excuse. I shall be speaking with my reporter about that oversight. I intend to publish a summary of your detailed email in tomorrow's edition. Included below is the text of that summary …"

There followed a seven-paragraph draft article.

Ms McCabe replied that evening. She dismissed the claim that the reporter could not identify or find her, pointing out that apart from anything else the chairman knew who she was and how to contact her. She objected that the proposed follow-up article was not satisfactory and then said:

"The proposed text is also inaccurate as follows: (1) the trustees did not sell the Courthouse to a Dunedin couple; (2) the description of my discussion with [the chairman] in October 2006 is misleading – he did call me to put in an offer for the Courthouse (at $10,000 less than the money raised) but never mentioned that $160,000 had been raised; (3) your fourth paragraph does not properly explain the arrangement I had with the Heritage Trust in August 2005. The words "had never been" should read "was not." The Courthouse sold two months ago. This is hardly news. The ODT needs to make a simple apology and retraction and leave it at that. If you are going to

publish any "text" then it needs to be accurate and it needs to be finalised with an apology and a retraction".

The email ended with a draft apology that Ms McCabe would find acceptable.

The next day, the ODT ran a follow-up article on the front page of the Regions section headed, *No verbal pre-sale agreement: trustee*. The article was a slightly amended version of the draft sent to Ms McCabe. The opening paragraph read:

"A trustee of the private family trust that sold the former Lawrence courthouse to a Dunedin party has denied the existence of a verbal pre-sale agreement with a Lawrence community group".

The article then referred to Ms McCabe's email the previous day, and summarised her position in relation to the alleged verbal agreement and the nature of the discussion when the chairman contacted her in October. It specifically recorded that it was "contrary to" the chairman's account as published on December 5. The final paragraphs read:

The ODT article implied "I was not straightforward with the heritage trust in that I did not honour a verbal agreement with the heritage trust and/or [the chairman," Ms McCabe said. "I have not breached any agreement. I have not acted in any way dishonourably."

The Complaint

On December 21, 2006 Ms McCabe complained to the Press Council.

She complained that the publication of the December 5, 2006 article breached principles 1 and 2 in that:

The article was inaccurate, unbalanced and unfair.

Although the editor apologised personally, he did not publicly apologise for the lack of fairness and balance or retract the inferences made by the original article.

The ODT did not promptly correct the error or give it fair prominence.

The follow-up article (and a further article that was not relevant to Ms McCabe's complaint) also lacked balance and fairness and was inaccurate, which was pointed out to the editor before publication.

ODT's Response

The newspaper's position was that the follow-up article of December 7 provided balance and correction for the original article of December 5.

The editor of the ODT noted that he received Ms McCabe's complaint on December 6 and immediately accepted that she should have been approached for comment. He apologised immediately and told her that he would speak with the reporter concerned and publish a summary of her complaint the following day. A copy of that summary was provided. It was amended in response to points (1) and (3) in Ms McCabe's email response (see above) but the editor did not feel that her point (2) required further action.

The editor maintained that he acted promptly and fairly in response to Ms McCabe's complaint and published her side of the story as soon as practicable. He did not think that a public apology was required.

Argument in Reply

Ms McCabe did not accept that the follow-up article took account of her com-

ments on the summary. First, she said that the amendment in response to point (3) still didn't take account of the August 2005 undertaking. Second, she did not accept that her second comment "required no further action".

Ms McCabe maintained that the follow-up article itself lacked balance:

"I provided details of my dealings with the [community group] which were protracted and unsatisfactory. I believe that I was extremely patient with [the chairman] and his colleagues. The ODT chose not to provide any of those details, which would have put the whole sorry affair in a completely different light".

Ms McCabe insisted that she was entitled to an apology and retraction as set out in her email reply to the editor on the evening of December 6, 2006.

Discussion

The editor accepted that the original article of December 5, 2006 lacked balance in breach of principle 1. Ms McCabe should have been given the opportunity to comment on the very serious allegation that she had breached a verbal agreement to sell the courthouse out from underneath the community group. That did not happen but, upon receiving Ms McCabe's complaint, the editor immediately moved to correct the situation.

The issues are whether the second article breached principle 2, and if it did not, whether the second article relieved the newspaper from liability of its breach of principle 1. The relevant principles are 1 and 2. Principle 1 requires accuracy, fairness and balance and prohibits misrepresentation of the facts. Principle 2, relating to corrections, provides that:

> "where it is established that there has been published information that is materially incorrect then the publication should promptly correct the error giving the correction fair prominence. In some circumstances it will be appropriate to offer an apology and a right of reply to an affected person or persons".

Accuracy, Fairness, Balance: the original article

A follow-up correction might, in appropriate circumstances, lead to the Council not upholding a complaint against an earlier inaccurate article. This will depend on the circumstances and, in particular, the materiality of the inaccuracy in the original article. Material matters will include the reason for the inaccuracy together with the effect of the inaccuracy on persons mentioned or identified from the contents of the article. If the reporter failed to adhere to good professional standards or the article casts a slur on a person who is identified or can be identified from the facts in the article, the complaint is likely to be upheld. If the inaccuracy is a simple error which does not stem from poor journalistic standards and is not material, it is more likely that the Council will not uphold the complaint.

In this case the original piece clearly cast a slur on the complainant and was published with no form of balance sought or included. In case 864, a case with very similar facts, the Press Council ruled that an immediate follow-up article clarifying the position of the people concerned "does not remove the need to make reasonable

efforts to check facts before publication". The same applies in this case. For this reason, the complaint that the original article breached principle 1 is upheld.

Accuracy, Fairness Balance: the follow-up article

The follow-up article did not in itself breach principle 1. Ms McCabe would have preferred the follow-up article to put "the whole sorry affair in a completely different light". The strict requirements of balance do not go so far. Ms McCabe's response to the allegations made in the original article was clearly and forcefully put in the follow-up article. Most importantly, any suggestion of underhandedness was clearly denied, both in the headline and in the body of the article. Given the promptness and prominence of the follow-up within the context of ongoing coverage of the community group's attempts to acquire the courthouse, it was enough to provide balance for the original article. The complaint that the follow-up article was also inaccurate, unfair and unbalanced is not upheld.

Adequacy of the Correction

There was no breach of principle 2.

The newspaper moved promptly to correct the lack of balance of the original article. Ms McCabe's position was fairly and adequately presented at the first practicable opportunity in a follow-up article the next day. The front page of the Regions section was sufficiently prominent given that the story was regional and a related story was appearing later in the same section. The complaint that the ODT did not promptly correct the error or give it fair prominence is not upheld.

Principle 2 recognises that a public apology will sometimes be appropriate. In this instance, the editor considered that a follow-up article and private apology would suffice. The Press Council has agreed with the editor on the efficacy of the follow-up story. The matter of an apology is something on which reasonable people could differ. However, the Press Council is not persuaded that it was demonstrably wrong to refuse a public apology. The complaint that a public apology was required is not upheld.

Decision

The complaint is upheld on the ground that the original article of December 5, 2006 was inaccurate, unfair and lacking in balance. The remaining three grounds of complaint are not upheld.

Press Council members considering this complaint were Barry Paterson (Chairman), Aroha Beck, Ruth Buddicom, John Gardner, Penny Harding, Keith Lees, Clive Lind, Denis McLean, Alan Samson, Lynn Scott and John McClintock.

Care and responsibility required when reporting youth suicide – Cases 1084 and 1085

Introduction:

The Press Council has upheld complaints by Paraparaumu and Kapiti Colleges against the *Kapiti News* for its coverage of allegations that bullying at the colleges had led to youth suicides. The Council has found the newspaper breached its principles in three areas – accuracy, balance, and children and young people.

The Background:

In a front-page article on October 18, 2006, headlined *Kapiti Schools Under Fire Over Suicides*, the *Kapiti News* reported: "Bullying at Kapiti schools by both teachers and students is responsible for a series of youth suicides in the area, friends of the victims say". Two former, unnamed students of Kapiti College were the source.

A large accompanying picture showed an unidentified young woman with her head in her hands.

The article reported the women as saying five of their friends had committed suicide in the last 12 months, that the "problem" stemmed from the schools and that in the prior six weeks, four students, one as young as 15, had taken their own lives. The women were highly critical of the schools and teachers. The assistant principal of Paraparaumu College was quoted as vigorously denying the allegations and the head of Kapiti College as saying he was surprised by the claims because the school did everything it could to combat bullying.

On page 3 of the same issue were separate articles more fully quoting Kapiti College principal John Russell and Paraparaumu College assistant principal Cliff van Schooten. Both defended their schools and, in support, quoted Education Review Office reports.

The day after publication, October 19, Kapiti College's Board of Trustees chairman Bruce Henry complained to the editor of the *Kapiti News*. On November 1, Paraparaumu College BOT chair Mrs Sue Ordish wrote a similar letter of complaint.

The letters said the front-page article was unbalanced, contained gross errors of fact and inconsistencies, and did the schools and the wider community a major disservice. The articles on page 3 did not provide redress.

The colleges said one Kapiti College student had taken her own life in the past nine years, and that had been unrelated to school experience, while there had been one such death in the 19 years' experience of the Paraparaumu College principal.

Kapiti College also said when the journalist contacted the principal, he did not outline any details of claims but simply said he was following up on claims that bullying was rife at the school.

On October 25, the *Kapiti News* followed up its report with an article headed: *School Meets Over Bullying.* It said assemblies had been held in the past week by Kapiti College to discuss bullying and how Mr Russell had sent home a letter to parents informing them the school was absolutely committed to providing a safe learning climate for all students. It then went on to quote Mr Russell extensively, apparently from his letter.

Alongside was a front-page editorial which began: "What is going on with our young people?" It then traversed details of its report of the week before, describing it as a "shocking situation." The newspaper said it had gone to "great lengths" to ensure the schools had an opportunity to respond.

Without admitting error, it amended its original report wherein it was claimed four students in the previous six weeks had taken their own lives. The editorial said only one of five young people who had taken their own lives in the past year was a current student.

The editorial said the paper did not know why the young people had taken their own lives and agreed it was only speculation that bullying was to blame. "Curiously reaction to our report was more negative than we imagined it would be."

The paper printed five letters in the same edition, including one signed by 19 students of Paraparaumu College. Four were highly critical of the initial report, and the fifth was critical of some points while acknowledging some of the issues it raised.

On October 25, the *Kapiti News* editor, Simon Waters, responded to the board of Kapiti College. He defended the October 18 article and said he was satisfied the two women were genuine in their concerns. He did not believe the coverage was unbalanced.

To Mr Russell's claim that he was asked only to explain the school's position on bullying, the editor said this was not the recollection of the reporting staff "and indeed I fail to understand how that could be, given Mr Russell's direct quotes in the college's response story that specifically refer to suicides".

He contested there were gross exaggerations and inaccuracies in the article and did not believe an apology was warranted. The paper had not set about to discredit the colleges, but he declined to apologise.

In his later response to the November 1 complaint from the Paraparaumu College Chair, Mrs Ordish (mistakenly calling her Sir and failing to change the date of October 25 from his previous response to Kapiti College), he said the newspaper's "ongoing investigation" into Kapiti suicides had revealed a far more serious situation than first realised in terms of youth suicides. It had elected not to publish such detail and the paper was adopting a cautious and responsible approach.

It had also received "dozens more calls" from people alleging bullying at one or both colleges. Similarly, the paper had decided not to publish them unless they were relevant to the issue of the high number of suicides taking place.

The Complaint:

The Paraparaumu College Board of Trustees formally complained to the Press Council about the article on November 29, 2006, and was joined by the Kapiti College Board of Trustees on December 12, 2006. The Press Council considered the complaints together.

The Paraparaumu Board listed four specific areas of complaint: accuracy/comment and fact; corrections; children and young persons/photographs/headlines and captions, and; insignificant investigation of specific complaint from the board.

- **Accuracy and balance:** The figures quoted in the article about suicides at the school were incorrect. Neither of the informants appeared to have attended Paraparaumu College and it would therefore be difficult to identify how they could have direct personal information relating to that college.
- **Corrections**: The Paraparaumu Board of Trustees believed the October 25 editorial made some attempt to address the October 18 article, acknowledging in the body of the editorial there had been just one college-age suicide in recent months. But no reference was made to the fact it was not a Paraparaumu College student. The Board of Trustees also challenged the

newspaper's view it had given the schools ample opportunity to respond. The issue of suicide was not the focus of the conversation, which was allegations by two students of bullying at the college. The implication, the Board of Trustees believed, was that the students had formerly attended Paraparaumu College. The published article identified the students, however, as former students of Kapiti College.

- **Children and young persons/photographs/headlines and captions:** The Paraparaumu Board of Trustees was also concerned about the front-page photograph and heading, noting they had the potential to create adverse reactions among vulnerable people. The board believed the use of a photograph that contained no detail about its background was inappropriate and misleading.
- **Insignificant investigation of specific complaints from the Board:** Paraparaumu board chair Mrs Ordish was critical that the newspaper's letter of response to her board appeared to be the same as the one sent to Kapiti College. She noted the incorrect date and honorific.

Discussion of suicide in the media was not at issue. The objection from both colleges was the strong inference that recent youth suicides were linked to bullying in the schools.

The Kapiti College chairman, Mr Henry, in his December 12 letter to the Press Council, cited breaches of principles relating to accuracy, children and young people, comment and fact, headlines and captions and photographs and described the quality of journalism as reprehensible.

The college reiterated that when the principal was approached by the reporter, he was not asked to comment on the allegations that subsequently appeared in the newspaper.

The October 25 story was "nothing more than a cynical attempt to validate the earlier story". It also misrepresented the facts when it suggested the college had met to discuss bullying. Assemblies were held to address student concerns about the inaccuracy and unfairness of the first story, and to let them know what steps the college was taking to seek a retraction and correction.

The Newspaper's Response:

Mr Waters acknowledged the date and honorific errors in his response to the Kapiti College board and apologised.

Since the articles of October 18 and 25, he had spoken to representatives of Suicide Prevention New Zealand who had raised concerns about the dangerous nature of openly reporting on the subject of suicide. As a result of those discussions, he had undertaken to research and prepare a policy on reporting suicide for the company's publications and had in the meantime instructed his staff not to actively pursue the "Kapiti Coast suicide issue" until he was satisfied continued reporting did not put people at risk or unless there was overwhelming public interest.

Accuracy and balance: He disputed that the newspaper's reporting of the young women's claims was incorrect. The comments accurately paraphrased what the young

women had said, and they confirmed their remarks later.

The newspaper had made it clear the young women were former students of Kapiti College but that they were friends of the victims, some of whom were current or former students at both colleges. In the paper's opinion, therefore, they were "uniquely placed" to comment on possible causative factors in the suicides and on alleged bullying at both colleges.

Both colleges were implicated in the young women's comments and that gave the paper confidence that bullying might have played a part in the deaths of their friends.

At the time the two articles were published, the paper had been unable to confirm through the coroner the identities of the victims the young women spoke of. It took those claims at face value and out of respect for the families concerned, elected not to name the victims in any subsequent coverage. "Nor have we approached those families for comment. To do so, while it may help shed light on whether bullying was a causative factor, would simply be unethical in our opinion."

The editor also confidentially provided names of six purported youth suicides and one by a Christian name, four of which he said had been confirmed through the Coroner.

Corrections: The newspaper disputed the colleges had not been given sufficient opportunity to respond. The reporter concerned strongly denied implying the two young women were from Paraparaumu College when he spoke to the assistant principal.

The question of suicide was clearly discussed as the article quoted the assistant principal directly on suicide.

Children and young persons/photographs/headlines and captions: The newspaper accepted the photograph should have been identified as a dramatisation, and it was an oversight not to have done so. But the editor said he did not believe it was unethical. The heading was an accurate reflection of the article.

The editor acknowledged suicide was highly complex and the paper "most probably" could have done better with its coverage. But the newspaper was not a large media organisation with vast resources able to investigate stories at length. Reporters handled a large volume of work each day fairly, accurately and ethically.

The newspaper realised that bullying alone was unlikely to force a person to take their own life, and the paper had since carried an article on other factors such as depression and low self-esteem, which had drawn praise.

Further comment from Paraparaumu and Kapiti Colleges:

In further comments on behalf of the Paraparaumu College's Board of Trustees, Mrs Ordish said the editor had said in his response that bullying "may" have played a part. If this was the case, more accurate investigation should have been undertaken rather than "sensationalise the issue based on flimsy comments from these two women".

Four of the seven names of suicide victims provided by the editor were said to have attended Paraparaumu College. Mrs Ordish pointed out two had left in 2002, one in 2003 while the fourth had not attended Paraparaumu College but Kapiti College.

Kapiti College's Mr Henry was highly critical of the editor's assertion that the paper took the informants' claims at "face value" for such a serious accusation.

Of the three suicide victims alleged by the editor to be from Kapiti College, Mr

Henry said none could be found of the school's rolls for the years between 1999 and 2006. While they might have attended the school before 1999, it would be misleading and unfair to suggest any recent suicides could be blamed on what might have happened more than seven years previously.

Mr Henry drew attention to his board's complaint under Principle 5 of the Council's statements of principles which states: "Editors should have particular care and consideration for reporting on and about children and young people". The newspaper's subsequent realisation of the dangers of such reporting and its decision to have a policy on the issue also reinforced the substance of his board's complaint.

He also said the editor's explanation that what was published accurately reported what the young women said was specious.

The editor, by his claim that the paper had two people on record saying bullying was "at least one of perhaps several causative factors" when the actual article said bullying by teachers and students was responsible for youth suicides, appeared to acknowledge the inaccuracy of the article.

Mr Henry said the size of the media organisation was also irrelevant. Newspapers serving a small community could often have greater impact and a paper choosing to publish an article on youth suicide had a responsibility to be balanced and accurate regardless of resources.

Mr Henry said the editor had not answered his point that the October 25 article reported how Kapiti College had met to discuss bullying. It had, in fact, met to discuss the "devastating claims" that had appeared in the paper.

Conclusion

The Press Council believes the *Kapiti News* was justified in investigating the claims of the two young women and their allegations. Nevertheless, it is a subject that requires the utmost care and responsibility, particularly when youth suicides are involved. The *Kapiti News* did not meet the required standards of accuracy and balance, and insufficient regard was paid to the issue of children and young people.

Accuracy: The Council upheld the complaints on the grounds of accuracy. The October 18 article said bullying at both colleges "by both teachers and students" was responsible for a series of youth suicides, according to two former students of one of the colleges. The claims were unconditional and forthrightly stated, and could mean only students recently at the schools.

Yet the reference to teacher bullying was fleeting, and the details provided by the young women were vague. The distressing nature of suicide and the essentially private action it requires means the informants could not have been fully aware of all the facts. As subsequent investigations showed, all but one of the victims said to be from Paraparaumu College were former students who had left some years previously. Kapiti College was also able to rebut the alleged number of suicides there.

What the reporter said to the head of Kapiti College about the proposed story is in dispute, and the Press Council found it difficult to adjudicate on such matters. But it seemed strange neither Mr Russell nor Mr van Schooten denied the numbers of students who had allegedly killed themselves when they would surely have done so if

they had been aware of the allegations – and as the colleges were able to do later.

The claims of the informants, therefore, could not be sustained in terms of accuracy. Given their non-specific nature, it was the duty of the newspaper to check further and verify the claims relating to the number of deaths at the schools before publishing them. As subsequent inquiries had discovered, such information was available. Though much of it might have been confidential or unlikely to be published, it would have allowed the newspaper to temper its original report and, at the very least, to be sure it was accurate.

It followed that if the article were inaccurate, the heading – while accurately reflecting what followed – must also have been inaccurate.

The newspaper was also misleading in the October 25 article when it said Kapiti College had met to discuss bullying. The assembly was to discuss the newspaper's coverage of the week before.

Balance: The Press Council also upheld the complaints of lack of balance. The newspaper believed it had provided balance by approaching the assistant principal and principal at the two colleges. But a subject as sensitive as suicide required more than "he-said-she-said" comments from directly interested parties, or certainly more than what was published.

The newspaper had a duty to approach other sources, most particularly the Coroner and groups set up to prevent suicide. The story demanded balance and explanation from acknowledged reputable sources, and the newspaper's reporters should have been aware of them. The Council is aware that such a code of practice for suicide reporting has been under development for some time through the Media Freedom Committee of the New Zealand Section of the Commonwealth Press Union, and the newspaper should have been aware of it.

The Council was pleased to see the newspaper developing its own code and subsequently becoming more directly involved with those groups who could have offered the necessary balance, but the fact remained the newspaper should have done so in the first instance.

The editor stated that it would unethical to approach the parents of the young people who had committed suicide. Such an approach would certainly have required tact and acute sensitivity but, carried out properly and professionally, it would not have been unethical and might have provided very important information and potential balance, as he acknowledges.

Children and Young People: The complaints from both colleges that the article breached the Press Council's principle on children and young people relating to editors taking care when reporting about children and young people are also upheld.

The newspaper was unable to illustrate that it had that principle in mind when it published the October 18 article and, if it had done so, it would not have published the article as it did. Its inaccuracies and lack of balance mean children and young people were poorly served.

However, the Council did not uphold the complaint about the separation of comment and fact. The newspaper made its views clear in its editorial and the news stories were clearly labelled as such.

The Press Council also rejected the suggestion that a small newspaper with fewer resources cannot carry out major investigations. In its editorial, the newspaper seemed ready to make a campaign of the issue, saying it would not "back off" in the face of criticism of its October 18 article, although it subsequently amended its form of coverage. On a major topic such as suicide, a newspaper needs to commit to all resources necessary to cover the issue responsibly because the risk of harm done by inadequate reporting is high. This responsibility particularly falls heavily on community papers with their greater penetration.

The colleges sought corrections from the newspaper, which it declined to do after receiving support for its stand, and further informants. A more conciliatory approach with the colleges, however, might have proved more fruitful in the long term.

The newspaper had acknowledged its photograph of a young woman on the front page should have carried a "dramatisation" explanation. Though the photograph was dramatic in itself, the Council did not believe its use in itself was unethical. A reasonable person would regard the photograph as posed for the purpose of illustrating a story. Still, the sensitivity about the picture as relayed by the Paraparaumu College Board of Trustees is a warning for newspapers of how such pictures can be regarded.

The Council acknowledged the workload of an editor responsible not just for a daily newspaper but also two community newspapers, particularly when the intended coverage of a sensitive issue would inevitably place a further heavy demand on his attention. But that in itself is no excuse and the Council found it had to uphold the complaints on all major grounds.

Press Council members considering this complaint were Barry Paterson (Chairman), Aroha Beck, Ruth Buddicom, John Gardner, Penny Harding, Keith Lees, Clive Lind, Denis McLean, Alan Samson, Lynn Scott and John McClintock.

Letter attack on professor went too far – Case 1086

Introduction

Professor (Emeritus) Freda Briggs complained to the Press Council that three Letters to the Editor published in *The Press* made untrue and professionally slanderous statements and insinuations about her and that the editor had maintained the exchange of correspondence despite being provided with her CV and other information about her professional background and standing.

The complaint is upheld on grounds of a lack of fairness.

Background

Freda Briggs is Emeritus Professor in Child Development, Researcher, and Lecturer in Social Development, Child Protection and Family Studies (part time), at the University of South Australia, Magill Campus. With Professor Russell Hawkins, then Professor of Psychology at Nanyang Technological University, Singapore, she published a paper, *Safety issues in the lives of children with learning disabilities* in the Ministry of Social Development's *Social Policy Journal of New Zealand,* November 2006 (Volume 29 pp 43-59). The research, conducted at undesignated special schools in New Zealand for the New Zealand Police had involved Professor Hawkins in both

design of the interview schedule and data analysis. Their findings had been presented at the *Australasian Conference on Child Abuse and Neglect* at Wellington in February 2006.

A central finding was that "while school counselors indicated that 44 per cent of girls at the schools were victims of (substantiated) sexual abuse, only 32 per cent of female respondents disclosed these offences to researchers".

The Social Policy Journal of New Zealand clearly states that papers must be approved by an editorial committee and further subjected to double-blind peer review involving no fewer than two assessors before being published.

The article, Professor Briggs stated, was publicised "responsibly" both by the *New Zealand Herald* and Radio NZ National. Following this publicity, there was significant speculation about which of the New Zealand special schools had been the focus for the research.

On January 26, *The Press* published a letter from Professor Briggs, which she wrote to attempt to bring a halt the speculation about which schools had been involved in the research. She suggested that Ministers and senior bureaucrats, rather than seeking to identify which schools had been involved, should be asking "What can we do about it?" She maintained "all New Zealand teachers and early childhood professionals should be trained to recognize the signs of abuse and to handle and report them sensitively … New Zealand has the best school-based child protection programme in the world … children with severe learning disabilities can be taught their rights and recognize and report inappropriate behaviour. All children should have the opportunity to live in a safer world".

On February 3, 2007, *The Press* published a letter from a Masterton correspondent, expressing doubt that Ms Briggs' research had been published in a reputable peer-reviewed journal. "Any expert worth their salt knows that there are no signs or behaviours that are symptomatic of child sexual abuse … I understand Freda Briggs is an avowed believer in the ritual abuse phenomenon … it is generally regarded as a myth … politicians, teachers, parents and police should steer well clear of Ms Briggs. She is not an appropriate person to lecture us on how to identify or prevent child sexual abuse".

Ms Briggs responded to the editor on February 6, complaining about what she considered "defamatory garbage" in the published letter. The editor should have first checked the facts. "The research in question was published in your *New Zealand Social Issues Journal*". She attached her CV and asked that the paper publish an immediate apology for "this disgraceful piece of journalism".

On February 9 the editor rejected the need to apologise as he had "no cause to believe that the writer's opinion was not genuinely held", but agreed to publish an edited version of her response "in the interests of fairness and balance".

This response (written by her university's legal adviser) was duly published, in edited form, the next day. Professor Briggs accepted that the writer had a right to express an opinion, "but no right to discredit my credentials as a researcher in the field of child protection without doing his homework". It explained how one became a professor, gave the background to the publication of the research, her employment

history, her considerable experience in child protection work and evidence of a long, extensive publications record.

On February 17 *The Press* published a further letter from the previous correspondent, casting doubt on Briggs' research, claiming that her figures had not been substantiated and that her findings had appeared in what is "basically a newsletter for social policy analysts." Important details were missing making it unsuitable for publication in any reputable journal; an online search suggested that Briggs had published 10 journal articles since 1982, rather than hundreds of articles as she had claimed. "As far as I know she has published no research into the interviewing of child abuse victims. Researchers are required to be ethical and impartial. From what I've seen I'm not sure that Freda Briggs is either".

The Press Council noted that it might not have received all correspondence around this issue. However, on February 20, under the banner *Steer Clear of Her* a letter from a Dunedin correspondent was published. This stated, "Some people achieve prominence through the quality of their work. Others achieve the same result by bullying their critics into silence. Freda Briggs' reply (Feb 10) ….. [to the letter of] (Feb 3) suggests to me that she falls into the latter category". The letter-writer supported the central premise of the Feb 3 letter and added that the letter-writer had been right in advising [various parties] to steer clear of her.

The Complaint

Professor Briggs's complaint is that it was irresponsible to publish untrue and professionally slanderous statements and insinuations in Letters to the Editor without making simple checks relating to their accuracy; and to persist in publishing such statements after receiving factual information disproving the allegations – her CV, a faxed copy of the article in question and evidence that it had been peer-refereed.

The Newspaper's Response

The editor cited legal opinion to the effect that there was a defence against defamation where writers were expressing their honest opinion, and that opinion had a basis of fact. The paper had ensured that this was so.

Further, the letters column is a forum for debate – often vigorous debate. Dispute about facts or interpretation of facts, is at its core. Correspondents are always given space to put the record straight.

In Professor Briggs' case, her beliefs, research and activities are controversial and that controversy was reflected in what correspondents wrote.

What they wrote was less emphatic than Professor Briggs intimated., the editor said. What she habitually saw as the defamatory assertion of incorrect facts was really the assertion of vigorous opinion.

He cited examples from the letters in question that were comments on the paper published in the Journal, not on her career as a whole. The fact that the professor and one other wrote a foreword endorsing a book on ritual abuse and torture in Australia at least implied that she was a believer in ritual abuse.

The editor claimed that *The Press* had given Professor Briggs unlimited opportunity to debate the points made by other correspondents. The newspaper had published

the three letters received from her and almost all the letters received in her defence.

The publication of her first letter (considerably longer than the number of words usually allowed) was given extended space because of the special interest of many Christchurch people in child abuse, as a result of the Peter Ellis case.

That same consideration – strong public interest – encouraged the newspaper to print the vigorous correspondence that followed Professor Briggs' first letter. The professor was a controversial and high profile academic specialising in a contentious issue. In such circumstances, her research and advocacy were bound to come under scrutiny. *The Press* did no more than provide a forum for that debate.

Conclusion

Newspapers have a particular duty to encourage debate on issues of interest and importance to their communities. One site for such debate is in the Letters to the Editor. The Press Council has upheld the right of editors to publish, or not to publish, such letters.

The Press Council has observed several times that freedom of speech is sometimes seen at its most raw in the letters section of newspapers. The sequence in this complaint is familiar: strong opinions expressed in Professor Briggs' initial letter about the need to train teachers and early childhood workers to recognise the signs of child abuse evoked a vigorous letter expressing contrary views, which, in turn, produced further forthright letters.

However, in this case, the views expressed in the letters complained of went further than vigorous debate; they also questioned Professor Briggs's professional background, integrity and competence, and the level of these attacks did not abate in the second and third letters. A professional working in a highly controversial area, can expect criticism and questioning and Professor Briggs will be well aware of this. She took steps to advise the editor of her academic and professional background, and the editor did publish an edited version of her letter.

The Council has held in the past that editors are not responsible for the accuracy of facts contained in a letter, but here the editor had received information prior to the publication of the February 17 letter which ought to have put him on his guard as to the accuracy of some of the statements in the subsequent letters.

The Press Council's Principle 12 in relation to letters recognises that selection and treatment are the prerogative of editors who should be guided by considerations of fairness, balance and public interest. In this case the Council finds that balance seems to have been achieved through publication of the communications *The Press* received from Professor Briggs and supporter[s] – although, as stated, it might not have seen the full coverage. There is likewise an undoubted element of public interest in these matters.

Nevertheless, the Council finds that Professor Briggs was unfairly treated when the editor published the letters of February 17 and 20 when he had been previously advised of the professional standing of the complainant. The publication of these letters prolonged an attack on Professor Briggs' professional integrity, and did not contribute further to the debate on a controversial issue.

The Press Council therefore upheld the complaint on grounds of a lack of fairness.

Press Council members considering this complaint were Barry Paterson (Chairman), Ruth Buddicom, Kate Coughlan, John Gardner, Penny Harding, Keith Lees, Denis McLean and Lynn Scott.

Aroha Beck and Alan Samson took no part in the consideration of this complaint.

Weight loss headline misleading – Case 1087

Introduction

The Press Council has upheld a complaint by Dr Denise Dalziel against the *New Zealand Listener* about cover headlines on its edition of November 18-26 2006. The Council found the magazine breached its principle on headlines.

Background

The cover story for the edition in question was about obesity in New Zealand and efforts being made by the Government and others to encourage people to eat healthy food and to exercise. The cover featured a photograph of personality Maggie Barry next to the headline: *Put to the Test NZ's world leading weight loss plan*. Under the headline was the quote: "I didn't want to turn 50 and be overweight" – Maggie Barry.

The Complaint

In her complaint to the Press Council, Dr Dalziel said she bought a copy of *The Listener* after seeing the headline. She said she was not a regular buyer of the magazine but had a professional and personal interest in reading about the weight loss plan. As a general practitioner she counselled people about weight, diet and exercise, and wanted to keep abreast of what her patients were reading. She had a personal interest in that she was soon to turn 50 and did not wanted to be overweight either.

Dr Dalziel said she felt deceived by the cover title, thinking she was going to read about a leading or new weight-loss plan and about exactly how Maggie Barry lost weight. The article, however, did not contain such a plan. It suggested instead that New Zealand could become a world leader – and this was different from what was implied on the cover.

She said the article did not reveal anything new and stated "no country has worked out a way to curb obesity yet". On February 3, 2007, Dr Dalziel complained to the Press Council saying the headers on *The Listener* cover had contravened the Council's Principle 1 concerning accuracy and Principle 10 covering headlines and captions.

Dr Dalziel said she had not received a reply to a letter of complaint sent to the editor of *The Listener* in December.

The Listener's Response

In its response to the Press Council, *The Listener* said it stood by its cover treatment and the inside feature about New Zealand being a possible leader in promoting weight loss. Editorial business manager Suzanne Chetwin said the cover clearly stated that New Zealand's leading weight loss plan was being "put to the test".

The feature article reported that the Government was committing $76 million to fight obesity and quoted leading Glasgow nutrition expert Mike Lean, who believed New Zealand could be a world leader in the fight. As well, *The Lancet* medical journal said New Zealand was setting the agenda for fighting obesity worldwide.

The Listener said the article discussed government-funded initiatives, including a programme to tackle child obesity and health and noted Sports Minister Trevor Mallard's view that Sport and Recreation New Zealand had made great progress compared to the ministries of health and education.

Maggie Barry had been an obvious choice for the cover because she was one of the most popular faces of the Government's Push Play exercise campaign. Though her exact regimen was not contained in the feature, Maggie Barry had been quoted as saying she had completed an Outward Bound course, now used the stairs, walked her son to school and used a pedometer.

The Listener said Dr Dalziel had singled out the statement that "no country has worked out a way to curb obesity yet", but had not included the previous quote from Mr Lean: "It sounds good, it sounds like vote-catching stuff, but being realistic, other programmes that have tried to do this sort of thing haven't been successful. But they haven't been done in New Zealand and they haven't been done in this way, so I'm not going to write it off".

The Listener acknowledged Dr Dalziel should have received a response to her letter.

Conclusion

The Press Council's Principle 1 says publications should not deliberately mislead or misinform readers. Principle 10 says headlines, sub-headings and captions should accurately and fairly convey the substance of the report they are designed to cover.

The Listener's cover words and headlines *Put to the Test NZ's leading weight loss plan*, do not accurately convey the substance of the article. They suggest New Zealand has come up with a world-leading weight loss plan that someone is putting to the test. The person on the cover is a smiling Maggie Barry, who is quoted under the headings as saying. "I didn't want to turn 50 and be overweight" – Maggie Barry.

It is reasonable to draw the conclusion from the cover that Maggie Barry has been testing New Zealand's world-leading weight-loss plan. Dr Dalziel bought *The Listener* expecting to read about the plan and Maggie Barry's experience.

The feature article does not deliver. It talks in general terms about Maggie Barry's desire to lose weight and become fit. *The Listener* has acknowledged that the article does not include her "exact regimen". In fact, the article doesn't say whether she managed to lose any weight at all. It talks in general terms about her taking more exercise.

There is no "weight-loss plan" as such mentioned in the article. The article talks about "a raft of initiatives", including SPARC's Push Play campaign, the "Mission On" child obesity campaign, the "Green Prescription", "Let's Beat Diabetes" and initiatives by government agencies and local councils to encourage people to walk or cycle rather than drive cars.

There is no "test" as such. *The Listener* article surveys the views of a number of health experts on the various initiatives and the impression the reader is left with is that no single approach will overcome the problem of obesity.

The majority of the Press Council does not find the cover headlines to be deliberately misleading, but upholds the complaint on the grounds that they did not accurately represent the report that followed. Three members of the Council dissented from this decision (see below)

It is unfortunate that *The Listener* did not reply to Dr Dalziel's original letter of complaint

Minority Dissent

A minority held that the cover headline *Put to the test NZ's leading weight loss plan* could be understood as accurately referring to the government's announced commitment to fighting obesity, as discussed in the article. The opening phrase, "Put to the test", could be understood as posing the question: was the Government's programme to counter the problem of increasing obesity likely to succeed?

Linking the piece with a largely unrelated case study of broadcaster Maggie Barry, and using a photograph of her on the cover, was certainly confusing, but this in itself was not enough to render the cover headers a contravention of Press Council principles requiring headlines, sub-headings and captions to accurately and fairly convey the substance of the report they are designed to cover.

The minority would therefore not uphold.

Press Council members upholding the complaint were Barry Paterson (Chairman), Aroha Beck, Ruth Buddicom, John Gardner, Penny Harding, Denis McLean and Lynn Scott

Press Council members not upholding the complaint were Kate Coughlan, Keith Lees and Alan Samson.

How many Iraqi deaths? – Case 1088

Introduction

Dr T F W Harris complained to the Press Council about a cartoon published in the *New Zealand Herald* on January 1, 2007 and an article published on January 2, 2007. Each of the publications made reference to the estimated number of Iraqi deaths after the United States-led invasion of Iraq. He queried the accuracy of the newspaper's numbers in these two instances and maintained that the newspaper should have relied instead on the research subsequently reported on by the *New Zealand Herald* on January 3, 2007. His complaint is not upheld.

Background

On January 1, 2007 the *New Zealand Herald* published a cartoon which satirised claims of "victory" by the president of the United States in the war in Iraq. The cartoonist drew President Bush's claim to victory against the background of a scoreboard. On one side, the death of Saddam Hussein was used to represent the sole success by the United States and its allies. On the other side, the cartoonist included a representation of the loss of lives suffered in order to achieve this alleged "success". The scoreboard was partially obscured and in the centre of the cartoon was a caricature of President Bush at a lectern saying "See folks … I'm winning!".

The cartoonist appears to have used numbers on each side of the scoreboard which were random but representational. There was not, for example, any source to suggest that the numbers should be viewed literally.

On January 2, 2007 the *New Zealand Herald* led its World section of the newspaper with a large headline containing grim statistics about the costs of the conflict in Iraq. The headline reported that 3000 US soldiers had been killed in Iraq; 22,057 US troops had been wounded; 134,000 US troops were deployed; and 655,000 Iraqis were believed to have died as a direct result of the US-led invasion, which had continued for 1382 days at an estimated financial cost to the United States of US$549 billion (as at the end of September 2006).

On January 3, 2007 the *New Zealand Herald* reported on a study by Oxford University academics, Professor Neil Johnson and Dr Sean Gourley, which challenged the findings of a US-led study by researchers from Johns Hopkins University and Al Mustansiriya University which had been first published in the *Lancet* in October 2006. The *Lancet* study gave rise to the widely reported and relied on figure of Iraqi deaths. The *New Zealand Herald* article reported that Professor Johnson and Dr Gourley were critical of the methodology of the *Lancet* study and the validity of the extrapolations drawn from it. Their research concluded that a more accurate figure for Iraqi deaths would be in the vicinity of 218,000.

The Complaint

Dr Harris complained that the statistics used by the *New Zealand Herald* were inaccurate and, as a consequence, he alleged that the newspaper failed to "acknowledge the Coalition's achievements". He claimed that those errors should be rectified by the newspaper. He complained that on three successive days the *New Zealand Herald* put three different figures before its readers as to the number of Iraqi deaths sustained since the occupation. He claimed the cartoon referred to 10,000 Iraqi deaths (the actual text of the cartoon was, in fact, 100,000); the article on January 2, 2007 referred to 655,000 deaths and the article on January 3 referred to 218,000 deaths.

Dr Harris maintained that the newspaper had a responsibility to use statistics that were accurate or to report where they might be considered suspect. Because he alleged that the newspaper was inaccurately reporting statistics on Iraqi deaths in its publications of January 1 and 2, 2007, he sought an apology and correction.

Dr Harris sent his complaint directly to the newspaper in the first instance. Unfortunately the newspaper failed to respond until the complaint was forwarded through the Press Council processes.

The Newspaper's Response

The editor rejected Dr Harris's claim that Coalition forces had been successful in meeting their objectives. He maintained that President Bush (as recently as January 2007) conceded as much.

He explained that, when the January 2, 2007 article was published, the figures cited were the most authoritative available. He was not aware of the Oxford study until the following day and immediately publicised it. He rejected any necessity for an apology or correction.

Discussion

A cartoonist uses satirical drawing to illustrate viewpoints that can amuse, challenge, provoke, entertain and even, on occasions, alienate readers. Cartoonists enjoy considerable freedom in their role.

Readers are assumed to understand that a cartoonist will not necessarily be relying on actual events. They can, for example, use a representational situation to give rise to the satirical point they strive to make. It follows that readers do not look to cartoons for "news". They look to them, first and foremost, to be entertained. It is most unlikely that readers expect to take a literal view of a cartoonist's comments.

The Press Council did not uphold Dr Harris's complaint of inaccuracy in the cartoon. It was readily apparent to readers of the newspaper that the figures on each side of the scoreboard were representational in order to allow the cartoonist to make his central point.

It also did not uphold the complaint of inaccuracy in respect of the January 2, 2007 article. The *Lancet* study had been widely reported and relied upon by a huge number of news organisations. It was published in a peer-reviewed and highly regarded medical journal. At the time of publication of the January 2 article the newspaper could properly rely on the study as an authoritative source. The Council accepted the editor's assurance that he was not aware of the Oxford study at the time of publication of January 2 article.

Once he became aware of the Oxford study, the January 3 article followed. This second article put each study under some examination and also referred to the "stir" in scientific circles that had resulted from the Oxford research. It seems likely that debate will continue in scientific circles about the validity of each study's findings for some time yet.

The newspaper did not express any preference for either figure in its January 3 article. As the editor later observed, it was not for the newspaper to determine who was right and who was wrong.

Because the Council did not uphold the complaint of inaccuracy, it followed that it did not find that the newspaper should either correct information or apologise.

Press Council members considering this complaint were Barry Paterson (Chairman), Aroha Beck, Ruth Buddicom, Kate Coughlan, Penny Harding, Keith Lees, Denis McLean, Alan Samson and Lynn Scott.

John Gardner took no part in the consideration of this complaint.

A journalists' spat – Case 1089

Introduction

On July 7, 2006 the *National Business Review*'s fortnightly Media Watch column, contributed by David Cohen, included criticism of the work and views of Jon Stephenson, a journalist specialising in international news and comment. Mr Stephenson complained to the Press Council about the column, citing the Press Council's principle that "publications should be guided at all times by accuracy, fairness and balance, and should not deliberately mislead or misinform readers by commis-

sion or omission". He also complained that the column, and its publication, was motivated by malice.

His complaint is upheld, at least in part.

Background

Cohen began by traversing recent developments in international reporting in the New Zealand media, especially print journalism. In his view, and despite some concerns, local newspapers were improving their coverage of "offshore situations". He pointed to the moving of international pieces to more prominent positions, new and talented commentators and editorial decisions to send reporters to cover breaking stories in the Pacific.

Cohen then outlined a different view about the adequacy of local coverage of international affairs, apparently held by Jon Stephenson. He referred to an interview on Radio NZ National, and quoted Stephenson as stressing the need for the media to provide commentary from a New Zealand perspective, rather than simply printing articles sourced from overseas.

Cohen questioned whether it was necessary to have information about some areas, such as Iraq, collected and delivered by New Zealanders and whether a New Zealand perspective on Iraq actually made much sense at all.

Cohen then made some negative comments about Stephenson's journalism, though praising him for bravery in going to "hotspots" such as Baghdad and for hard work.

The Complaint

Mr Stephenson argued that the claims Cohen made about his professional work were deceptive, inaccurate, dishonest and unfair or unbalanced.

He took particular exception to Cohen referring to him as "the self-described award-winning freelance foreign correspondent" and pointed out that the use of the term "self-described" could mean someone who is boastful of their achievements and/or someone who had not actually won any awards.

He suggested that Cohen had "deliberately misrepresented" his views by quoting selectively from the Radio NZ *Mediawatch* programme.

He was highly offended by Cohen's comment that Stephenson "has been on a number of sponsored trips to various international hotspots, most notably Baghdad". Stephenson thought that Cohen was hinting that his views on better foreign affairs coverage by New Zealand media were linked to self interest that is, more work or free trips. He denied the implication. According to the complainant only one of his five trips to Baghdad had been sponsored.

He pointed out an inaccuracy in the column. Cohen stated that Stephenson had graduated from AUT's journalism school, but according to the complainant, he had not.

Mr Stephenson also disputed Cohen's claim that he engaged in a "never-ending tour of self-promotional spots". He found the accusation "without basis and offensive".

He further complained that Cohen had been misleading when indicating how seldom a New Zealand perspective had been included in Stephenson's reports from places such as Iraq. According to the complainant he had never argued for an explicitly New Zealand perspective in every piece; he had argued, however, for a more

independent perspective than that often provided by the American media.

The complainant was particularly irked by the columnist's criticism that "(Stephenson's) Mideastern dispatches have been . . . thin on presenting real Mideastern voices". He considered this to be, "at best a demonstration of ignorance on the part of the columnist; at worst, outright dishonesty".

Mr Cohen's comment, that in Stephenson's journalism, "the reporter, rather than the situation being reported on, has always tended to dominate the narrative" was also considered "highly offensive" as well as "misleading and inaccurate".

Finally, he disputed a criticism of wording that was "a little strange" and "rather odd", at least according to Cohen. In a quote from an Iraqi talking about Saddam Hussein, "Even an unjust Islamic ruler is better than an unjust occupation", Cohen found the phrase "Islamic ruler" awkward and posed the question, "did the subject really put it that way?" Stephenson suggested that Cohen was insinuating that either the reporting was sloppy or that Stephenson had changed or concocted the quote. Either insinuation was "highly offensive" to the complainant.

Mr Stephenson concluded by stating his belief that the column, as well as the editor's decision to publish it, was "motivated by malice and deliberately sought to discredit or undermine my professional reputation".

The Newspaper's Response

The editor of the *National Business Review*, Nevil Gibson, did not reply to Mr Stephenson's initial letter of complaint to the newspaper (October 1) but chose to respond once his complaint had been accepted by the Press Council.

He firmly rejected the various complaints.

The editor pointed out that Cohen had acknowledged Stephenson's "personal bravery" and his commitment when reporting on international hot spots. There was no suggestion of personal antipathy on Cohen's part.

He noted that Cohen's Media column was an opinion piece. Strong but honestly held personal opinion was to be expected.

Mr Cohen has some expertise in this area because he had a "lifelong interest in the Middle East", he had visited and reported on Muslim countries for British and American publications and his articles had also been published locally.

Mr Gibson explained that as far as the expression "self-described award-winning freelance foreign correspondent" was concerned, Cohen was objecting to the term "foreign correspondent" which Cohen understood in "the more traditional sense of a reporter employed and housed overseas over a substantial period of time by a news organisation". Stephenson had not been so employed.

Cohen clearly disagreed with Stephenson's "negative assessment" of local media in their commitment to covering international news.

He suggested that as Stephenson commented on and criticised the performance of colleagues and their parent media organisations, he could hardly complain when his own opinion and work were criticised.

In closing, Mr Gibson noted that in the past Stephenson had taken legal action, under the Employment Relations Act, against the owner of *NBR*, but that matter had been resolved and played no part in his editorial decision to publish Cohen's comments.

Further Correspondence

Despite the newspaper's response, Mr Stephenson stood by his complaint, reiterating his view that the article had been motivated by malice.

He submitted examples to show that his reporting was not "thin" on "real Mideastern voices" and pointed to the range of sources quoted.

He stressed that Cohen was clearly wrong in suggesting that the phrase "an unjust Islamic ruler" was odd. Cohen had claimed that "Islamic ruler" was "rather like a New Zealander speaking of a 'Christianity' ruler" but he explained that because "Islamic" is an adjective, whereas "Christianity" is a noun, the quote was grammatically correct.

He pointed out that if Cohen and his editor were now disputing the words "foreign correspondent" in "the self-described award-winning freelance foreign correspondent" (because Stephenson did not fit the traditional definition offered), then it was very confusing – four years earlier Cohen himself, in one of his columns for *NBR*, had written … "A correspondent is, as the *OED* puts it, 'one employed by a journal to supply it with news from some particular place'". That definition clearly applied to the complainant.

He found "difficulty" in accepting the editor's position that his previous legal action had played no part in the decision to publish. He repeated his belief that "personal antipathy and antipathy toward my work" were involved in writing the column and in publishing it.

He claimed that he was not arguing against Cohen's right to express and publish his opinion – rather, that right had been exercised neither fairly nor responsibly. In his view, Cohen's criticism was unethical and the "sneering tone, errors and inaccuracies, and the lack of evidence" suggested a "hatchet job".

Discussion

Mr Stephenson provided the Council with copies of several of his previously published reports. However neither he nor the *NBR* provided a transcript or recording of the Radio NZ Media Watch interview in support of their argument. There are therefore matters which the Council is unable to determine.

It is disappointing that this particular complaint, by one journalist against another, required a formal adjudication by the Press Council.

In an ideal scenario, a prompt letter of complaint to the *NBR* would have led to an offer by the newspaper to publish an opposing piece by Stephenson in rebuttal of Cohen's criticism.

Nevertheless, Stephenson had the right to take this matter to the Press Council and once he had exercised that right he was entitled to have his complaint considered carefully.

As the editor noted in the newspaper's defence, this complaint involves the issue of free comment and free speech. It is clear that this was an opinion piece and the Council has frequently stressed the right of columnists to express their honestly-held views strongly and forcefully, even when the content or the tone gives offence.

However, at what point does forceful criticism become unfair or unbalanced criticism? Is there a point where it becomes difficult to escape the conclusion that the

criticism is "motivated by malice" and "deliberately seeks to undermine or discredit" Stephenson's professional reputation? That is the heart of his complaint.

The Council took the view that much of Cohen's column could be read as strong but honestly held personal opinion – for example, his comment that Stephenson's dispatches were "thin" on "real Mideastern voices". Certainly, the complainant countered with a list of examples from his work that some might find impressive, but "thin" is obviously a highly subjective term. Similarly, Cohen's claim that "the reporter . . . always tends to dominate the narrative" was simply a matter of opinion.

Further, Stephenson stated that his views about the coverage of foreign affairs by New Zealand media were deliberately misrepresented when Cohen quoted only one sentence from the Radio NZ interview, but it was not at all clear to the Council exactly how his views were misrepresented. Cohen's understanding of Stephenson's viewpoint was at least one possible interpretation and does not seem to the Council to be "intellectually dishonest".

In addition, though Cohen's comment that Stephenson had been "on a number of sponsored trips" might seem to exaggerate, at least some of the travel to "international hotspots" was indeed sponsored. The claim was hardly entirely inaccurate.

The complainant might well have been offended by Cohen seeing his public talks and lectures as merely a form of "self-promotion". That might not be true, of course, but that was a point of view that Cohen was perfectly entitled to take – and to express.

However, there were two details that gave the Press Council more concern.

The first was the reference to "Jon Stephenson, the self-described award-winning freelance foreign correspondent". Without Cohen providing any evidence at all to back up "self-described", that seemed unjustified and served to hint that he might not have actually won awards for his journalism.

This concern was only compounded by the newspaper's reply that it was merely disputing the term "foreign correspondent", which it took to mean in a traditional sense. However, the columnist himself seemed to have argued differently in an *NBR* column four years earlier, when accepting "correspondent" as being anyone "employed by a journal to supply it with news from some particular place". The Press Council found the editor's defence tenuous.

Secondly, and more importantly, was the comment about the "strange" and "rather odd" wording in Stephenson's work, especially followed by posing the question, would the subject "really put it that way?" Stephenson suggested that this had the effect of insinuating that the reporting was sloppy or that he had altered or, worse, made up the quote. It was the view of the complainant, and it was the view of the Council, that this effect was indeed intended by the writer.

However, it is not justified, at least by the example he gives. "Islamic ruler" in the sentence, "Even an unjust Islamic ruler is better than an unjust occupation" did not appear to be as "odd" as Cohen insinuated, whether one argued grammatically or semantically.

In these two areas the column clearly crossed from robust but fair expression of opinion to unfair treatment of the complainant and his professional work. On balance, they were of sufficient weight to justify an uphold decision.

On the more serious complaint, that the writing of Cohen's column, and its publication in *NBR*, was the result of personal malice and a deliberate attempt to undermine the complainant's reputation, the Council did not find, on the evidence before it, sufficient evidence to draw such a conclusion and this part of the complaint was not upheld.

Conclusion

For the reasons noted above the complaint is upheld, on the grounds of lack of fairness. The allegation of malice is not upheld.

Press Council members considering this complaint were Barry Paterson (Chairman), Aroha Beck, Ruth Buddicom, Kate Coughlan, John Gardner, Keith Lees, Denis McLean, Alan Samson and Lynn Scott.

Penny Harding took no part in the consideration of this complaint.

Asian Angst: Inaccurate and discriminatory – Cases 1090, 1091 and 1092

Introduction

The Press Council has upheld complaints by Tze Ming Mok and others, the Asia New Zealand Foundation and Grant Hannis against *North & South* for its report on Asian immigration and crime. The Council has found the magazine breached its principles on accuracy and discrimination.

The Background

In its December issue (published in November) *North & South* carried a cover story by Deborah Coddington flagged *Asian Angst: Is it time to send some back?* The discussion of immigration policy concentrated on crime but also referred to demands on legal aid and health services.

At the heart of the article was the use of figures, which said that in 2001 Asians made up 6.6 per cent of the population but were responsible for just 1.7 per cent of all criminal convictions. It went on to say: "However, according to Statistics New Zealand national apprehension figures from 1996 to 2005, total offences committed by Asiatics (not including Indian) aged 17 to 50 rose 53 per cent from 1791 to 2751".

Several crimes committed by Asians, ranging from kidnapping to "domestic" murders and breaches of the Fair Trading Act, were described in the course of the story. It quoted Detective Sergeant John Sowter, head of the Auckland Drug Squad, as saying that 90 per cent of major drug cases involved foreign nationals "and the large majority of those are Asian".

Charles Mabbett, media adviser to the Asian New Zealand Foundation, wrote to the magazine challenging the article. Another letter of complaint was sent by Tze Ming Mok and 24 other signatories.

In the January issue the magazine published several letters critical of the article, including a letter from Mr Mabbett and another from Keith Ng, specifically dealing with the statistics. This carried a footnote from Deborah Coddington rejecting the criticism. Further critical letters were published in the February issue.

The Complaints

Charles Mabbett lodged a complaint with the Press Council on December 13 and a similar complaint was made on December 18 by Tze Ming Mok and 18 others [see attached schedule for names of all complainants]. A third complaint was made by Grant Hannis, head of journalism at Massey University, on March 29 following the publication in January of Keith Ng's letter and the response to it. The Council treated the complaints together.

Mr Mabbett's complaint was on two grounds: accuracy and discrimination. On the cover line *Is it time to send some back?* he said migrants who had been granted permanent residency had the same rights as any other citizens and New Zealand was their home country. The suggestion that legal aid was being made available for "the worst Asian criminals" failed to explain that legal aid is available for anyone unable to afford representation.

Mr Mabbett said the claims of increased crime had failed to take into account the increase in Asian population. In 1996 Asians were far less likely than the general population to commit crime by a factor of 2-1. By 2005 this had risen to 3.7 to 1.

On discrimination he complained that the language used was inflammatory and cited as an example "a flick through the crime files shows the Asian menace has been steadily creeping up on us". He further complained that there was a lack of representation of Asian views with only two, Lincoln Tan and Rosemary Jones, being quoted.

The complaint by Tze Ming Mok also complained on the grounds of accuracy. It too made the point that measured against the increase in the Asian population the crime rate had fallen. The complaint referred to the published correspondence from Keith Ng with the reply from Deborah Coddington. In this exchange Deborah Coddington did not address the crucial issue of the comparison between the increase in crime with a larger increase in population but attacked the validity of Ng's analysis because he used a different age range. But Tze Ming Mok's complaint said the pattern of decreasing Asian representation in the crime figures was repeated for all age groups.

This failure of the basic plank on which the article rested meant that phrases like "the gathering crime tide" and "Asian menace" were themselves misleading. The complaint said the article was not an opinion column but an investigative feature yet it had a strong editorial bias.

The complaint by Grant Hannis concentrated on the statistical issue. Using figures he obtained from Statistics New Zealand on March 9, 2007, he asserted that using the populations and time periods used in the article it was clear the Asian crime rate had fallen. The rebuttal by Deborah Coddington of Keith Ng's figures, on the grounds that his use of population and time periods did not match those in the article, was groundless.

The Magazine's Response

North & South responded to the initial complaint in a letter from Debra Millar, the group publisher of ACP magazines, which said the article was subject to a two-week editing process, which included additional checking of statistics and verification of quotes. She attached a submission from the author.

In that submission Deborah Coddington said it was important to record that the Asian New Zealand Foundation existed to promote positive coverage of Asian issues. She agreed that permanent residents had the same rights as other New Zealanders and that legal aid was universally available but this did not preclude discussion about these issues.

Ms Coddington agreed that the crimes of other ethnic groups could be catalogued in a similar way and said she had done that in a story on Maori child abuse but "this story is about the negative aspects of Asian immigration". It was about crimes "mainly alien to New Zealand, secretive, underworld gang crimes", which was not stated as her opinion but in observations from experts like the head of the Auckland Drug Squad. She repeated the argument that Keith Ng's statistical criticism was invalid because it was not comparing like with like.

A "gathering crime tide" was a metaphor carefully chosen because a tide can go in and out.

In response to Tze Ming Mok she said that the article clearly pointed out that the Asian population had risen.

Overall, Deborah Coddington says that "flaws in New Zealand's immigration policies, using graphic examples of the types of people we might not want" is a legitimate subject for an article. "I reiterate that the article was to expose readers to the downside of Asian immigration which I clearly stated has been overwhelmingly good for New Zealand".

In a further response Charles Mabbett repeated that the statistical basis of the crime figures was lacking and there was therefore a lack of balance in the coverage.

On March 29 Deborah Coddington repeated her view that there was a conflict of interest in Mabbett's position. She said that being hostile to Asian criminals could not be taken to her being hostile to all Asians. She pointed out that she quoted Mr Api Fiso that "the Asian reputation as a law-abiding community is still there". If she had been writing an unbalanced story she would not have included that.

In response to Dr Hannis' complaint Ms Coddington said that she did point out the increase in the Asian population. When recording the rise in the number of offences committed by Asiatics aged 17 – 50 in the national apprehension figures from 1996 – 2005 she "did not intend to insult the intelligence of my readers by putting, in the same sentence, that this needed to be measured against the population growth".

Ms Coddington said that Dr Hannis was using figures not available to her at the time and that she was using national apprehension statistics, which were not the same as crime rate figures.

In his response of April 12 Dr Hannis said that it would have been easy to use extrapolated figures. Regardless of that, the article presented an incomplete statistical analysis in neglecting to compare the rates against the population. The crime rate he calculated used the same national apprehension figures Ms Coddington used. He did compare like with like.

Conclusion

Freedom of expression, affirmed by the New Zealand Bill of Rights Act and cen-

tral to all Press Council considerations, is not unlimited. Amongst other things, it is subject to the prohibition on discrimination in the Human Rights Act. That is reflected in the Council's Principle 8, which provides:

Publications should not place gratuitous emphasis on gender, religion, minority groups, sexual orientation, age, race, colour or physical or mental disability. Nevertheless, where it is relevant and in the public interest, publications may report and express opinions in these areas.

Immigration policy and crime rates in a specific ethnic community or sector of society are legitimate subjects for journalistic investigation by a free press that would fall within the proviso to principle 8. Nor is balance in the form of neutrality necessarily required. Magazines are entitled to take a strong position on issues they address (principle 7). But that does not legitimise gratuitous emphasis on dehumanising racial stereotypes and fear-mongering and, of course, the need for accuracy always remains.

The key issue was the absence of correlation between the Asian population and the crime rate. Ms Coddington argued she had recorded the rise in the Asian population and that it would have insulted the readers to link that with the crime figures. The Council did not accept this argument. The linkage was vital and should have been made explicit. It is abundantly clear and is not effectively challenged by Ms Coddington, despite quibbles about terminology and direct comparisons of her figures with those of her critics, that the rate of offending is dropping pro rata. To then talk of a gathering crime tide was therefore wrong.

The suggestion that a "crime wave" – a phrase Ms Coddington points out she did not use – is different from a "crime tide" because a tide can go out is disingenuous. In the context of the article as a whole the implication is clear that crime generated from within the Asian immigrant community is increasing.

Both in the article and in responses to the complaint Ms Coddington referred to a May 2003 *North & South* article stating that people of Asian origin had long been known in New Zealand for their "all-round fine citizenship". The implication was that this has changed. The statistics did not support this.

The language used was emotionally loaded. There was an explicit statement in the third paragraph of the article – "we'll make it loud and clear from the start, the vast majority of Asians making New Zealand their new home are hard-working, focused on getting their children well educated and ensuring they're not dependent on the state (unlike so many New Zealand citizens.)". But the subsequent use of phrases like "The Asian menace has been steadily creeping up on us", "Asian crime continues to greet us with monotonous regularity" and "as each week passes with news of yet another arrest involving a Chinese sounding name" combined to portray a group that had a disproportionate tendency to crime.

The chronicle of crimes was not restricted to gang or professional criminal acts but included domestic incidents and fraud. That there are serious crimes committed by individual Asians was not at issue but the failure to set this in context, both of other sectors of New Zealand society and of the Asian communities as a whole, could not but stigmatise a whole group.

There were counter-references in the report. Immigration Minister David Cunliffe

was quoted as saying he had seen no evidence that Asian crime rates were higher than other ethnic groups and Graham Gill of the Commerce Commission was quoted as saying there were "ratbags who regardless of their ethnicity will break laws". But this was followed by a reference to ignorance of "a major problem" and the quotations did not therefore change the overall tenor of the material, which in the Council's view did breach the Principle referring to discrimination.

Ms Coddington suggested that in the case of Mr Mabbett there was a conflict of interest. But complaints to the Press Council can be expected to come from parties with an interest and Mr Mabbett has an incontestable right to make his complaint. He and the other complainants sought no special treatment.

North & South did carry a large number of critical letters but any ameliorating effect of these was negated by counter-comments and lack of recognition of the statistical inadequacies. The *North & South* article failed to meet its obligation in regards to accuracy and discrimination and the complaints were upheld.

Press Council members considering this complaint were Barry Paterson (Chairman), Aroha Beck, Ruth Buddicom, Kate Coughlan, John Gardner, Penny Harding, Keith Lees, Denis McLean, and Lynn Scott.

Alan Samson took no part in the consideration of this complaint.

Schedule of additional complainants to the Tze Ming Mok complaint:
Keith Ng, journalist
The New Zealand Chinese Association (represented by President Kai Luey and Vice-President Steven Young)
Ruth DeSouza and Andy Williamson, Aotearoa Ethnic Network
Kumanan Rasanathan, public health physician
Stephen Epstein, Asian Studies Institute, Victoria University Wellington
James Liu, Centre for Applied Cross-Cultural Research, Victoria University Wellington
Roseanne Liang, film-maker
Kenneth Leong, entrepreneur
Derek Cheng, journalist
John Ong, journalist
Esther and David Fung, community leaders
Sekhar Bandyopadhyay,academic
Belinda Borel, academic
Manying Ip, academic
Sapna Samant, documentary-maker

Conflict over conflict of interest in stadium – Case 1094

The Press Council has not upheld a complaint by Peter Attwooll against the *Otago Daily Times* over the content of a footnote added to a letter to the editor.

Background

On April 4 the *Otago Daily Times* published a letter penned by Mr Attwooll thanking weekly newspaper the *Sunday Star Times* for (in its April 1 edition) being the first

to break the story *Conflict of interest hangs over stadium*, noting that land owned by Otago Community Trust chairman John Farry, was in the path of the city's proposed new stadium. The footnote read: "It was first reported in the *ODT* on March 2, 2007. – Ed".

The Complaint

Mr Attwooll complained that the *ODT's* claim of precedence was a misrepresentation because the paper's earlier story had revealed only a conflict of interest, "not the specific nature of that conflict of interest".

"I want the *ODT* to take responsibility for misrepresenting a fact, and myself, by inserting a correction to the *To the Point* section of Letters to the Editor", he wrote.

Mr Attwooll supplied with his correspondence analysis and opinion of the *ODT's* performance in covering the stadium debate – he called the newspaper's coverage unbalanced and inadequate – but this was offered as an aside to the specifics of the charge of misrepresentation.

The Newspaper's Response

In response, *ODT* editor Murray Kirkness – not the editor at the time the footnote was added – defended the addition as accurate:

"The *Sunday Star Times* report … was published on April 1, 2007. In an editor's note – not a correction – following Mr Attwooll's letter, it was pointed out the *ODT* first reported Mr Farry had declared a conflict of interest about the issue in an article on March 2, 2007… we do not believe the editor's note misrepresented any facts".

Mr Kirkness went on to say that at the time of the *ODT's* first reporting, the specific nature of the conflict was not available, but his paper had been the first newspaper to disclose the fact. "In our view, reporting that a conflict of interest existed was sufficient for any reasonable person to assume Mr Farry had some financial interest in the matter".

He rejected any claim of partisan reporting, by way of reference to a selection of articles provided to the Council, including opinion pieces and letters, that he said were variously for and against the stadium.

Conclusion

A great deal of Mr Attwooll's correspondence appeared to be a personal judgment of the performance of the *ODT* in covering Dunedin's proposed new stadium. It was clear the issue was a big one for the city's residents, and certainly one that generated a great deal of interest and emotion.

As a reader, Mr Attwooll was perfectly at liberty to make judgments about the newspaper's coverage, and to make them publicly, including by offering them for publication in letters to the *ODT.* Mr Kirkness in his correspondence expressed an apparent willingness to publish letters on the subject from him.

But though his concerns appeared to be wide-ranging, the nub of Mr Attwooll's complaint to the Press Council was not the standard of coverage but the accuracy of the footnote appended to his letter of April 4. The nature of the earlier article claimed by the *ODT* might not have satisfied him but such an omission did not render the footnote inaccurate.

The Press Council requires publications to not "deliberately mislead or misin-

form readers by commission or omission". Though it might have been more accurate for the newspaper to have written, "The *ODT* first reported the conflict of interest on March 2 but at that time did not know the nature of the conflict", the Council did not find there to have been a deliberate misrepresentation in this case.

Some members noted that in failing to follow up on the matter of the Otago Community chairman's "conflict of interest" the *ODT* seemed to have missed the opportunity of running an interesting story.

Other issues raised by Mr Attwooll, notably what he saw as the lack of rigour of the *ODT's* investigation, might be the subject of valid comment and concern, but they were not for the Council to rule on.

The complaint was not upheld.

Press Council members considering this complaint were Barry Paterson (Chairman), Aroha Beck, Ruth Buddicom, Kate Coughlan, Penny Harding, John Gardner, Keith Lees, Clive Lind, Denis McLean and Alan Samson.

The smacking debate – Case 1095

Introduction

Allan Chesswas complained to the Press Council that a column in the *Sunday Star-Times* of February 25, 2007, by columnist Finlay Macdonald headed *A blow for debate* breached the Council's principle of accuracy. The complaint was not upheld.

Background

On that day, Mr Macdonald wrote in his regular column in the *Sunday Star-Times* about the debate raging throughout the country at the time on the Crimes (Abolition of Force as a Justification for Child Discipline) Bill before Parliament, which sought to repeal Section 59 of the Crimes Act 1961. The opening paragraph was: "The so-called 'smacking debate' obviously ceased to be a debate in any meaningful sense long ago. Sides have been taken, attitudes have hardened, there's little room for reason or rational argument any more".

The column discussed aspects of the debate from both sides, and in general lamented the level of debate.

Mr Chesswas took issue in an email dated February 27 to the *Sunday Star-Times*. He disagreed with parts of the column, including Mr Macdonald's view that the Bill was "wrongly-labelled 'anti-smacking' " legislation.

Mr Chesswas said Mr Macdonald himself had stated the specific intent of the Bill was to send a "clear message that physical discipline is unacceptable" while the Bill's purpose was "to make better provision for children to live in a safe and secure environment free from violence by abolishing the use of parental force for the purpose of correction". (The origin of the first "clear message" quotation is unclear – Mr Macdonald himself used quotation marks and they appear to have been a reference to what the promoter of the Bill, MP Sue Bradford , had said.)

Mr Chesswas continued that Mr Macdonald had also stated that if it was an anti-smacking bill, there would have been specific references to smacking becoming an

offence. Mr Chesswas argued in his email that it was surely obvious that the abolition of parental force meant smacking would "no longer exist as a concept and what we consider a smack will be considered under the law as assault".

He believed Mr Macdonald's column was not factual, lacked objectivity and balance and parties had been misrepresented. He sought a correction from the newspaper.

In response on March 1, the newspaper's deputy editor invited Mr Chesswas to write a letter to the editor and, after a further exchange, a letter critical of the column was published in the newspaper on March 4. However, the deputy editor declined to publish a correction. On March 1, Mr Chesswas complained to the Press Council.

The Complaint:

In his letter to the Press Council, Mr Chesswas reiterated his points about the Bill's aims and Mr Macdonald's description of it as "wrongly-labelled 'anti-smacking' " legislation. "While Macdonald hedges all of his statements quite effectively, it is clear his main point is that the proposed amendment will not criminalise smacking".

The Bill's purpose was to abolish the use of parental force for the purpose of correction, Mr Chesswas said, and "it is very clear that 'smacking' and 'parental force' meant the same thing. He gave Oxford dictionary definitions of "smack" ("a sharp blow given with the palm of the hand") and parental force ("physical strength or energy as a attribute of action or movement (force) . . . of a father or mother (parental)". The definition of "parental force" included within its bounds the definition of "smack".

"The nature of Section 59 is that it provides a specific reference to smacking not being an offence because without this provision, it would by definition be assault." Without Section 59, police would have no option but to interpret a smack as an assault.

In his view, Mr Macdonald had published an ignorant and/or misleading fabrication, thus breaching the Press Council principle on accuracy.

The Newspaper's response

The deputy editor, in her response to the Council, said Mr Chesswas was as entitled to his opinion as Mr Macdonald was to his. The column had simply made the point that the real purpose of the Bill was to remove the "reasonable force" defence in child discipline from the Crimes Act rather than to make smacking illegal per se.

The paper had declined to publish a correction because it did not agree the columnist had made an error of fact. But it had published Mr Chesswas' letter to the editor at the first available opportunity.

Conclusion

The debate over the removal of Section 59 of the Crimes Act divided the country, and opinions on both sides were firmly fixed. It is not for the Press Council to decide what legislation might or might not mean. Nor can it take into account what happened subsequently with the passing of the legislation.

The Council has consistently emphasised freedom of expression and this complaint firmly falls into that category. As a columnist, Mr Macdonald was perfectly

entitled to express the views he did. They were reasonably expressed and contained some balance (not that this is required in an opinion column).

The *Sunday Star-Times* had no reason to print a correction in such circumstances and it allowed Mr Chesswas to make his points with a letter to the editor. This was a satisfactory outcome.

The complaint was not upheld.

Press Council members considering this complaint were Barry Paterson (Chairman), Aroha Beck, Ruth Buddicom, Kate Coughlan, Penny Harding, John Gardner, Keith Lees, Clive Lind, Denis McLean and Alan Samson.

Editorial falls foul of Egg Producers Board – Case 1096

The Press Council has not upheld a complaint from the Egg Producers Federation concerning an editorial published by the *Manawatu Standard* on March 26.

Background

The Egg Producers Federation initially complained to the *Manawatu Standard* that the editorial referring to the treatment of battery hens was inaccurate and unbalanced. Specifically, the federation complained about the writer's reference to "de-beaked" and "de-clawed" birds and his claim that the caged birds were "loaded" with antibiotics. The federation also complained that the editorial made inappropriate and inflammatory comments in support of raids on battery hen sheds.

The newspaper acknowledged in an editorial on April 5 that chickens were not de-clawed or de-beaked, but instead had their beaks trimmed. The editorial also acknowledged that egg-laying hens were not routinely fed antibiotics. The federation was not satisfied with the newspaper's response.

The Complaint

On April 23 the Egg Producers Federation complained to the Press Council that it was unable to accept the newspaper's "correction" because it had failed to apologise for glaring inaccuracies and lack of balance. It said the tone and content of the follow-up editorial were "belligerent" and the newspaper had continued to publish false and misleading claims about sickness among caged chickens that would be alarming to its readers.

The federation said that the newspaper's March 26 editorial had published a number of misleading and damaging statements about the welfare of caged egg-laying hens and had made statements in support of illegal property attacks that could place its members at risk.

It said it was absurd to claim that birds were de-beaked, as birds could not eat without beaks. However, beak tipping was common throughout the industry and was beneficial for birds because it prevented feather pecking and cannibalism.

The claim that the industry "de-clawed' birds would have horrified readers, and was nonsense and unsubstantiated. The federation said it did not support the forced removal of bird claws.

Antibiotics were an accepted and necessary feature of farming life worldwide and were used for the health and welfare of sick animals.

The federation complained that the industry had not been consulted before the claims were published and the newspaper had deliberately misled readers.

The Newspaper's Response

The editor of the *Manawatu Standard* said the comments made in the editorial about methods used in the poultry industry were the opinion of the editorial writer and clearly expressed as such on a page marked as opinion and bearing the writer's name and picture.

The editor acknowledged there were a number of minor errors in the comments and, in line with the newspaper's policy, these were corrected as soon as practicable on the opinion page where the original editorial ran. The editor said he defended the writer's right to express an opinion, but accepted that it must be based on facts.

He said the March 26 editorial was making the point that animal rights activists risked losing support if they didn't take notice of where they had a point and where they didn't. The editorial described raiding battery hen sheds as the type of protest action against animal cruelty that many people would support. He said it was not urging people to attack farmers, but referred to attacking battery hen farming.

The newspaper offered the Egg Producers Federation the opportunity to write a letter to the editor to present an alternative viewpoint to the editorial. This offer was not taken up.

The newspaper suggested to the federation that the editorial writer and a photographer be allowed to visit a battery hen farming operation to report on the egg production process. The federation was opposed to the editorial writer being involved.

Conclusion

The Egg Producers Federation's complaint to the Press Council was made on the grounds of fairness and accuracy, but the organisation appeared also to see the newspaper editorial as a piece of reporting on the industry and subject to the obligations of balance.

An editorial is one of the sections of a newspaper in which a writer can freely express an opinion – even a controversial opinion. The Press Council upholds that right so long as the opinion is clearly expressed as opinion and is not based on error. The Press Council would, however, like to see a clearer differentiation between editorials and opinion columns in the *Manawatu Standard*.

Differences of opinion remain over practices in the poultry industry. The Federation was given the opportunity to write a letter to the editor expressing its views and the newspaper suggested sending the editorial writer and a photographer to examine a battery hen shed. Neither opportunity was taken up.

There were a number of errors in the March 26 editorial, which the writer claimed were the result of relying on second-hand information. The errors were promptly corrected and the Press Council determined that the corrections were adequate and did not uphold the complaint concerning the adequacy of the correction.

Corrections do not necessarily mean that a complaint will not be upheld on the basis of accuracy as to the facts on which an opinion is based. The issue is one of materiality.

This was a borderline case, but on balance the Council determined that the errors were not material enough to uphold in this case.

On the question of raids on poultry farms, the editorial urged animal rights activists to stick to the point when protesting. The Press Council considers that, though the editorial suggested that battery hen sheds were clear targets for protest and also that people would support that kind of pressure going on the poultry industry, it stopped short of encouraging unlawful behaviour.

The complaint was not upheld.

Press Council members considering this complaint were Barry Paterson (Chairman), Aroha Beck, Ruth Buddicom, Kate Coughlan, Penny Harding, John Gardner, Keith Lees, Denis McLean and Alan Samson.

Clive Lind took no part in the consideration of this complaint.

What is a majority? – Case 1097

Introduction

On March 26 *The Dominion Post* published on page two an article headlined *Chinese top of deported crims list.*

On the day of publication Dr Anne Henderson, an immigration researcher of Palmerston North, emailed concern to the newspaper about the "slanted, sensationalised and inappropriate headline". Two days later Dr Henderson emailed a further complaint about the "news item" alleging breaches of Principles 1, 8 and 10 of the New Zealand Press Council. After receiving a response from *Dominion Post* editor Tim Pankhurst, Dr Henderson made a formal complaint to the NZ Press Council.

The complaint was not upheld.

Background

The article concerned deportation of criminals both from and into New Zealand with a focus on the risks posed by returning criminals.

Paragraph one reported an increase in the number of foreign criminals deported from New Zealand and on the lack of information about criminal deportees returning to New Zealand. Paragraph two canvassed alarm at this lack of monitoring of returning criminals. Paragraph three reported that New Zealand deported 72 criminals in 2006. Paragraph four identified 34 as 16 Chinese, 8 Malaysians, 5 Russians and 5 Indians. The remaining 38 deportees were not identified as to racial group. The subsequent 13 paragraphs concerned the risks posed by returning criminals.

A sidebar highlighted the return of seven New Zealand criminals, six of whom were deported from Australia.

On March 26 Dr Henderson emailed *The Dominion Post* a "concern re news item bias". She stated that the headline was slanted, sensationalised and inappropriate and that a cursory glance would leave fair-minded readers retaining an inaccurate bias that Chinese formed the majority of the criminals deported.

She argued that, contrary to a statement in the article, 16 out of 72 did not constitute a majority. She stated that as an immigration researcher she was "very concerned at the misleading information, to the point of racial discrimination". She requested

"editorial staff and reporters have more regard for the implications and accuracy of their headlines and reporting".

On March 28, after checking the NZ Press Council website, Dr Henderson made a complaint to the editor of *The Dominion Post* about the news item citing Principle 1: Accuracy, fairness and balance; Principle 8: Discrimination; and Principle 10: Headlines … should accurately and fairly convey the substance of the report.

On Principle 1 she stated the article was misleading and misinformed the readers through the headline and interpretation of the figures. She claimed the headline was unbalanced and unfair.

One Principle 8 she stated that the article placed gratuitous emphasis on Chinese as a minority and ethnic group or race. "The emphasis on deported Chinese 'crims' was not appropriate in an article that focused on New Zealand deportees from other countries".

On Principle 10 she stated that the headline did not convey fairly the substance of the report.

Editor Tim Pankhurst's reply of April 2 "failed to see" how the article breached the principles of accuracy, fairness and balance. He did not, at this point, address the complaint about the headline. He suggested Dr Henderson was exhibiting "reverse racism" and "unhealthy political correctness".

He placed the article within the following context: "Serious crimes by Chinese, in Auckland in particular and usually against other Asians, have been well documented. With the marked increase in the Chinese population it is no surprise there will be more offending".

Mr Pankhurst stated the article was neither inaccurate nor sensational and assured her that staff were well aware of their responsibilities. He suggested if she was not happy with his response she should take the matter to the Press Council.

The Complaint

Dr Henderson, stating that the editor's response did not seriously deal with the issues raised, complained to the Press Council on April 10. Dr Henderson found Mr Pankhurst's response very disappointing, unsatisfactory, incomplete, not dealing seriously with the issues raised, mischievous and flippant. She suspected that his comments were designed to make her "wound up".

The Newspaper's Response

In his response of April 13 to the Press Council Mr Pankhurst stated that he had little to add to his original response to Dr Henderson's complaint.

He then noted "If we must descend to sophistry, the *Chambers 20th Century Dictionary* … defines major as greater in number, quantity, size value, importance". Sixteen of 72 people deported from New Zealand were Chinese and so that was the major ethnic group. He found it a puzzle "why recording of this indisputable fact should cause offence".

On May 7, following Dr Henderson's further complaint that Mr Pankhurst's response was frivolous, inadequate and time-wasting, Mr Pankhurst reiterated his position that *The Dominion Post*'s reporting was not discriminatory or gratuitous but agreed

the headline could have reflected other elements in the story, but that this was true of many stories.

Conclusion

The Press Council found that the article did not breach the New Zealand Press Council Statement of Principles.

Principle 1: Accuracy says "Publications should be guided at all times by accuracy, fairness and balance and should not deliberately mislead or misinform readers by commission or omission."

The article reported statistics relating to the deportation of criminals from and to New Zealand in 2006. The headline and article drew attention to Chinese criminal deportees. The numbers of Malaysian, Russian and Indian criminal deportees were also identified. In the absence of information about the ethnic background of the 38 unidentified deportees it must be assumed that *The Dominion Post* accurately identified the largest ethnic groups.

Dr Henderson argued that Chinese criminal deportees, numbering 16 out of 72, were inaccurately identified in the article as a "majority". The Council accepted that 16 was not a majority of 72. However readers could form their own opinion on the accuracy of identifying 16 of 72 as a "majority". As the statistics were given in the article readers were unlikely to have been misled.

On the grounds of Principle 8, "Publications should not place gratuitous emphasis on … race" the Press Council found the article was not discriminatory. Dr Henderson argued that "gratuitous emphasis" was placed on Chinese as a minority or ethnic group and that this was not appropriate in an article that focused on New Zealand deportees from other countries.

The Press Council did not find this so. Even though the article largely concerned risks posed by returning New Zealand criminals it was not discriminatory to identify the most numerous of ethnic groups among the deportees.

On Principle 10, relating to headlines, Dr Henderson complained that the headline breached the principle by not fairly conveying the substance of the report. By a slim margin the Press Council did not uphold the complaint. It was noted that the paragraphs relating to the headline formed a minor part of the article. Mr Pankhurst agreed that the headline could have reflected other elements in the story. However, this did not make the headline inaccurate or misleading.

The complaint was not upheld.

Press Council members considering this complaint were Barry Paterson (Chairman), Aroha Beck, Ruth Buddicom, Kate Coughlan, Penny Harding, John Gardner, Keith Lees, Clive Lind, Denis McLean and Alan Samson.

When a 'profit' is not a profit – Case 1098

The Press Council has not upheld a complaint lodged by Meaghan Miller, communications manager for the Queenstown Lakes District Council (QLDC), against the weekly newspaper *Mountain Scene* ("The Voice of Queenstown") arising from the newspaper's treatment of issues to do with Council finances.

The Complaint

Ms Miller, on behalf of the QLDC, complained to the Press Council on April 11, citing a piece in *Mountain Scene* of March 29 which described QLDC operating surpluses as "profit" (a front-page article, *QLDC coins it* of January 26 drew on the same word). In a letter to the editor on another subject in the same March 29 issue Ms Miller had stated that a new aquatic centre had not been funded from rates but from payments by developers and council land sales. An "editor's reply" to this letter claimed that these monies should have gone to rebates on rates rather than the aquatic centre.

With the agreement of the editor, Ms Miller submitted a letter pointing out that the council was a not-for-profit organisation and that there were legal impediments to the use of miscellaneous funds for relief of rates. She stated that to describe the surplus, which was already allocated to capital expenditure and loan repayments, as "profit" was not correct.

The editor said he had not yet decided whether the newspaper would make further comments. Ms Miller said QLDC would have entered into further negotiation if the newspaper had shown its hand on this point.

In the event Ms Miller's letter, as agreed, was published in the next edition on April 5, alongside another letter from the chair of the QLDC finance committee, both under the headline, *QLDC claims rates cannot be cut*. In the same space, marked Opinion, another "editor's reply" asserted that the council's operating surpluses represented "obscenely high profits" and claimed that the funds from land sales and developer contributions could have been used to offset rates increases.

Ms Miller contended that since she had in her letter to the editor rebutted these assertions, the newspaper – through this further "editor's reply" – had deliberately chosen to mislead readers for a second time. Moreover, the headline *QLDC claims rates cannot be cut* did not fairly represent the context of her letter. QLDC felt compelled to complain to the Press Council to "avoid further ill-informed misinformation appearing in the newspaper".

The Newspaper's Response

The editor of *Mountain Scene* noted that the letters from Ms Miller and the finance committee chair as published on April 5 were largely taken up with reasons why QLDC could not use developer funds to cut rates and could not make a profit from rates, which in turn justified the headline *QLDC claims rates cannot be cut*. Ms Miller's letter of April 11 had also said that running this headline when the council had asked for submissions as to how to reduce rates, had been unhelpful. The editor submitted that the council had asked for contributions to debate on the matter and the newspaper had complied.

Ms Miller had also raised a substantial point by calling in question the newspaper's treatment of a request to correct misleading information. In response the editor cited the Press Council's Principle 2 Corrections. He contended that what had been published had not been found to be materially incorrect as required by Principle 2. Ms Miller had been given the opportunity to make the council's case to the effect that developer funds and proceeds from land sales could not be set off against rates. *Moun-*

tain Scene had acquired other information giving a contrary view – that such monies could be applied to basic infrastructure programmes, usually financed by raising loans, and that this procedure in turn could lead to savings on rates, since interest would not have to be paid.

Ms Miller appeared to concede this point in general in her letter dated May 23, noting that though the council could not simply apply the developer contributions as a general rate reduction tool, it did have a significant positive effect on rates by providing funding for tagged projects [which would otherwise be funded through borrowing]. In the case of the aquatic center (which the community had clearly said it wanted) the funding had been provided by tagged contributions that must then be spent on that project.

Discussion

The Press Council decided it was not going to get into a discussion of the ins and outs of council financing. The issues here were to do with the role of a local newspaper in casting light on matters of local governance. QLDC clearly had much on its plate, as a consequence of rapid regional development. At the same time there could be no doubt that, with rates rising, vigorous analysis of the way the council was doing business was a service to the community.

Mountain Scene had applied a blunt instrument in its coverage of these issues. An adversarial tone was evident. The use of the emotive word "profit" to describe annual budgetary surpluses was a case in point. Some members of the Press Council were inclined to the view that the use of the word profit to describe funds that had not been spent in a financial year but had clearly been allocated to an on-going project was, at least, mischievous and would caution against its use. However, the QLDC was given the opportunity to clarify the issue in a letter to the editor.

The newspaper has been doing its job in drawing attention to large surpluses carried over by the council in recent years and it has raised legitimate questions about the use of funds, not derived from rates, for the relief of ratepayers. The editor noted that the council had not cited legal chapter and verse as to why his suggested approach is not permissible. The newspaper had, from its own investigations, found other authorities to rebut the council argument.

There now seems to be some meeting of minds on this issue and the Press Council made no ruling.

All this – rather than misleading readers – promotes discussion and contributes to understanding of a fast-changing local scene. It is no doubt exasperating to officials that a newspaper is able – through the use of such a device as an "editor's reply" – to change the focus of a debate and keep up the pressure. Nevertheless the key issue is whether the wider community interest is thereby served. The Press Council found nothing to suggest otherwise in this case.

Conclusion

The Press Council did not uphold the complaint in relation to the headline or as concerned the proposition by the council that the newspaper was guilty of publishing misleading information requiring correction.

Press Council members considering this complaint were Barry Paterson (Chairman), Aroha Beck, Ruth Buddicom, Kate Coughlan, Penny Harding, John Gardner, Keith Lees, Denis McLean and Alan Samson.

Clive Lind took no part in the consideration of this complaint.

An allergy to zealots – Case 1099

Introduction and Background

In its edition of January 27, 2007 the *NZ Listener* (*Listene*r) published its weekly column by Joanne Black, headed *Beyond the Pale*. The page was entitled *The Black Page.* The sub-heading read:

"Summer Holidays: There's no better time for board games and a blue with the local zealot"

The article was in three sections and it was the second section that was the subject of the complaint by Pat Timings. That section described an event at Patons Rock Beach "when a man approached waving his arms and asking my friend if she had seen the dog–ban notice". The article included:

"It is good that there are people prepared to look after their local communities and uphold the bylaws, but I confess an allergy to zealots. I became convinced that if my friend and I whipped off our clothes for some nude sunbathing, we would have sent this guy into an apoplectic rage from which he might never have recovered."

The complaint was not upheld.

The Complaint

Mr Timings was not named in the article but has done voluntary work at the beach for about 30 years and he said that he is well-known in the area and that most Golden Bay people knew to whom Ms Black was referring.

Mr Timings wrote a letter to the *Listener*, which was published, although the last sentence that stated that Ms Black should apologise was not published. The published letter noted that Ms Black's friend had been told when she made a booking that dogs were not allowed on the beach during the summer holiday months. She ignored that restriction and he had to speak to her, that being the undertaking he had with the Tasman District Council. Mr Timings, in his letter, said he was polite and referred a male companion of the dog owner, who wanted to argue the matter, to the council dog control. His letter ended with:

"Your columnist's description of my behaviour at the time, portraying me as some sort of village idiot, is insulting, dishonest, vulgar, cowardly and irrelevant".

Another letter supporting Mr Timings was also published by the Listener.

Mr Timings found the column arrogant and insulting. He complained under several of the Council's principles, namely accuracy (Principle 1), corrections (Principle 2), privacy (Principle 3), children and young people (Principle 5), comment and fact (Principle 6), discrimination (Principle 8) and captions (Principle 10).

The nub of Mr Timings' complaint was that the column put him in a poor light, therefore misleading readers. He alleged that the column made insulting and lying

remarks about him, and he sought correction of what he alleged were factual errors. These included "a man approached waving his arms", "my friends are responsible types", "poked his head into a campervan", "It was raining and there were about 10 people on 2km of beach", "zealot", "apoplectic rage" and "a blue" as the latter term appeared in the subheading. Mr Timings was offended by the standfirst: "a blue with the local zealot".

***The Listener*'s Position**

The *Listener*'s position wass that Ms Black described the event as it took place. She was standing at the water's edge talking to her friend, who had a small dog on a lead, when they were approached by a man asking her friend if she had seen a sign banning dogs from the beach. Ms Black's friend took the dog away and her friend's husband became involved in a discussion with the local man about the dog by-law. Eventually, the local man walked off.

In response to the particular allegations made by Mr Timings, the *Listener*'s position was that Ms Black accurately described the events as they had occurred and, although Mr Timings took issue with Ms Black's interpretation of his behaviour, he did not point to any factual errors; in fact, his version of events confirmed Ms Black's description. There was therefore nothing to correct. There was no breach of privacy because the scene occurred in a public place during holidays. The exchange could have been observed by anyone present. Mr Timings was not named in the column and Ms Black did not know his identity until he wrote to the *Listener*. The column did not confuse the distinction between comment and fact and the column on *The Black Page* was obviously an opinion piece with Ms Black's name and photograph at the top. The opinions expressed were those of Ms Black. The *Listener* denied the allegation that the column gave the impression that Mr Timings was borderline senile and Ms Black did not resile from her description in the subheading, namely "a blue with the local zealot".

Discussion

There are differences between the parties as to the facts of this case. The Council cannot resolve factual differences. There was no doubt that Mr Timings approached Ms Black's friend and advised her of the by-law prohibiting dogs from being on the beach at that time of the year and that there was a reasonably long discussion. As the Council cannot resolve the factual dispute, it could not make a finding that Ms Black's column contained inaccuracies. Some of the alleged factual inaccuracies were either comment or supposition based on facts – for example "local zealot" and "apoplectic rage".

A commentator, provided that the opinion given is based on facts, is entitled to be forthright and express opinions that a reader may not like. In this case, it was quite clear that Ms Black was critical of Mr Timings and the manner in which he approached her friend. Rightly or wrongly, Ms Black, although acknowledging that it was good that there are people prepared to look after their local communities and uphold the by-laws, was critical of the manner in which Mr Timings approached and talked to her friend and her friend's husband. Providing she did not distort the facts, she was

entitled to express her opinion in a strong manner. She did this by her reference to "the local zealot" and, to a lesser extent, by the reference to a man approaching "waving his arms". The Council's view was that she was not criticising Mr Timings for doing what he saw as his public duty but for the manner in which she perceived he did his self-imposed duty.

Whether Ms Black was right or wrong in the opinion she expressed, the Council was of the view that she was free to do so, provided she did not distort the facts. The Council could not make such a finding. It was, therefore, unable to make a finding that the *Listener* infringed the principles of accuracy and corrections.

It was only necessary to comment briefly on the other allegations. There was no breach of privacy, as Mr Timings was not named in the article and the matter happened on a public beach. The fact that he was evidently identified by many readers in the Golden Bay area did not mean, in the circumstances, that Ms Black breached any privacy principle.

The allegation that the journalists should be careful of reporting on people of Mr Timings' age was not upheld. By his own admission, Mr Timings approached the group and the dog owner's male friend argued with him at some length. Mr Timings has obviously been a diligent volunteer assisting the local council and was awarded a QSM for his services. However, the Press Council did not accept that the column suggested he was "borderline senile". Nor did the Council uphold the complaint relating to the standfirst, and the use of the word "zealot". Mr Timings as a volunteer had obviously undertaken for many years the task of drawing to the attention of those people who did not observe the sign, the obligation to keep the beach clean. Ms Black was of the opinion that Mr Timings was over-enthusiastic in the pursuit of what he saw as his duty, and was entitled to express her opinion in these terms.

The Council did not read the article as portraying Mr Timings in the manner in which he suggested he was portrayed in the letter that he submitted for publication in the *Listener*. The Council accepted that the article was not complimentary of Mr Timings when it commented on the manner of his approach. However, it was clearly the opinion which Ms Black formed based on the facts that she stated in her article

For this reason, the complaint was not upheld.

Press Council members considering this complaint were Barry Paterson (Chairman), Aroha Beck, Ruth Buddicom, Kate Coughlan, Penny Harding, John Gardner, Keith Lees, Clive Lind, Denis McLean and Alan Samson.

Fraction too much friction but no fault – Case 2000

The Press Council has not upheld a complaint by Maureen Mildon against the *Waikato Times* over a report of an Employment Relations Authority hearing involving a former colleague.

Background

On March 31, 2007, the *Waikato Times* reported a determination by the ERA in which Ms Elizabeth Kneebone was awarded $4500 against the Schizophrenia Fellowship Waikato where she had been employed as a field worker.

The report detailed friction in the office including that between Ms Mildon and Ms Kneebone. It quoted the ERA findings that the difficulties were "symptomatic of a failed and dysfunctional relationship". The newspaper's account depended on the ERA report but included brief comments on the outcome of the case from Ms Kneebone and the Fellowship. It also included the information that Ms Kneebone and Ms Mildon had attended school and university together and lived on the same street.

The Complaint

Ms Mildon complained that the report was unfair and unbalanced. It breached her privacy in recording she attended the same school and university and lived in the same street as Ms Kneebone. In the case of the university the report was inaccurate as she and Ms Kneebone were in different years. Ms Mildon also complained that fact and comment had been mixed in the report. She suggested the report "may well have damaged my reputation".

The Newspaper's Response

Ms Mildon raised her concerns with the *Waikato Times* in a letter of April 17 to which the editor replied on April 26. He said the findings of the ERA were publicly available and the media had a right to report them. A case that showed how deteriorating relationships could affect the workplace was a matter of legitimate public interest.

In a letter to the Press Council on May 19 the editor said its report was a straightforward account of the matters before the ERA and its findings. It reported briefly the reactions of the parties: Ms Kneebone and the Fellowship. The editor said that a message was left for Ms Mildon seeking comment but she did not reply.

The fact that Ms Kneebone and Ms Mildon lived in the same street and had been educated at the same institutions added to the report of a deteriorating relationship. If the reference to their having been at university together was inaccurate, he apologised for that error.

The editor said the report contained no editorial comment. It fully reported Ms Mildon's side of the story and the ERA's finding that the relationships did not constitute bullying.

In her further response, received by the Press Council on June 11, Ms Mildon insisted the report was inaccurate because she disputed the facts as presented by Ms Kneebone and did so at the ERA hearing.

Ms Mildon disputed the editor's suggestion that attempts were made to reach her for comment.

Conclusion

Ms Mildon correctly pointed out that she was not a party to the dispute and that the determination was based solely on the activities of the Schizophrenia Fellowship Waikato and not any actions of hers. But the report as published clearly spelled out the basis of the award and in reporting, in a balanced and unsensational manner, the background the newspaper was not implying fault on Ms Mildon's part. It made clear the interaction between the two colleagues did not constitute bullying and specifically recorded that Ms Mildon sought mediation.

The details of the schooling and the fact the former colleagues lived on the same street were of legitimate interest in such a story. The editor acknowledged that the paper might have been in error in suggesting they were contemporaries at university but this was not of major significance and could not be characterised as either damaging to Ms Mildon or a gross intrusion of privacy.

There was some dispute as to whether the newspaper made a sustained attempt to contact Ms Mildon for comment. But given that she was neither applicant nor respondent in the hearing this omission was not substantial.

The Press Council found that the article was substantially based on a public document, which it reported accurately. It made clear the basis of the award was dependent on the organisation's actions and implied no fault on Ms Mildon's part. The personal details were not damaging to Ms Mildon nor a breach of her privacy.

The complaint was not upheld.

Press Council members considering this complaint were Barry Paterson (Chairman), Aroha Beck, Kate Coughlan, Penny Harding, John Gardner, Keith Lees, Clive Lind, Denis McLean, Alan Samson and Lynn Scott

'What does seven figures buy you at the beach?' – Case 2001

Mrs Joy C Downes and Mr R Syron complained about an article published in *The New Zealand Herald* on January 10, 2007. The article described a coastal property that Joy Downes had listed for sale with a real estate agency. The complaint was not upheld.

Background

The article was written by the property editor. It was headlined *Million-Dollar Bach* and was accompanied by a small photograph of the property. The lead posed the question: "What does seven figures buy you at the beach?"

The article went on to note the discrepancy between the asking price ($1.5million) and "what you get" (a "small, old bach with two bedrooms, one bathroom, the water tank out the back") and suggested that this discrepancy, coupled perhaps with "months of cold weather", had been the reason for the lack of interest since the property had been listed, in July 2006.

The owner was cited as a Cecily Downes, of the Gold Coast, Australia, and the real estate agent who had the listing was quoted, at some length, explaining why the property might be worth considering, despite what might seem a steep asking price.

It is clear that the article was written with the general reader in mind, rather than the experienced dealer in real estate.

The Complaint

Joy Downes first complained to the Press Council on March 1, 2007.

There is some confusion about an earlier letter apparently sent to *The NZ Herald* by Joy Downes to which no reply was received. The deputy editor later said there was no such letter on their files. (A copy of this earlier letter was later sent to the Press

Council by her brother, Bob Syron, but he also noted that the letter was undated.)

What is clear, however, is that Bob Syron took up the complaint on behalf of his sister, with another letter to the Council, on April 20. That he had authority to act as her agent in pursuing the matter was later confirmed, in writing, by Joy Downes.

On June 15, Bob Syron replied, on behalf of his sister, to the newspaper's initial response to their formal complaint.

Their letters traversed various areas where they considered that *The NZ Herald* had displayed "disgraceful ethics". Although they did not specify particular Principles that had been transgressed, it was obviously their view that *The NZ Herald* had been inaccurate and unbalanced and so had treated the owner, Joy Downes, unfairly.

The newspaper had also failed in its obligations in the areas of confidentiality and privacy.

Their overall complaint can be divided into two distinct concerns.

Firstly, Joy Downes was distressed by the negative tone of the article. She thought the details provided only a "degrading description" of the property, so much so that it was "now totally unsaleable".

She listed various ways the writer had downplayed her property, including calling the "cottage" (her term) a "small, old bach", the repeated reference to the outside water tank (which was actually the norm for most properties along this beachfront), the mention of "rough surf and chilling winds" and the various ways in which the high price had been stressed.

These claims were reinforced by Bob Syron in his letters. He felt that the information supplied by the newspaper "was negative to the point of rendering the property and location, valueless". He supplied a similar list of "errors and distortions", including the agent "laughing" at the price. He also claimed that supplying the Quotable Value estimates of the property's worth was a "blatant disregard for privacy and marketing ethics".

In summary, he considered that the newspaper had a responsibility not to undermine property values but in this case the "negatives reported had a serious effect on the value".

Secondly, both felt that publishing a photograph of the bach without permission, and supplying readers with the name of the owner and her address, were breaches of confidentiality, privacy and trust.

Further, *The NZ Herald* had been inaccurate in at least two instances; the owner's name was Joy Downes, not Cecily Downes, and the colour of the bach was not pink but pale green (according to Joy Downes) or cream (according to Bob Syron).

The Newspaper's Response

The deputy editor's response was straightforward. He pointed out that the article was never designed to be a piece of positive marketing; it was, rather, journalism that aimed "to serve the reader". He stated that their obligation was not to the owner, but to the newspaper's readers.

Further, and in any case, the article was a "fair and balanced assessment of a property that had been publicly offered for sale".

He noted that land values are not confidential – they can be published because they are a matter of public record. He added that the real estate agent had spoken openly about the property and that it had also been available for viewing on the internet.

It had appeared "bright pink" on the agent's website.

If the newspaper had been inaccurate over the owner's name, this was because the agent had called her Cecily Downes during the interview and it was reasonable for the journalist to assume that she went by her middle name.

He responded to the point that the bach was rendered unsaleable because of the *Herald* article by suggesting that the bach had been on the market for six months before the article appeared, but "not one single person had been to look" – that is, it seemed to be the unrealistic price tag, which was the cause of the lack of interest, not the piece by the property editor.

Conclusion

The Press Council notes that this article was never intended to be, nor should it have been, an advertisement for the property. It was a piece designed to inform readers about the market, and perhaps to note, in a lively, good-humoured way, that even beachfront properties, even in a strong market, have a point where buyers are simply dissuaded by price.

It is the Council's view that the article was both fair and balanced. For example, there were many positives noted about the property: the bach was "classic", in "immaculate" condition, it stood on a "valuable" section (of 1012 sq m) and enjoyed "views of Lion Rock". The agent's defence of the pricing was covered in some detail, including his suggestion that a larger house could be built at the front of the section. The particularly close proximity to the beach was noted.

It was very difficult to see how covering all these positive features made the bach "unsaleable".

It was also difficult to see how the article breached confidentiality and privacy issues.

Here, the point made by the deputy editor, that it was advertised on the internet, was telling. It was not a breach of confidentiality to publish a photograph that had already been put up on a real estate website.

Further, it was not a breach of privacy to give the name of an owner of a property when it is on public record. And finally, publication of an address in such general terms as Gold Coast, Australia did not constitute an invasion of personal privacy.

There were two minor inaccuracies. The newspaper might perhaps have had the shade of colour wrong but then the complainants seem to see the bach differently as well.

The Council also acknowledged that the complainant is Joy C Downes, not Cecily Downes, and the newspaper was incorrect, even if her agent certainly seemed to have used Cecily Downes when talking about the owner. These inaccuracies were inconsequential in the overall context of their complaint.

The article in question was interesting, informative and appropriate. The various complaints were not upheld.

Press Council members considering this complaint were Barry Paterson (Chair-

man), Aroha Beck, Kate Coughlan, Penny Harding, Keith Lees, Clive Lind, Denis McLean, Alan Samson and Lynn Scott

John Gardner took no part in the consideration of this complaint.

Inadvertent embargo breach inconsequential – Case 2002

Introduction

The West Coast District Health Board, through its chief executive officer, Kevin Hague, complained that *The Westport News* breached an embargo. The complaint was not upheld.

Background

On February 16, 2007 the Kawatiri Maternity Unit in Westport closed for birthing. The loss of birthing services, the reasons for it, the consequences for women in the district, and its future were all big news locally.

On May 2, at about 11am, the board released to the media a copy of the New Zealand College of Midwives review of Westport Maternity Services (the review), subject to an embargo against publication before 4pm. A press conference was scheduled for 4pm.

The reporter covering the story contacted the board at about 1pm to advise that the newspaper intended to publish (*The Westport News* is normally available from 3pm) and would be happy to discuss it with Mr Hague or the community liaison officer, Vikki Carter. The reporter was unable to contact Mr Hague for comment. Ms Carter responded by email. She advised that the reason for the embargo was to ensure the media had time to read the report and that affected board staff were fully informed. She was later advised in an email from the reporter that the editor had ordered distribution be delayed until 4pm so that the embargo would not be breached.

At about 2pm, Mr Hague issued a press release, which did not carry an embargo, summarising the board's response to the review. The reporter's front-page story about the review drew on that statement to include coverage of the board's response to the review. (The editor had held the front page.)

The reporter attended the press conference at 4pm and it was reported, along with community reaction to the report, the next day.

Complaint to the editor

On May 3, Mr Hague wrote to the editor complaining that the embargo had been intentionally breached "because of competitive spirit rather than freedom of information". Mr Hague advised that unless a formal apology was forthcoming, complaint would be made to the Press Council.

The editor, Colin Warren, responded to Mr Hague by letter dated May 8. In that letter he declined to apologise on the basis that the alleged breach, if in fact there were one, was unintentional and could only have been a matter of minutes. He explained that *The Westport News* is not normally printed until 2.45pm but on May 2 the print run was delayed so that the first copies were not available until about 3pm and the editor had expressly instructed dispatch staff that deliveries to agents and shops were

not to take place before 4pm (subscription deliveries always begin about 4pm).

The editor further argued that even if the paper had inadvertently been distributed a few minutes before 4pm it could not seriously have cut across the stated reasons given for the embargo. The board had had the report for some time already so had had plenty of time to inform interested parties and there was no suggestion that the story had been inaccurate, unfair or unbalanced or otherwise suffered from a lack of analysis of the review. The editor argued that the real reason that the embargo had been set for 4pm was an attempt to prevent *Westport News* from breaking the story before *The Press*, which had been covering the story in a less prominent way.

Complaint to the Press Council

By letter dated May 5 (received on May 15), Mr Hague complained to the Press Council. He argued that an email from the reporter on May 2 had made it clear that the newspaper would intentionally breach the embargo. Mr Hague went on to say:

"Members of my management team bought *The Westport News* from shops in Westport before 4pm, meaning that members of the public and other staff are also likely to have done so … it is indisputable that this frustrated the DHB's intention to announce the report's findings balanced with its own responses, and that it was the newspaper's intention to do so. The media release issued with the report … had been intended only to supplement the comments that were to be made by me and the director of nursing and midwifery at that afternoon's media conference."

By email dated August 8, 2007, Mr Hague belatedly advised the location of one news-agent where a staff member purchased a newspaper "shortly before 4pm".

Mr Hague argued that if *Westport News* did not wish to be bound by the embargo, then it should not have accepted the embargoed review nor commented upon it (relying on case 747). He agreed that there might be situations in which an embargo cannot be justified but argued that in this case, the public interest would not have been thwarted by honouring the embargo:

"The DHB had determined sometime before receiving it that it wished to be able to make public as much of the report as possible, but in tandem with the DHB's responses to its recommendations …. Even though the breach may only have been a question of minutes, the point is that by abuse of the courtesy of pre-release supply of the report, the *Westport News* in fact thwarted the DHB's legitimate intention to release the report in proper context."

Mr Hague said that newspaper publication schedules had not influenced the timing of the embargo:

"The timing was determined by two factors: our need to have briefed a number of staff on different shifts in both Greymouth and Westport prior to public release, and the availability of myself and [the director of nursing and midwifery] for the media conference."

He considered the quality of the story as published to be irrelevant.

The Newspaper's Position

The newspaper's position was that it did not intentionally breach the embargo and, if it inadvertently did so, then it was inconsequential and, in any event, the em-

bargo was unreasonably imposed.

The editor referred to email correspondence between the chief reporter and Ms Carter specifically advising that the newspaper would not be available before 4pm and therefore not in breach of the embargo. He also pointed out that if the newspaper had wanted to take the scoop by intentionally breaching the 4pm embargo, he could have run the story on the newspaper's radio station, Coast FM, at 12.30pm and 1.30pm. Distribution staff had express instructions not to release the paper to newsagents until 4pm.

In response to the allegation that a newspaper had been sold "shortly before 4pm" the editor said:

"…I have checked with the drivers who say they followed my instructions. It is possible, given that we did not synchronise watches, some bundles could have been delivered a few minutes ahead of the 4pm deadline".

The editor argued that, if there had been an inadvertent breach of the embargo it could only have been a matter of minutes and was inconsequential. He insisted that the reporter had fully digested and analysed the review and the press statement as evidenced by the accurate, fair and balanced story. The media conference did not provide any further "context" that was not available from the review itself or the board's press statement. The board had had the review since April 23, which provided ample time to inform interested parties.

The editor also maintained that, in any event, the embargo was unreasonable. He argued that the real reason that the board had embargoed the review was an attempt to "manage the news … by carefully crafted public relations language, by delaying the release of information, or by favouring sympathetic outlets" (quoting from case 747). In this case, the press statement ignored the key finding and the conference "offered little more than board spin." He said that Mr Hague had refused to answer questions about why the Kawatiri crisis had occurred and whether the board's recruiting processes were at fault. The embargo favoured a competitor, which had provided less robust coverage of the issue. The editor also pointed to a 2005 Ombudsman's investigation into previous misuse of the embargo convention by the board.

Discussion

The Press Council has always enforced the convention that the terms of an embargo are binding provided that they are reasonably imposed (see cases 747, 862, 992 and the 2002 annual report). But it is not an automatic muzzle:

"Not all embargoes are equal. This form of restraint on the freedom of the press can obviously be misused by agencies or officials seeking to advance special agendas. There is absolutely no requirement to accept without question the strictures of Ministers of the Crown or other providers of releases" (case 862).

Editors are entitled to inquire into the reasons for an embargo and, where appropriate, to negotiate a change of terms. There might also be cases where, having considered all the relevant facts, the proper approach is to "publish and be damned" but they will be extremely rare.

In this case, the complaint that the embargo was intentionally breached is not upheld. The email correspondence from the reporter initially challenging the em-

bargo and unsuccessfully attempting to renegotiate the terms, upon which Mr Hague relies, cannot be looked at in isolation. Events moved on. The editor's subsequent actions and the email from the reporter to Ms Carter both evidence a clear intention to honour the terms of the embargo.

Mr Hague advised that a staff member had bought a paper at a local newsagent "shortly before 4pm". The editor concedes that, despite his best efforts, it is possible that some papers might have been delivered "a matter of minutes" before the embargo expired. On that basis the Press Council accepts that there might have been an inadvertent breach of the embargo. But, in the absence of absolute certainty about timing and given the efforts of the editor to conform to the embargo, the newspaper's actions cannot be faulted.

As for any damage done to the interests of the DHB, the Council notes that there had been ample time to brief staff. Moreover the story as published included the "context" of the DHB's response to the report, taken directly from Mr Hague's press release. The Press Council accordingly found that any breach was inconsequential.

The Press Council wishes further to record that *The Westport News* appears to have conducted itself both ethically and professionally. The reporter quite properly queried the reasons for the embargo and attempted to negotiate a change in its terms; the editor took necessary steps to honour the terms as fixed; the board was courteously kept advised, and the resultant story was accurate, fair and balanced. It is the business of a newspaper to pursue the public interest.

Equally officials and others with responsibilities for releasing or commenting on official reports and similar documents are reminded that there has to be good reason for delaying release of information that is in the public interest.

The complaint was not upheld.

Press Council members considering this complaint were Barry Paterson (Chairman), Aroha Beck, Kate Coughlan, Penny Harding, John Gardner, Keith Lees, Clive Lind, Denis McLean, and Lynn Scott

Alan Samson took no part in the consideration of this complaint.

Fast-track Local Body Election complaint – Case 2003

Background

The Press Council has upheld a complaint on the grounds of inaccuracy about two articles in *The Dominion Post* – as well as a third appearing during the complaints process – that report on Wellington city councillor Helene Ritchie's attendance record and remuneration while on sick leave for breast cancer.

1. The first (April 17) article – headed *Work by sick councillor a rort, says Shaw* – proceeds from deputy mayor Alick Shaw's charge that Cr Ritchie regularly missed council meetings (from which she had been granted sick leave), but regularly turned up for work at her other constituent body, Capital and Coast District Health Board (which does not have sick leave provisions for elected representatives).
2. The second (July 7) article, *Eye on council meeting attendance*, an analy-

sis of council attendance statistics, including graphs of councillor attendance headed *The Best and the Rest ... (percentage of meetings attended)* concluded with two paragraphs addressing Cr Ritchie's attendance, which it marked bottom of the list. No timeframe was included for the figures in either graph or article, though the relevant council tables supplied by Cr Ritchie were labelled as being for the period from April 1, 2006 – March 31, 2007.

3. Subsequent to Cr Ritchie's initial complaint, a third (August 31) article, *Ratepayers want accountability* was published containing further reference to her having the worst council meeting attendance record. This time, the figures were reported as data for the previous three- year period. The newspaper ran a correction on September 5.

Complaint

Cr Ritchie contested implications she earned more than $70,000 while on sick leave; the timing of her return to council duties; and says reporting that she returned to council "after the *DomPost* revealed she was turning up for work at Capital and Coast District Health Board while still on sick leave", was defamatory. As a published letter to the editor had made clear, she had two months leave of absence from the health board, did not attend, and was not paid. Her return to the council and the board had nothing to do with the *DomPost* revelations.

She also said the paper misrepresented her council attendance rate, reporting she had attended 36 per cent of meetings when council tables clearly showed a 36.2 per cent figure only in terms of *minutes* attended at meetings. Her meeting attendance was identified in the tables as 45.5 per cent. The third article said she turned up for 36.2 per cent of meetings over the past three years, when the council figures were April 1, 2006 – March 31, 2007.

After the first article Cr Ritchie issued a press statement (April 17) saying Cr Shaw's attacks on her, as well as reflecting an irrational obsession with her life, contained numerous errors of fact. "For example, I asked for, and was kindly granted, four months' leave of absence from council, not a year. And, more recently, my two months' leave from the health board was unpaid."

On May 6, through lawyers Oakley Moran seeking an "acknowledgement of the relevant facts and an apology", as well as payment of costs, she set out the following:

i. After diagnosis of her illness, she had sought leave from the council because legal advice made it clear she could still attend council meetings and vote. But in respect of the health board, she had been advised she might be able to attend meetings, but would not be able to participate or vote. She accordingly did not seek leave.

ii. She was subsequently granted leave by the council for the period February 22 – June 22, 2006. Though on leave, she undertook some limited advocacy and other duties on behalf of constituents. During her leave, she was paid $23,567.

iii. In respect of the board, to preserve her membership and her ability to vote

during the term of her council leave, she attended all but one of its monthly meetings in 2006. Because of her ill-health, her attendance had been "difficult".

iv. Between February 11 – April 13, 2007, she had taken an additional period of leave from the board, for further recovery. She was not paid during this time.

v. On February 12, for like reasons, she arranged not to attend council meetings till April.

Cr Ritchie says her April 17 statement was "not published", and the remedy-seeking lawyers' letter (May 6) received no reply. She then wrote a 200-word letter to the editor, restating her upset at Cr Shaw's charges and setting out her attendance record, which was published (May 9).

After the second article she wrote another brief letter that was not published.

She says she had a (July 4) conversation with the reporter after he rang her "to be fair", and seeking comment at short notice. She questioned the reporter's judgment of timeframes of her absences and, in particular, that he had included in his percentages a period when she was on approved leave to recover from her illness.

Separating the leave period, she told him, her attendance had been 88.1 per cent (later confirmed by the council to be 89.6 per cent). But he had chosen not to use this information.

She said he had been given information by the council that showed she was in fact present – including leave period – for 45.5 per cent of the time, but he had "chosen" to represent this as 36.2 per cent. The errors were repeated, despite having received information to the contrary.

Newspaper's response

In response, *Dominion Post* editor Tim Pankhurst pointed out that Cr Ritchie, as an elected representative, could be deemed a person of public interest.

On a matter of "considerable debate among councillors", it was clear Cr Shaw had a different stance on the issue from Cr Ritchie. "The newspaper has no view on whether Mr Shaw's honest opinion is right or wrong; it is not our role to judge the merits of various councillors' professional or personal debates. Our job is to inform our readers of the debate on the subject and in this case we have done so independently in every respect of our coverage."

In respect of the April 17 article, with reference to the Press Council's Statement of Principles, Mr Pankhurst noted:

i. The paper had carefully adhered to principles of accuracy, fairness and balance. Cr Shaw's contention on Cr Ritchie's attendance at health board meetings had been checked and verified by board chairwoman Judith Aitken, confirming her attendance at "most board meetings".

ii. Cr Ritchie had been given the right to respond in a "spat" between two "seasoned councillors" on a subject each held differing views on.

iii. The $75,000 salary identified in the introduction was an extrapolation of a figure used in an earlier (July 15, 2006) article which stated: "Ms Ritchie

was on leave for four months, during which she was paid $25,000 by the council".

iv. In objecting to the publication of Cr Shaw's criticisms, Cr Ritchie appeared to wish to muzzle fair and balanced reporting of a newsworthy debate, on a subject readers deserved to know about.

v. The paper had been careful to make a distinction between Cr Shaw's comments and fact, carefully attributing to him his comments alleging a rort.

vi. Cr Ritchie's letter to the editor had been published, in full and at the earliest opportunity.

In respect of the July 7 article, Mr Pankhurst noted:

i. There was no attempt to deliberately and maliciously target Cr Ritchie. Using both the total percentage of meetings attended, and figures based on the total number of minutes of each meeting attended, was to enable comparison of remuneration with attendance.

ii. The graphic was created around minutes spent at meetings to give a better appreciation of councillors' diligence. Its heading, *The Most Diligent: Percentage of meetings attended*, might have been confusing, but the overall import of the graphic was accurate. And Ms Ritchie had had the opportunity to correct any errors before the material was supplied to the newspaper.

iii. The detail was a matter of public record and the paper was duty-bound to tell readers about Cr Ritchie's sick leave; failure to do so would have unfairly left readers mistakenly thinking she was failing to attend.

iv. The published article contained an editing error in suggesting Cr Ritchie returned to work in June, when the paper had previously reported she resumed her duties in April, but this did not constitute a "malicious campaign" against her.

Mr Pankhurst said Cr Ritchie had been responsibly reported during the period, in a range of articles in which she had always been afforded the opportunity to comment. She was clearly unhappy at Cr Shaw's criticism of her and the system relating to sick leave for health board members, but both issues had been canvassed in a responsible and balanced fashion.

Additional responses

After detailed comment on what she described as "extraneous matter" in Mr Pankhurst's reply, Cr Ritchie set her complaints against the Council's Statement of Principles:

i. Accuracy: on top of various inaccuracies, she said, the paper was unfair and unbalanced for repeatedly publishing inaccurate information and for not giving her sufficient space to reply.

ii. Corrections: the paper did not publish corrections.

iii. Comment and fact: she argued was no distinction.

iv. Subterfuge: the editor was sanctioning misrepresentation and attempting to avoid censure by evading the issue.

v. Headlines and caption: the *Work by sick councillor a rort, says Shaw* did not accurately convey the unbalanced, inaccurate and unfair substance of the report.

vi. Letters: A letter to the editor (July 13) was not published.

In her supporting words, Cr Ritchie said Mr Pankhurst had deliberately cited only one of the periods of her health board leave (that taken in the year of the two articles was unpaid); the first article was not balanced in terms of tone or number of words assigned each party; the "rort" headline was defamatory; and the implication she received $75,000 a year salary on sick leave, was not only incorrect, but "maliciously misleading".

She rejected Mr Pankhurst's claim that the newspaper had fairly reported a difference between her and Cr Shaw, and that her argument should therefore be with Cr Shaw. Her complaint was solely about the paper's reporting.

Noting the third article to appear (August 31), she says: "There continues to be published this incorrect information leading to a very unfair situation for me."

Replying in Mr Pankhurst's absence, *Dominion Post* deputy editor Nick Wrench absolutely disputed Cr Ritchie's complaints as set against Press Council principles regarding corrections, comment and fact, subterfuge, headlines and captions, and letters. On the principle of accuracy, he conceded the July 7 article incorrectly suggested she returned to work in June, though the correct date had been previously reported; and that the August 31 article contained a "subsequent inaccuracy" that had been "voluntarily corrected".

He defended his paper's persistence with the 36.2 percentage figure, saying it represented the percentage of total meeting time attended, as shown in the graphic.

Of the error in the latest (August 31) article, he explains: "Two newspaper staff have been involved in preparing a response to Ms Ritchie's complaint: editor Tim Pankhurst and deputy chief reporter Oskar Alley. Both are currently on scheduled leave (the editor is overseas) and neither were at work when the August 31 article was published. Both staff play a role in assessing articles submitted for publication and were aware of Ms Ritchie's complaint. If either had been at work, the error relating to Ms Ritchie's attendance figures would have been picked up and corrected before publication." He also said: "It would be unfair to Ms Ritchie for us not to promptly correct an incorrect figure and we have done so."

Discussion

Cr Ritchie provided copies of the council-supplied information showing her meeting attendance at 45.5 percent.

The Dominion Post's responses noticeably still assumed that the 36.2 per cent figure as presented in the second article was correct. To take that stance requires an understanding that "attended 36 per cent of meetings" could be read as meaning, "attended 36 per cent of the total minutes the meetings comprised". That that would have been the understanding of ordinary readers is an unlikely scenario.

On the timing of Cr Ritchie's return to work, Mr Pankhurst conceded an editing error. The paper had previously reported the correct date.

Cr Ritchie's concern at the reports she was turning up for work at the health board while still on sick leave from the council, bringing possible implications of dereliction of duty, was understandable. But the first article, the only one of the two to substantially focus on her attendance, was clearly a report of a charge made by a fellow councillor, deputy mayor Alick Shaw. It also carefully included prominent balancing comment from Cr Ritchie.

Other concerns raised by Cr Ritchie included the non-publication of a press statement. In fact, the paper responded as quickly as practicable by publishing a letter containing much the same detail after seeking legal advice – any delay being a routine one after an accusation of defamation. Non-reply to her subsequent lawyers' letter and the non-publication of another brief letter from her might have been ill-advised but, given the amount of space given to both sides of the subject, did not warrant an uphold decision by the Press Council. The error contained in the third article was defended by the paper on the grounds that its senior staff in the know, who might normally have been expected to correct the mistake, were on leave. Once made aware of it, the newspaper promptly corrected the error in the August 31article.

The reporter's seeking of comment at short notice on a subject the councillor was obviously deeply familiar with, was not untoward, given her position as a public figure. Similarly, it would be drawing a very long bow to judge the newspaper as malicious for legitimately addressing questions of councillor attendance.

The Press Council similarly could uphold on the suggestion of subterfuge when there was no indication of deliberate deceit, nor over headlines, when the following copy addressed the reported accusation. Further, there was no untoward blurring of comment and fact; and the principle of failing to publish corrections is difficult to apply when most of the errors remained a matter of dispute.

Cr Ritchie had valid reason for complaint, however, about a newspaper introduction (in the first article) implying she had earned $75,000 on sick leave. The $75,000 referred to is, according to Mr Pankhurst, an extrapolation of a year's salary calculated on the basis of figures printed in an earlier, unchallenged article. But this ignored the fact that her sick leave from the council was of a considerably lower order, producing a smaller figure.

Though it could be argued the stated figure was "annualised" and, on that basis, (approximately) correct, readers could have assumed that she had been paid the sum while on sick leave for a year. The error was compounded in the second article, with the outright assertion she "attended 36 per cent of meetings while still earning $72,719".

Cr Ritchie also had valid reason for complaint about incorrect figures in the second article. The article stated she attended 36[.2] per cent of meetings. However, the council tables clearly showed the figure described minutes of attendance – her meeting attendance was, in fact, 45.5 per cent.

The mistakes were even more seriously compounded in the third article, with the added error that the repeated "36.2 per cent of meetings" attendance was measured over the past three years. This timeframe was demonstrably wrong according to the city council tables.

The Press Council turns to the statement in the July 7 article that Cr Ritchie

"returned to work a month ago, after *The Dominion Post* revealed she was turning up for work at the health board while on sick leave". As with the statistics, there are possible grounds for reading ambiguity. The sentence could be read simply as a chronology. Readers are more likely, however, to have concluded that she returned only because the newspaper had "revealed" that she had been absent from the council while attending health board meetings. In fact she resumed her places at both the council and the board in April after an agreed period of two months' leave. The statement is accordingly incorrect and misleading.

Conclusion

Cr Ritchie's complaints about lack of balance, corrections, comment and fact, headlines and captions, letters, and subterfuge, as well as the charge of malice, for the reasons given above, are not upheld.

But in its April 17 article, *The Dominion Post* carelessly implied Cr Ritchie has earned $75,000 on sick leave. Read precisely, the introduction was a statement of an annualised figure, but that detail was ambiguous. It was also written as fact, without the attribution that validates the even stronger headline: *Work by sick councillor a rort, says Shaw.* Only half the statistical story was told. The error was magnified by repetition.

The paper also erred in using the 36.2 per cent figure to describe her meeting attendance instead of the 45.5 per cent figure. Again, this error was magnified by repetition.

Moreover, it was misleading to overlook that the councillor had fully explained the reasons why she wished to take two months' additional leave at the beginning of 2007 and that she had resumed her council and board seats as intended in April. To imply otherwise – that she returned in effect because of "revelations" in the newspaper – was unfortunate.

The Press Council has previously ruled that public figures have to withstand scrutiny at a higher level. The attempt by *The Dominion Post* to analyse and judge councillor attendance rates was entirely justifiable. Any member of a public body who appears to be absent from a large number of meetings deserves to be held up to scrutiny, and the paper cannot be criticised for investigating Cr Ritchie's performance, even in the context of her experience with cancer. But in its scrutiny of a public figure, the newspaper should have been scrupulously accurate. In this instance, *The Dominion Post* was not.

Article leads to 'hue and cry' and loss of advertising – Case 2004

The New Zealand Press Council has not upheld, by a majority, a complaint against *The Oamaru Mail* by Waitaki District Council and Alison Banks after the publication of an article linking Mrs Banks, the Waitaki district's community safety co-ordinator, to the conviction of her son on a charge of depositing litter likely to endanger.

The Press Council believes the newspaper technically breached none of its statement of principles in publishing the article. Nevertheless, the newspaper's decision to apologise promptly to Mrs Banks for the article revealed the *Mail's* discomfort at

what it published. Newspapers, particularly smaller ones that live by their connection with their community, can face a higher authority in their treatment of stories – their own readers. In readers' judgement in this instance, the newspaper was found wanting.

Three members of the Press Council would have upheld the complaint on grounds of unfairness.

Background:

On Thursday, May 31, 2007, under the heading *Alison Banks' son appears in court*, the *Mail* reported how "high-profile" Mrs Banks had faced "another crime issue yesterday – her son appeared in court". The front-page article went on to give details of the prosecution's case that led to her son pleading guilty under Section 15 (2) of the Litter Act when he deposited litter likely to endanger another person, a glass bottle, on May 12.

The article said Mrs Banks had been behind efforts to try to curb continuing youth crime and vandalism problems, and gave details of some of them. Comment was sought from Mrs Banks, and one quotation was included.

On Monday, June 4, 2007, in an article written by the general manager, Tony Nielsen, and under the heading *Apology to Alison Banks*, the newspaper said it had received a "big reaction" to the initial article.

It said: "Many of our readers have told us we did Mrs Banks a disservice by publishing her name on the front page in connection with her son's reported offence."

The newspaper said it had no intention to embarrass Mrs Banks and that she did a "fantastic job" in the community, noting her good work had been publicised many times in the *Mail*.

It continued: "Listening to our readers' views we now believe it was inappropriate to publish this story on the front page and connect Alison Banks with her son's conviction … The facts were right, but we got it wrong when we decided how to treat the story. For that, we unreservedly apologise."

By this time, Waitaki District Council, which employs Mrs Banks, had withdrawn its advertising from the *Mail*. In an email on June 5 to the council's chief executive, Michael Ross, Mr Nielsen said: "I believe it [the article] should never have been published and that our editor made an error of judgment by publishing the story." He had not known it was going to be published and would have acted had he known.

But Mr Nielsen said he also believed he had acted with integrity since publication, by acknowledging the error and apologising. He had also initiated a more robust process so that unnecessarily provocative local stories were not published in future without due consideration.

He also noted the district council was entitled to withdraw its advertising but the outcome it hoped for had already been achieved in that the editor had realised a mistake was made. "Your action will now impact (unfairly in my view) on the rest of my staff, and I ask you to reconsider your decision." Staff had had to shoulder the "hue and cry" that had resulted from the article.

In his response on June 8, Mr Ross said the advertising ban would be reviewed at the end of the month. Though he noted and appreciated steps taken by the newspaper as a result of the article, he was highly critical of what he regarded as the negative and

divisive stance the *Mail* took on "most of our local interest stories".

Reporters at the *Mail*, no matter how brief their time in Oamaru, were part of the community, and would benefit from developing a more empathetic approach towards their work, which would increase their professional credibility and thus affect the newspaper's reputation in the wider community. Mr Ross was also critical of what he termed reporters' general lack of maturity.

He rejected the notion the editor alone had made an error of judgment. The reporter who filed the story had also made an error of judgment.

Mr Ross did not believe the cancellation of advertising would affect the *Mail*'s staff. Any loss of revenue would affect the shareholder, who is the "party with the most to lose and who is also in the best position to improve this situation".

The Complaint

Mr Ross formally complained to the Press Council on behalf of the district council and Mrs Banks on June 25. In his letter he said: "It is clear that this headline and article is a gross example of 'sensationalising' news through the media and the only reason that this was published was as a direct result of the role that Mrs Banks holds on behalf of the community".

Specifically, Mr Ross noted two grounds – privacy (Publications should exercise care and discretion before identifying relatives or persons convicted or accused of crime where the reference to them is not directly relevant to the matter reported) and children and young people (Editors should have particular care and consideration for reporting on or about children and young people.)

The Newspaper's Response

After the Press Council sought clarification from the *Mail,* the editor, Barry Clarke, explained he was based at APN's regional headquarters in Christchurch where he was also editor of the twice-weekly broadsheet, *The Star,* Christchurch, and its community news group. *Oamaru Mail* sub-editors were based in Christchurch and reporters in Oamaru. He was editorially responsible for the content of the *Mail,* and Mr Nielsen was responsible for the business side and oversaw staff.

The editor explained the *Mail* had been highlighting disorder problems with youth in the town for 18 months, usually on the front page. Various opinions and solutions had been sought, and Mrs Banks was among those who regularly featured.

The *Mail* covered the fortnightly district court day in Oamaru extensively, and these appeared usually on page three unless the matter was quirky, serious or deemed to be of more public interest than page three. Sometimes comment was sought from an offender, victim or other party.

Mrs Banks herself had raised the issue that her son might be soon appearing in the court list or Police Notebook with the newspaper's chief reporter in an informal discussion in late 2006. The chief reporter had said that if that did occur, the *Mail* would have to report it and possibly the story would record how difficult it was to bring up teenagers. Mrs Banks had asked the chief reporter to call her if that happened.

On May 30, 2007, the editor had learned that Mrs Banks' son had appeared in

court and been convicted under the Litter Act. Because of Mrs Banks' position, her high profile in North Otago and the editor's belief she had never shied away from publicity for the work she did, her son's conviction for the offence made it newsworthy and it was elevated to the front page.

The editor denied the article and heading were sensationalising. The article was accurate and balanced and the headline was plain and unemotional.

He denied any breach of privacy. Mrs Banks held a public position and her son's conviction was directly associated with the work she did. Naming her in association with the conviction was therefore fair and not unreasonable.

As for the principle regarded children and young people, the editor said the *Mail* always exercised care and consideration for reporting on children and young people. In this case, the son was 17, convicted in open court and did not have name suppression. The newspaper regularly published names of others of the same age.

Additional Responses

In reply, Mr Ross maintained placing the article on page one was questionable particularly when compared with other cases which were placed on page three.

He also said the argument that the matter warranted page one treatment because of Mrs Banks' position in the community was untenable. She had sought profile for work-related campaigns, not as an individual.

The *Mail* appeared to justify its placement because Mrs Banks promoted programmes to discourage the behaviour her son displayed. That was correct but Mr Ross noted the view of the wider community and its reaction to the paper's coverage indicated they did not consider the story worthy of page one treatment.

Though the *Mail* might argue that technically it covered the matter professionally, ethically its judgment remained open to question. Mr Ross said the council was not alone in withdrawing its advertising in protest but had recommenced advertising with the mail from July 1.

Discussion

The role of the editor is to decide what should be published in a newspaper, and where articles or illustrations should be placed. Many factors are taken into account in making such decisions.

The Press Council notes a trend whereby media companies are editing and producing more publications away from their immediate circulation areas. In this instance, statements from the Oamaru-based general manager and the Christchurch-based editor indicated a lack of clarity over who really was in charge.

This is a particular conundrum for newspapers so edited. Issues such as how a story is covered, its angles and emphasis and where it is placed in the newspaper might be viewed very differently by people in different localities, and effective internal communication takes on added importance. Correspondence to the Press Council, however, revealed that the editor remains responsible for the content of the *Mail.*

It was clear that the article of May 31 drew considerable criticism. The newspaper received critical letters from readers, and the general manager wrote of the "hue and cry" his staff had had to shoulder as a result of publication.

Such criticism, often forcefully delivered, is very much part of newspaper life when publication of some detail offends a section of the community. Readers can take offence for a variety of reasons. Staff of a newspaper who go about their everyday lives in the community are more likely to feel the heat than those who live outside.

As happened in this case, a newspaper can suffer a financial penalty for such offence. The district council withdrew its advertising. It was entitled to do so, although the Press Council considers the withdrawal of advertising to be a crude weapon, particularly when the larger aim of the district council seems to have been to encourage a higher standard and more community-engaged style of journalism in the local paper.

It is not for the Press Council to decide whether *The Oamaru Mail* was justified in running the article, or whether its placement was correct. Such matters remain the responsibilities of editors, who must bear the consequences of their decisions.

Conclusion

The Oamaru Mail was entitled to link the fact that Mrs Banks was the mother of a young man convicted of littering when part of her job was to try to prevent such activity and the issue was a news item in the town. This was no doubt distressing, but the reporting of news is often distressing for affected parties. Not to have linked these facts might well have drawn criticism on the newspaper from other sources.

The Press Council's privacy principle contains the statement: "Publications should exercise care and discretion before identifying relatives of persons convicted or accused of crime where the reference to them is not directly relevant to the matter reported."

The Council has considered previously (Case 1059) such matters. In that instance, a majority ruled that the identification of a family member of a man convicted of a serious crime was not necessary and was an unnecessary invasion of privacy.

In this case, however, it is considered that the reference to the young man's mother was directly relevant to the matter reported as it was part of her job to try to prevent such behaviour.

The complaint with regard to children and young people also cannot be sustained. The young man was named in open court and the newspaper was entitled if not obliged to publish it.

The issue of fairness is more difficult and subjective. The Press Council can only judge fairness by examining the words of the actual article and the context of the explanations of the editor. It does not find the newspaper acted unfairly.

The complaint was not upheld.

The dissenting opinion

Three members of the Press Council, Keith Lees, Ruth Buddicom and Lynn Scott, disagreed with the decision to not uphold the complaint. They accept that it was reasonable for the newspaper to publish the details of the young man's conviction and to note that his mother was the Waitaki Council's safety co-ordinator. In their view, however, the combined effect of the placement of the report on the front page, under the headline *Alison Banks' son appears in court*, reinforced by the lead sentence,

which noted that she "faced another crime issue" (her son's court appearance) and with several references to her throughout, was to give an undue and unfair prominence to Mrs Banks. The dissenting group would uphold this complaint – on the grounds of lack of fairness.

Council members not upholding the complaint were Barry Paterson, Aroha Beck, Kate Coughlan, John Gardner, Penny Harding, Clive Lind, Denis McLean and Alan Samson.

Council members upholding the complaint were Ruth Buddicom, Keith Lees and Lynn Scott.

Catholic Church and the smacking debate – Case 2005

Michael Gibson, of Wellington, complained about a front-page article published in *The Dominion Post* on May 2, 2007. The grounds for complaint were that the article breached Press Council Principles 1,2 8 and 10 [on behalf of the Catholic Church and its leaders].

The complaint was not upheld on principles 1, 2, 8 or 10.

Background

On May 2, 2007, *The Dominion Post* carried a front page story (tag line *Smacking Bill* headline *Church against church)* outlining the positions of the major Christian denominations and Destiny Church on proposed legislation known as the anti-smacking bill and predicting that, following an ecumenical service at Wellington's Anglican Cathedral, mainstream churches would rally that day at Parliament at the same time as a Destiny Church-led anti-bill protest to Parliament.

The story stated "Leaders of the Anglican, Presbyterian, Methodist and Catholic churches have thrown their weight behind the bill – and have accused Christian opponents of selectively misquoting the Bible.

"They will rally at Parliament at the same time as a Destiny Church-led protest against Green MP Sue Bradford's bill …"

Complaint

Michael Gibson complained to *The Dominion Post* by fax on May 2 that there was no justification for the claim that leaders of the Catholic Church had thrown their weight behind the bill.

In his reply *Dominion Post* editor Tim Pankhurst directed Mr Gibson to an earlier report [April 27] regarding the Catholic bishops offering "qualified" support for the anti-smacking bill and quoting church spokeswoman Lyndsay Freer.

Mr Gibson's faxed response stated he was unable to locate the statement attributed to Lyndsay Freer.

Mr Pankhurst provided the Catholic Church press release and elaborated that the reporter had spoken to Ms Freer about the release and was told the bishops were offering their "qualified support".

In his response Mr Gibson then argued there was no justification for the May 2 claim that Catholic Church (with its leaders) was pitted against other churches.

On July 10 Mr Gibson made a formal complaint to the Press Council claiming the May 2 front-page story to be false and offensive and breaching principles 1, 2, 8 and, on behalf of the Catholic Church and its leaders, a breach of principle 10.

Mr Pankhurst's response included a transcript of the April 27 story covering the Catholic bishops "qualified support" for the bill and rebutted each of the four breaches of principle claimed by Mr Gibson.

On August 14 Mr Gibson filed a final comment and included, for the first time, a copy of a press release from the Catholic bishops dated May 1 that Mr Gibson asserted *The Dominion Post* had received. The release advised the Catholic bishops would not be attending the ecumenical service. This was furnished as proof that the article was inaccurate, unfair and unbalanced.

Mr Pankhurst's reply claimed Mr Gibson was shifting the goalpost with his complaints, stated that "a series of reverends, pastors and other church hierarchy from each denomination" had attended and addressed the ecumenical service and given MP Sue Bradford a letter of support. There was no suggestion in the article that Catholic bishops would be attending.

Discussion

The complaint under Principle 1 accuracy was not upheld. The article was accurate. It was predicted that an ecumenical service at 1pm at the Wellington Anglican Cathedral and a Destiny Church rally would result in two religious groups with opposing views on proposed anti-smacking legislation meeting in the grounds of Parliament. This occurred.

It was correct that leaders of the Anglican, Presbyterian, Methodist and Catholic churches had thrown their weight behind the bill. Even if the position of the Catholic bishops was "qualified" support, it was still support.

The prediction "They will rally at Parliament …" came true.

As there were no inaccuracies, no correction was required. The complaint under Principle 2 was therefore not upheld.

The Council did not consider there to have been any gratuitous emphasis placed on religion. The complaint under Principle 8, discrimination was not upheld.

The complaint under Principle 10, headings and captions was a third-party complaint on behalf of the Catholic Church and its leaders. The tagline and headline were accurate and the complaint was not upheld.

Conclusion

This bill resulted in strongly held opinions on both sides. The debate was heated and received significant media coverage on an almost daily basis. *The Dominion Post* coverage was extensive with reporters going beyond the press releases and hand-outs to expand on the position of various parties. This article was but part of the coverage and the Council found no grounds for upholding any of Mr Gibson's complaints against it.

Council members considering the complaint were Barry Paterson, Aroha Beck, Ruth Buddicom, Kate Coughlan, John Gardner, Penny Harding, Keith Lees, Clive Lind, Denis McLean, Alan Samson and Lynn Scott.

The pohutukawa tree and the boating club – Case 2006

The Press Council has not upheld a complaint by Jenny Kirk against the *North Shore Times* about the editing of a letter to the editor.

Background

Former North Shore city councillor Jenny Kirk sought a correction from the *North Shore Times* after the editing of her letter to the editor, published on Thursday August 2, 2007, made it appear that she supported the removal of a pohutukawa tree from outside Takapuna Boating Club when, in fact, she was opposed to its removal.

The last two paragraphs of her letter, dealing with a perceived conflict of interest involving a member of Takapuna Community Board, had been cut and replaced with two paragraphs of text from elsewhere that supported the removal of the tree.

The newspaper published a correction on Tuesday August 7, 2002 acknowledging the error and confirming that she was opposed to the removal of the tree.

Ms Kirk accepted that her letter had been too long and would have needed editing, but she was not satisfied with the newspaper's correction. She complained to the Press Council that though the correction went some way towards mitigating the editing errors, it did not address the main point of her letter; this was her contention that a Takapuna Community Board member had a conflict of interest. She said the correction made no mention of this point.

She then widened her complaint to say there had been similar problems with other letters she had sent. She said the newspaper seemed unable to correctly print letters from people with opposing viewpoints.

The Newspaper's Response

The newspaper's editor said the error was noted in an email exchange with Ms Kirk, full responsibility was accepted and a correction was published immediately. The correction was published in boxed form, to give it prominence. The editor assured Ms Kirk that the *North Shore Times* was objective in its handling of copy.

The editor said the letter had been condensed because it had exceeded guidelines on length. Her letter was 389 words when readers were asked to restrict letters to 200 words.

Conclusion

There were three parts to Ms Kirk's complaint: the initial editing errors; the failure of the correction to address the question of conflict of interest; and her view that the newspaper was prone to editing errors when dealing with opposing viewpoints.

This complaint was considered in light of two of the Press Council's principles governing letters to the editor and corrections.

In the first aspect to the complaint, the editing confused the issue by adding an opposing viewpoint to the bottom of Ms Kirk's letter. This was readily acknowledged by the newspaper, which promptly published a correction pointing out that she was against the proposal to remove the tree.

As to the second part of the complaint, the editing removed paragraphs that essentially repeated her argument about conflict of interest that had been made in the

opening statements of the letter. Ms Kirk's point had not been lost. It is a newspaper's prerogative to edit letters, provided there is fairness and balance.

The Press Council was unable to express a view about the newspaper's treatment of previous letters from Ms Kirk, or its treatment of other letters published in the same edition, having had no specific complaints or evidence to consider.

The Press Council, by a majority of 10 to one, did not uphold the complaint.

Council members considering the complaint were Barry Paterson, Aroha Beck, Ruth Buddicom, Kate Coughlan, John Gardner, Penny Harding, Keith Lees, Clive Lind, Denis McLean, Alan Samson and Lynn Scott.

Debate about NCEA healthy and on-going – Case 2007

The Press Council has not upheld a complaint laid by the New Zealand Qualifications Authority (NZQA) against *North & South* that an article published in the June 2007 edition headed *So What's To be Done About NCEA* breached the Press Council's principle of accuracy, fairness and balance (Principle 1). Additionally, it has not upheld the complaint that there was a breach of Principle 6, that publications should as far as possible make proper distinctions between reporting of facts and conjecture, passing of opinions and comment.

Background

The article, written by a senior staff writer, was accompanied by a photograph of a model dressed in school uniform with *NCEA sux* apparently written by the model, in large writing on a white board behind her. This picture also appeared on the cover of the magazine. The standfirst stated:

"Taxpayers have spent $600 million on NCEA but five years after it replaced School Certificate and Bursary, the Minister of Education acknowledges it needs help, the All Blacks coach (and former secondary school principal) Graham Henry says it's wishy-washy and non-competitive, and parents nationwide have all but lost faith".

NCEA is the National Certificate of Education Achievement, administered by NZQA.

In summary, the eight-page article was highly critical of the NCEA, and by implication the NZQA, with about three-quarters of the content giving a negative impression of the rigour and suitability of the qualification to stretch high-achieving students. It also suggested that the qualification was "dumbing down" standards and shifting goals. As well, comments from those interviewed who are critical of the NCEA questioned how standards are being enforced.

After an extensive profile of the principal of Palmerston North Boys' High school, Tim O'Connor, his philosophy, his opinions, and his success in achieving high standards and results for his students, this section included the following: "So it's unsurprising O'Connor has little time for NCEA". It went on to note that as well as using the Cambridge International Exams he was instituting an examination and assessment system in the school, in defiance of Ministry of Education guidelines.

The article then went on to explain how both the NCEA achievement standards and unit standards differ, how the Cambridge examination works, and provides brief

comment on the NCEA from several people, including the president of PPTA, principals, and the Minister of Education. Included in this section was reference to a column written for the *New Zealand Herald* by Dr Rosemary Hipkins, chief researcher with the New Zealand Council for Educational Research. The article stated: "(her) opinion piece in the *New Zealand Herald* seemed to back up the long-held suspicion NCEA was meant to drag potential neurosurgeons down to the level of burger flippers….".

There were interviews with two other secondary principals whose schools also offer the Cambridge International Examinations alongside the New Zealand qualification administered by NZQA. In addition to the initial profile of Palmerston North Boys' High School, interviews with the principals of Avondale College, and Senior College were extensive.

The article also included comments by the Principal of Avondale College questioning the veracity of research undertaken by Professor John Hattie of Auckland University. This research compared the NCEA with Cambridge qualifications, and concluded that the NCEA was better than any other system at identifying students who will do well at university.

The Avondale College principal was also critical of other academics and researchers who support the NCEA qualification.

The final segment of the article was essentially given over to the politicians: Katherine Rich, National Party spokesperson on education, who was essentially supportive of the qualification, but would increase the rigour of interschool assessment procedures; Steve Maharey, Minister of Education who supported NCEA but indicated that some changes were forthcoming and also a comment by Graham Henry, All-Black coach who said that the brightest students were not challenged and extended (attributed to the April issue of *SkySport* magazine).

The article concluded with another summary of the criticisms of the system, and a damning final comment from the Principal of Avondale College.

At the end of the article is a box entitled *Rescuing NCEA* with opinions from five educators on how NCEA could be fixed.

The Complaint

Dr Karen Poutasi, chief executive of NZQA, made the following points in complaining that the article breached Press Council's Principles 1 (lack of balance and fairness) and 6 (lack of distinction between comment and fact).

The magazine cover featured a supposed young woman student with the words *NCEA Sux* but nowhere in the article were there any students' responses to NCEA.

The introduction to the article stated: "parents nationwide have all but lost faith". The views of parents were absent from the article.

The writer stated as fact that unit standards for academic subjects were in a "dumbed-down and easy-peasy form". This statement was clearly comment and should not appear in what is presented as an objective news feature.

There were inaccuracies of facts, such as the costs of the NCEA fees, she said.

Students were quoted on "official NZQA forums" – no such forums exist.

Dr Poutasi also advised that an interview arranged with the deputy chief execu-

tive, qualifications, did not proceed as the article writer was unavailable. Despite extensive written material being provided to her by NZQA in answer to her written questions, only a fraction of this was used in the article. This represented lack of balance.

The Magazine's Response

The magazine responded that article was sparked by the Minister of Education, Steve Mahary, admitting in an interview with a *Herald* reporter that NCEA needed help. Additionally, several leading state schools had announced that they would be offering Cambridge International exams to their leading students, alongside NCEA.

When Graham Henry, the All Blacks coach (a former secondary principal) came out against NCEA, the magazine judged it timely to proceed with an article on the angle – what to do about NCEA. How can it be fixed, if at all? In order to pursue this angle the magazine needed to show what are considered to be the failings. The final box gave expert opinion on how it could be fixed.

The cover and article picture showed a typical female student of the type taking the qualification. It was ludicrous to suggest that because a student was shown, students' opinions should be sought.

Parents' views were represented in the interviews with principals, and in comments attributed to MP Katherine Rich.

The use of the words "dumbed down and easy-peasy" was a justified opinion formed from facts published in the months leading up to the *North & South* article. Several specific examples of statements and articles were given.

North & South accepted that the writer made a mistake in the costs of NCEA.

The writer sourced her student quotes from www.studyit.org.nz, a website dedicated to a discussion forum about the NCEA. There is nothing on the website to suggest that it is not recognised by NZQA.

The writer phoned the communications manager of NZQA 10 days before the deadline of April 25 to request an interview with Dr Poutasi. She had a further conversation with him and sent a list of questions to be answered. She needed a response by the deadline of April 25 and was told that she could speak with the deputy director, qualifications at 9am on April 26. When he did not keep that appointment by 9.15, she had to leave due to personal reasons. When the written response finally came through on April 27, a special effort was made to include some of his comments for balance. It was regrettable that Dr Poutasi did not make herself available when first requested, as her comments would almost certainly have been included.

Further comments from the disputants

North & South

The story tried to move beyond the simple weighing up of pro and con arguments. NZQA's claim that the cover image was a misrepresentation of the story was taking a far too literal approach to an image, which can only ever convey a mood and impression.

A story of this complexity can't possibly quote all parties and still be readable.

The writer's claim of NCEA being "dumbed down and easy peasy" was as a result of her research.

The failure of the CEO of NZQA being available for comment was inexplicable given the time frame offered.

NZQA

The request for the interview was referred to the person in charge of NZQA Assessment. Arrangements were made for the interview to take place as soon as the writer provided an outline of what she wanted to discuss. This occurred on April 23, two days before the stated deadline.

Discussion

It is apparent that concerns about the qualification prompted this article and the headline and standfirst made it clear that this would be the angle explored. That those who had the concerns would therefore feature most prominently was reasonable.

The article did include comments from an NZQA deputy director, the chairperson of PPTA, and others, which show qualified support for the NCEA. These had little impact on the overall impression that NCEA has some problems, and that there was strong opposition to it from some quarters.

The Press Council notes that *North & South* published three letters in its August edition from writers critical of the June article. The first was from Dr Rosemary Hipkins, chief researcher for the New Zealand Council for Educational Research. She stated that the article writer had not contacted her when writing it. Quotes attributed to Dr Hipkins were strung together from a previously published article, and distorted her research findings.

The second letter was from Dr John Hattie, Faculty of Education, University of Auckland. He stated that the Avondale principal's discreditation of the Faculty of Education's Starpath Research was unacceptable, and that though NCEA did need some improvement, there was a growing body of evidence that it is the best system to work from to prepare students for university.

The third letter, signed by 28 principals from the Central North Island Secondary Principals' Association, supported NCEA, protested that some vocal principals' views were included at such length, and stated that given the principles of fair and balanced journalism, views of those supporting NCEA should have been sought.

Other published letters were also critical of aspects of the article.

The Press Council also acknowledged that *North & South* published a letter from Dr Poutasi, protesting about the accuracy and balance of the June article. This letter was misplaced, and could not be published until the October edition when it appeared.

The Press Council noted the published concerns of the two researchers referred to in the article that their research was not reported accurately. If they were to be quoted it was important to interview these researchers and give them the opportunity to ensure that their views were properly represented.

Decision

The Press Council noted that this was the fifth article *North & South* had published on NCEA. The magazine was entitled to publish an article giving voice to critics of the scheme. The Press Council noted in its 2001 Annual Report that there can be circumstances where "balance can often be provided over time, or across a

broader canvas, than one article in a single publication". This is such a case.

Therefore, the Press Council did not uphold the complaint on the basis of lack of balance and fairness.

The Press Council additionally did not uphold the complaint about facts and opinions. The major tone of the article made it clear that it was the opinions of those interviewed that were being reported. It was also clear that the writer of the article was highly critical of the qualification, and that this was her opinion.

The Council's Principle 7 on advocacy is quite clear: "A publication is entitled to adopt a forthright stance and advocate a position on any issue".

The factual errors around the cost of the NCEA entry fees, and the website were not substantial in the scheme of things.

The Press Council recognises that debate about the NCEA is healthy, and ongoing. However, it is aware, both from this article, and from subsequent correspondence that there is a strong wish from educationalists and others that the debate around this issue should present a range of views. This can be achieved over time and in other articles.

Council members considering the complaint were Barry Paterson, Aroha Beck, Ruth Buddicom, Kate Coughlan, John Gardner, Penny Harding, Keith Lees, Clive Lind, Denis McLean, Alan Samson and Lynn Scott.

Psychic calls carry cost – Case 2008

The Press Council has not upheld a complaint against the *Sunday Star-Times* following a report of incidents in the student leaders' offices at Victoria University, Wellington.

Background

On May 6, 2007, the *Sunday Star-Times* carried a report that said Victoria University student leaders had vandalised the walls of their offices after drinking and that thousands of dollars of calls had been made to a psychic hotline. The report was headed *Uni seeks costs of psychic calls by drunk student*. The report quoted what it described as a report on the student union's website Salient.

On May 7 Laura McQuillan, the news editor of *Salient* and author of some of the material on the website, emailed the newspaper complaining of inaccuracies in the report and on the following day requested an interview with the editor who declined.

Further correspondence followed and in a letter of May 18 the *Star-Times* editor, though not accepting that the report was inaccurate in its key claims, offered the opportunity of a letter to the editor clarifying details. The student representatives were unsatisfied with the editor's responses and lodged a formal complaint with the Press Council on May 28.

The Complaint

The complaint from Laura McQuillan and Geoff Hayward, president of the Victoria University of Wellington Students' Association, said that the report had cast VUWSA and *Salient* into disrepute.

It said the headline and report were inaccurate in reporting that the university was attempting to retrieve the money when it was VUWSA that was doing so. The thousands of dollars spent on psychic hotline calls were not made in one night and it had not been reported that the student making the calls was a co-opted official rather than having been elected.

It further complained that information in the report was stated as coming from the student union website rather than the website of *Salient* magazine which is the student magazine funded by VUWSA, a separate body from the student union.

The complainants objected to the description of those involved as student executives when their correct title should be officers of the Students' Association executive. The description of the graffiti referred to the use of the word "hearts" when it actually showed a picture of a heart.

The newspaper had not printed a correction or apology. The complainants also complained under principle 6 on "comment and fact" saying that the report appeared to be based on an opinion column written in *Salient* by Ms McQuillan, which did not claim to be a complete or objective piece of reporting.

By suggesting that the *Star-Times* report was based on copy in *Salient* the newspaper had discredited the *Salient* as a reputable news organisation.

The Newspaper's Response.

The editor stood by the suggestion that the University was working alongside the students association in attempting to retrieve the money and referred to another *Salient* report which said "the Association was working with the university" to have the costs of the phone calls added to the student's records.

On the question of whether the calls amounting to thousands of dollars were made on one night the newspaper had information from other sources that this was the case and believed at the time of publication that information was correct.

The newspaper did not believe the status of the student officer's appointment, the exact nature of *Salient* and the description of members of the VUWSA executive as student executives were crucially important.

The newspaper did not rely entirely on *Salient* for its information. It had a copy of a report on the incident from a separate source.

The newspaper described the suggestion that the report rather than the incident itself had cast the VUWSA into disrepute as "laughable" and said no apology was required. Ms McQuillan had been given an opportunity to clarify the report and had not accepted this offer.

Further responses.

The complainants were unsatisfied by the response, reiterated the complaints and took exception to the remark in connection with the co-opted status of the officer that "the distinction seemed to be of no relevance to our readers so was not reported".

The complainants summed up the newspaper's response as: "if our readers don't want or need the facts we don't have to report them".

In its final response the newspaper took particular issue with this remark, which it described as an invention of the newspaper's position. The position was that the

report as published was an accurate summary of the key events.

Discussion

There was no suggestion that the main material of the report is incorrect. There was drinking, calls were made to a psychic hotline and the premises were subjected to the writing of graffiti. The offending student was an officer, whether co-opted or elected. It was difficult to see that making the distinctions sought by the complainants would have significantly ameliorated the damage to the reputation of the student body. The expansions of detail sought by the complainants were not substantial, not because "readers don't want them" but because they would not affect the major content of the report.

Had the complainants accepted the offer of a letter of clarification on these details they would have been able to make the position clear.

On the matter of who was involved in attempts to seek reparation, it was unclear from the correspondence of the exact nature of the university's role. One report in *Salient* by Ms McQuillan said "the VUWSA is currently working with the university" on cost recovery and in further correspondence the complainant suggested that certain action by the university in having a "hold" placed on the concerned student's record account would hinder the process. This suggested that, regardless of the effectiveness of any such action, VUWSA was not alone in seeking to act on the matter.

Conclusion

The matters of detail on which the report was faulted by the complainant were insufficient to sustain a finding that the report was inaccurate. The headline reflected the material in the report and it seemed to the Press Council that the university was involved at some level in the recovery of the money spent on the calls.

There was therefore no requirement for an apology although it would have been within the newspaper's powers to correct the matters of detail, whether or not the complainants accepted the offer of a letter to the editor. Publication of such a correction would not have significantly altered the substance of the report.

There was no editorial comment in the report and therefore the complaint on this ground cannot be sustained.

The complaints were not upheld.

Council members considering the complaint were Barry Paterson, Aroha Beck, Ruth Buddicom, Kate Coughlan, John Gardner, Penny Harding, Keith Lees, Clive Lind, Denis McLean, Alan Samson and Lynn Scott.

Benny Hinn and the Dalai Lama – Case 2009

The Press Council has not upheld a complaint by Thijs Drupsteen against the *Herald on Sunday* about a report of June 10 2007 on a meeting held in Auckland by the American televangelist Benny Hinn.

The Complaint

In his final comment to the Press Council of October 11, Mr Drupsteen charged the *Herald on Sunday* with "inaccuracy, unfairness and imbalance" in their report on the meeting. He had earlier (June 14, 2007) maintained that the reporter had "listed

only negative aspects of the meeting and didn't bother to list any of the miracles that God did in the latter part of the meeting". He assumed that the reporter had attended the Friday night gathering only, whereas Mr Hinn had held three events – all attended by Mr Drupsteen. A balanced report would have detailed "some miracles and healing testimonies at least equal in number to the 10 negative points that he had counted in the article".

Mr Drupsteen also complained that the comparison between Pastor Hinn and the Dalai Lama made in two boxes attached to the report in question was also unbalanced – "why not state the Dalai Lama's income instead of just Benny Hinn's?"

The Newspaper's Response

The editor responded that the complaint was without foundation. He noted that the reporter had spoken to [and reported] "an attendee who was miraculously freed from his crutches after Mr Hinn's intervention – hardly a negative event". In a final comment on October 1, the editor insisted that the report was "accurate, balanced and fair" and that he had no problem with the paper's coverage of the event. The journalist had "quite properly reported on the more newsworthy events of the night". Mr Drupsteen's was the only complaint received from a crowd of 12,000.

Discussion

The Press Council has consistently made the point that an editor is responsible for the product, which is the newspaper and its contents. It is his or her judgment as to what is and what is not newsworthy, which will sell newspapers or otherwise. It is to be expected that the reporting and editorial judgments of this kind will not always find favour with all readers. Special interests and deep personal concerns cannot necessarily be catered for if the newspaper is to serve a wider readership.

In this case the reporter homed in on the personality of Pastor Hinn and his insistence on discipline on the part of the faithful if they were to get the message. Mention was also made of the large sums of money derived from Benny Hinn's "crusades" and of the suspicions of a church-funding watchdog organisation, which reviews financial transparency in the field. A comparison was also made with the different approach likely to betaken by the next spiritual leader to speak at the same Auckland venue – the Dalai Lama.

Decision

The Press Council is all for free discussion and the free expression of opinion. It is obvious that all points of view cannot or, often need not, be represented in a single article. On an issue to do with religious belief this might indeed be impossible. The reporter was entitled to report the event as he saw it.

Mr Drupsteen's complaint was not upheld.

Council members considering the complaint were Barry Paterson, Aroha Beck, Ruth Buddicom, Kate Coughlan, Penny Harding, Keith Lees, Denis McLean, Alan Samson and Lynn Scott.

John Gardner took no part in the consideration of this complaint.

Publication of leaked ferry incident report – Case 2010

Introduction

Maritime New Zealand (Maritime) has complained to the Press Council about three articles (including an editorial), which appeared in *The Dominion Post* on November 11, 13 and 14, 2006.

Similar articles also appeared in other Fairfax publications but the complaint is against *The Dominion Post* alone. It was on the grounds of breach of confidentiality, unfairness and balance.

The Council has not upheld the complaint on confidentiality (which is seen as the main complaint) with one Council member dissenting. The complaint on balance was not upheld. A majority (6 – 4) upheld the unfairness complaint.

Background

The background to the publications was a Cook Strait crossing of the interisland ferry *Aratere* on March 3, 2006 when, in very rough seas, the ship heeled over causing injury to passengers and damage to vehicles. As a result of an inquiry into the incident, Maritime issued to interested parties a draft report, which contained at the foot of each page:

> "***DRAFT – Maritime New Zealand Investigation Report***
>
> "This is a private and confidential preliminary report to interested parties only for the purpose of comment to Maritime New Zealand. Any breach of this confidence may result in legal action being taken by Maritime New Zealand."

The newspaper was aware that the report was confidential. It took the view that it was in the public interest to publicise the report and did so without seeking any comment from Maritime.

The first article on November 11 referred to the ferry becoming "extremely close to capsizing". It suggested that the skipper showed poor judgment. It noted that:

"The draft Maritime New Zealand Report into the sailing, leaked to *The Dominion Post* before its official release next month, makes a string of safety recommendations …"

The second article on November 13, under the heading *Calls for Action on Ferry Report*, reported the reaction of some of the passengers and the standfirst noted *Passengers in Close Call want New Rules.*

The editorial appeared on November 13 under the heading *Placed in Peril on the Seas.* It included the statement:

"The report is still only a draft but it leaves little doubt it was more by good luck than good management that a Wahine-style disaster was avoided."

The Complaint

As noted above, there are three distinct elements to the complaint. Maritime retained a barrister to make the complaint; he summarised the confidentiality complaint in the following terms:

"It is Maritime New Zealand's view that by intentionally breaching the obligation of confidentiality by which it was bound *The Dominion Post* has acted unethically and intentionally so."

Maritime's position is that the publication of portions of the draft report seriously undermined Maritime's investigation processes and this will have an impact on future investigations. It said that confidentiality was an important part of its investigation process and that such confidentiality encouraged free and frank discussion and disclosure by witnesses and interested parties, which was plainly in the public interest. In Maritime's view its ability to conduct future investigations on a confidential basis had been seriously compromised, and that *The Dominion Post* had acted unethically.

The complaint under Principle 1 of the Council's rules (the unfairness complaint) is that *The Dominion Post* acted unfairly in publishing parts of the draft report, which were still subject to further comment from interested parties, and without advising its readers that as a result the final report might in some respects be in a different form. Likewise Maritime was unable to respond to the published commentary on the draft report because as the report was in draft it was potentially subject to further change.

The final ground for complaint was also under Principle 1, namely that the reports lacked balance because the newspaper had not sought the views of Maritime before publishing the articles. While this complaint might be based on Principle 1, one reason for the complaint was that Maritime believed it was denied an opportunity to prevent by legal means the publication of the articles.

***The Dominion Post*'s position**

The Dominion Post also took legal advice and provided an opinion from its own solicitor. The opinion analysed the legal principles that constituted a breach of confidence. It suggested that *The Dominion Post* might not have infringed one of the basic elements of breach of confidence, namely that the unauthorised use of the confidential information was to the detriment of Maritime. Further it was suggested that, even if there had been a breach of confidence, which *prima facie* would have allowed Maritime to institute legal proceedings against *The Dominion Post,* the latter would have been entitled to avail itself of the public interest defence.

The public interest defence is available if the public interest in publication outweighs the countervailing interest in protecting the confidence of the draft report. It was suggested that the benefits (in addition to the universal benefits of a free press), possibly include informing the public about an issue of public safety.

Discussion

Confidentiality: The Council seeks in its Statement of Principles to uphold the standards of ethical journalism. It is not a court of law. It is accepted by *The Dominion Post* that the draft report had the necessary quality of confidence and that it was communicated in circumstances importing that obligation of confidence on *The Dominion Post*. It was aware that the report was confidential and had been leaked to it. However, it did not concede that there has been a detriment to Maritime. The Council cannot, and did not, come to a view on the legal issues.

The Council's position is that a report received as a result of a third party's breach of obligation of confidentiality should not be published unless there is an overriding public interest. In assessing whether there is such an overriding public interest the Council cannot come to the conclusion by determining fact and applying legal principles. It is required to make its assessment by considering the general factual matrix and applying its collective judgment to the importance to the public, or a section of it, of the matters of the report.

The Council did not uphold this complaint, because it is of the view that there was an overriding public interest in publication. The report was an inquiry into a matter involving public safety. The public was entitled to know the reasons for the near disaster and the steps proposed to alleviate future risks. A considerable number of the public cross Cook Strait and were entitled to be informed of these matters. The public interest was such that the statutory right of freedom of expression in s14 of the New Zealand Bill of Rights Act 1990 was not restricted by confidentiality.

Although the report was a draft, it came several months after the incident and there was a public interest in its contents being made public sooner rather than later. The Council was not persuaded that the publication was likely to have the adverse effects contended by Maritime.

Unfairness: The complaint on unfairness was based on the fact that *The Dominion Post* did not advise readers that the report was subject to change as a result of comments and submissions to be received. It was said that it unfairly represented that it was a final report and would appear in that form shortly thereafter. The first article referred to "its official release next month".

A majority (six) of the Council upheld the complaint. The statement that it was to be officially released next month implied that it would be released substantially in the form of the draft. It was not made sufficiently clear to readers that this might not be so.

A minority (four) was not prepared to uphold on this ground. The fact the report was referred to as a "draft report" could mean only that it was not in its final form. A reasonable reader should have known that the report might well be altered. The matters upon which *The Dominion Post* focused were those that were unlikely to change, namely the danger there had been to the passengers on the particular crossing and the safety recommendations.

Balance: The ground of the complaint based on balance was that Maritime should have been advised of the intention to publish. Because of the failure to seek comment, Maritime argued, the readers were misled into thinking that the draft report would become the final report and that the findings and recommendations would remain unchanged. The failure to seek such comments meant that the articles lacked any form of balance and were unfair both to Maritime and the interested parties. There was a suggestion that this ground of complaint was motivated more by the fact that Maritime did not have an opportunity to seek injunctive relief.

The complaint was not upheld on this ground. This was a matter of public interest and there was no need for *The Dominion Post* to expose itself to a possible injunctive

claim to prevent such a matter being discussed in public. Further, the matters upon which the article concentrated, namely the danger to the public and the recommendations to ensure safety, were matters upon which Maritime itself was not likely to be in a position to give balance. These were its own statements and recommendations.

Decision

The substantive complaint of breach of confidentiality was not upheld, with one member, Ruth Buddicom dissenting. (See below for the dissent). Nor was the complaint based on a lack of balance upheld.

By a majority of six to four, the lesser complaint of unfairness (not making it clear that the report might be changed) is upheld.

Members upholding the unfairness complaint were Barry Paterson, Ruth Buddicom, Kate Coughlan, John Gardner, Keith Lees and Denis McLean.

Members not upholding were Aroha Beck, Penny Harding, Alan Samson and Lynn Scott.

Clive Lind took no part in the consideration of this complaint.

Dissent (Ruth Buddicom)

I disagree with the majority decision under the confidentiality ground. Maritime New Zealand had an obligation to notify the Aratere incident to the Transport Accident Investigation Commission (TAIC). Having done so, by virtue of Section 14 of the Transport Accident Investigation Commission Act 1990, the TAIC was thereafter in charge of the investigation processes (which are required by law to be co-ordinated). It has the power to regulate its own investigation procedures in accordance with the Commissions of Inquiry Act 1908, which power includes, relevantly, the power to hear evidence or representations in private. The circulation of the draft report to interested parties on a confidential basis for their comment prior to the final report being prepared falls within the ambit of that power. It is significant that Parliament has not legislated for maritime safety hearings to be conducted in public.

I do not agree that there was an overriding public interest, which justified the newspaper publishing from the leaked draft report. Both the Maritime New Zealand and the TAIC reports were, quite properly, to be made public once finalised.

The question is only whether the public interest justified the newspaper publishing at an earlier date relying on the leaked draft report (which was still vulnerable to change and possibly quite significant change), rather than waiting to publish from the final report. I am of the view that it is speculative to assume that public interest justified the earlier publication from the leaked draft report. The newspaper had no means of predicting the content of the final report at the time that it published the articles complained about. It surely could not be considered to be in the public interest to know sooner if, for example, the information communicated turned out to be wrong. On the facts of the present case, this would have resulted in incorrect information remaining in the public arena for about nine months.

That similar private investigation processes are adopted by a number of bodies (including others which can be deemed to have a public safety focus) causes me further circumspection about endorsing a failure to observe the confidentiality of the

draft report. Section 14 of the Bill of Rights Act 1990 does not give a newspaper the right to publish anything it pleases whatever harm it might cause to others. The right to freedom of expression is subject to "reasonable limits prescribed by law as can be demonstrably justified in a free and democratic society".

Notwithstanding the right to freedom of expression, three factors cumulatively lead me to a different conclusion than the majority view. These are the existence of the legal right to have the investigation carried out in private, the fact that publication was always going to occur once the final report was completed, and the potential risks to both the public interest and private interests by the publications based only on a draft report when the final report contents were not, and could not, be known. I am of the view that the public interest defence does not suffice to justify the newspaper's publications and I would, therefore, also uphold on the ethical ground of a breach of confidentiality.

Abridgement of letter did not misrepresent – Case 2011

The Press Council has not upheld a complaint from Ulli Weissbach against the *New Zealand Herald*. Mr Weissbach objected that the abridged form in which a letter he wrote to the editor was published, on August 14, 2007, misrepresented his opinion and distorted what he had intended to say.

The letter was written in response to another letter that had been published three days earlier, in which the writer – who had recently returned from a holiday in Europe — expressed disillusionment with New Zealand society, citing headline stories of inappropriate and in some cases criminal behaviour from people in positions of authority and a child abuse case as specific examples of decay.

In his letter, Mr Weissbach expressly agreed with that opinion, related it to his own personal history as a European immigrant, referred to further headline examples, and criticised the prime minister and other societal leaders for failing to act.

The Press Council will rarely interfere with the selection and treatment of letters written to the editor for publication (Principle 12). Mr Weissbach's letter, which exceeded the 200-word limit, was edited before publication. However, the changes were minor: tightening the syntax and deleting some details, a "wake up" call, and some legally risky statements. The meaning and tenor of the letter were not affected.

The Press Council did not accept that the abridgment misrepresented Mr Weissbach's opinion or distorted what he intended to say.

The complaint was not upheld.

Council members considering the complaint were Barry Paterson, Aroha Beck, Ruth Buddicom, Kate Coughlan, Penny Harding, Keith Lees, Denis McLean, Alan Samson and Lynn Scott.

John Gardner took no part in the consideration of this complaint.

Fathers and the Family Court – Case 2012

The Press Council has not upheld a complaint by Allan Golden against stuff.co.nz

concerning an NZPA article published on August 14, 2007 about the release of Family Court statistics for 2005.

Complaint

Mr Golden complained that he was unhappy with the headline and his main complaint relates to the "bold-type one-sentence preface which follows the heading and date."

> **"*Fathers win custody battles too***
>
> "Latest statistics suggest gender is not a factor in custody applications to the Family Court, with fathers just as likely as mothers to win custody of their children."

Mr Golden believed the heading and introduction were misleading as data reported in the article showed more than twice as many mothers than fathers were granted custody.

He argued:

a. It was irrelevant to link the granting of custody to the sex of the applicant, as this outcome was not an indication of who deserves to have the role.
b. It was an accidental but irrelevant happening that the applicants' ratio is roughly the same as the award ratio.
c. Decisions about which parent will initiate a custody claim can be arbitrary and thus cannot be interpreted as a lack of gender bias.
d. There was an agenda to make males satisfied with their lot regardless of the facts.

Mr Golden found the article disgusting and complete rubbish.

Response

Stuff deputy news editor Cathy O'Sullivan agreed that the report was confusing but endorsed its accuracy in reporting the figures provided by the Family Court

She stated:

a. The report stated that 1805 male applicants, constituting 65 per cent of those who applied for custody, were successful in their application. The 4046 successful females represented 69 per cent of all female applicants.
b. The thrust of the article, that men were just as likely as women to gain custody when they apply to the Family Court, was accurate.
c. The report did not explore the reason that far fewer men applied for custody than women.

Complainant's response

Mr Golden rejected this reply and expanded his original complaint to include:

a. Rejection of the term "custody battle"
b. Speculation that the article might result in future applicants believing there is an advantage in being "first in" for custody
c. A suggestion that the Family Court is "trying to illogically downplay its

opinion or position adopted that women usually make the better parent in these cases", and that the website was improperly going along with that.

Stuff's second reply

Mark Stevens, editor of stuff.co.nz, responded as follows:

a. No offence was meant by the use of bold type for an introduction; it was standard.
b. The introduction was an interpretive sentence written by a journalist, as is common practice.
c. Use of the term custody battle was legitimate because two litigants were before a court to determine custody.
d. The odds faced by men and women when making custody applications were roughly equal.
e. It was not appropriate to comment on the "getting in first" issue or on speculation about the motives of the Family Court
f. The article was a fair and accurate interpretation of the report.

Mr Golden rejected the reply.

Decision

This is a sensitive issue and one that provokes strong and emotional reactions in affected readers. The NZPA report, carried on stuff.co.nz, was an accurate account of the release of 2005 Family Court statistics and accompanying interpretive comment by the Family Court. It was the view of the Family Court that "it is usually the applicant, irrespective of gender who gains custody" that lies at the core of Mr Golden's response to the article.

Mr Golden's view, that this was an inaccurate interpretation, could be taken up with the Family Court or placed in the public arena by way of a letter to the editor.

However, the Press Council did not find that the article was misleading.

Council members considering the complaint were Barry Paterson, Aroha Beck, Ruth Buddicom, Kate Coughlan, John Gardner, Penny Harding, Keith Lees, Clive Lind, Denis McLean, Alan Samson and Lynn Scott.

'Alarming insinuation' over man's death – Case 2013

The New Zealand Press Council has upheld a complaint from Bay of Plenty District Health Board over a feature story, which appeared on the front page of the Weekend Edition of the *Bay of Plenty Times* on August 25, 2007.

The Article

The story focused on the death of an elderly patient who had initially been admitted to Tauranga Hospital to be treated for a broken arm. He died in the hospital four weeks later from organ failure due to septicaemia.

The first headline in red stated *Bay Man's Death Sparks Health Fears* followed by a triple-decker headline in bold type across almost all the top half of the front page – "He went to hospital with a broken arm. A month later William was dead".

The introduction stated, "A man admitted to Tauranga Hospital earlier this year with a broken arm, died there after contracting a mysterious infection."

The caption to the accompanying photo read: *Avoidable Death: The wife and daughter-in-law of a 70-year-old who died in Tauranga Hospital have spoken out about staff numbers*.

The report was largely dependent on the opinion of the man's wife and daughter-in-law who were critical of his care and suspected that the infection that led to septicaemia had been contracted in hospital. They praised the staff but considered that low staffing levels had contributed to his death.

The article closed with comments from the DHB's communications manager rejecting the claims about lack of personnel.

The Complaint

In the DHB's view, the newspaper's dramatic coverage of the story was misleading, unbalanced ad unfair, especially in the strng insinuation that the hospital was the cause of death. The DHB also suggested that the newspaper was guilty of misrepresentation when asking for comment, as the request did not make the focus of the story apparent, but asked about staffing levels in general.

Finally, the complaint asserted "editorial bias" against the DHB.

The Newspaper's Response

The editor strongly rebutted the complaint and the criticism. He defended the right of newspapers to cover such issues even when a local institution was shown in a bad light.

More specifically, he stressed the speculation about the cause of death came from the family and was acknowledged as personal opinion in the report. The reporter had been up-front when asking for a response from the DHB. He also took exception to the charge of ongoing bias against the DHB arguing that every story was handled on its merits.

Discussion

The Press Council had some misgivings about the way the requests for comment from the DHB were handled. The exchange of emails led to confusion. Given such prominent and dramatic treatment being accorded the story, the newspaper should have taken the time to establish a direct contact with the DHB where the concerns raised could have been put in an interview.

Although the newspaper's emails did clearly refer to the particular patient, giving name and date of death and that the patient's widow "wanted her story told" , the email had the potential to mislead as the specific response requested related to staffing shortages. Having been told, in the same email, there was no complaint against the medical staff the DHB might not have realised there was to be a suggestion that it was responsible for the death. The Council did not, however, find that there was deliberate misrepresentation.

Further, when the second request for a response was received only two days before publication, the DHB might have considered asking for more time to respond, citing a need to investigate and/or contact the family.

Nor was one complaint about one particular story enough to indicate ongoing "editorial bias" against the DHB on the part of the newspaper.

The Press Council did not uphold these aspects of the complaint.

However, the suggestion that the cause of the death lay within the hospital was carried not only by the widow's suspicions, it was reinforced by the newspaper in the large and emotive headline, and by captions and comments such as *Avoidable Death* and "died after contracting a mysterious infection".

The Council could not determine the accuracy of the facts relating to the medical condition and cause of death, but neither could the newspaper. The editor himself said, in responding to the DHB claim that it was not responsible, that only a medical investigation or coronial inquest could make such a determination.

In making this deliberate link between the patient's death and his care in hospital, there needed to be much more support than was supplied in the article.

The Press Council recognises the traditional right of newspapers to cover such stories in a strong, even dramatic, manner. Nevertheless, in creating this alarming insinuation, the *Bay of Plenty Times* was unfair to Tauranga Hospital and misleading to its readers.

That complaint was upheld.

Council members considering the complaint were Barry Paterson, Aroha Beck, Ruth Buddicom, Kate Coughlan, John Gardner, Penny Harding, Keith Lees, Clive Lind, Denis McLean, Alan Samson and Lynn Scott.

Opinion piece OK – Case 2014

Introduction

Mr R Lavën, a Tauranga lawyer, laid a complaint with the Press Council about an article published in the opinion section of the *Bay of Plenty Times* on October 16 2007. He complained that the article breached the Press Council's principles on accuracy, fairness and balance.

The complaint is not upheld.

The Complaint

The article complained about was in two parts. The second part (on which the complaint was based) retold an American anti-lawyer joke. The columnist then went on to criticize an anonymous published article in the Canterbury student magazine *Canta* which rated young film stars for their sexual attractiveness. It stated that some heterosexual men "would go to prison in order to sleep with them" (implying that they were underage – although in the case of those named this was not the case). The final sentence of the article was a side-swipe that tied in the columnist's criticism of a poor article which condoned sexual abuse to his earlier reference to lawyers.

Mr Lavën complained that the second part of the article in general, and the last sentence in particular, was inaccurate, unfair and unbalanced. Further, he said that cheap shots about lawyers were made without substantiation or reason under the guise of opinion. He did not accept that regurgitated jokes were an expression of opinion.

Also he did not accept that linking lawyers to child abuse in order to take cheap shots was ethically justifiable.

In a further elaboration of his complaint, Mr Lavën again stated that at the heart of his complaint were issues of accuracy, fairness, taste and balance.

The Response

The editor responded strongly, both in his initial response to the complainant, and then in his responses to the Press Council. He made it clear that this column was purely and simply the columnist's opinion on issues of the day. He often used humour and satire to make his points. If the complainant did not like the column, he did not need to read it.

Conclusion

The complaint was not upheld. On many occasions the Press Council has upheld the right of an editor to publish opinion pieces, some of which might offend some people simply because they did not agree with the opinions expressed or the way in which they were expressed. Newspapers publish such pieces in order to entertain, or to engage the public in discussion and debate. In this case, the column was clearly placed in the opinion section of the paper. The complaint was a reflection of the controversy that such pieces sometimes generated.

Council members considering the complaint were Barry Paterson, Aroha Beck, Ruth Buddicom, Kate Coughlan, John Gardner, Penny Harding, Keith Lees, Clive Lind, Denis McLean, Alan Samson and Lynn Scott.

Sex-ring story revisited – Case 2015

Introduction

Tom and Teresa Lewis complained about an article in the magazine section of the *Otago Daily Times* (*ODT*) for the weekend of May 19 and 20, 2007. Mr Lewis was in the 1980s a detective sergeant in the New Zealand Police stationed at Dunedin. The basis of the complaint was that the article was inaccurate. Mr and Mrs Lewis sought a written retraction from the *ODT* in relation to alleged factual errors and a public apology acknowledging those errors.

The complaint was not upheld.

The Article

The article appeared under the heading *Shadows of the Past haunt Police*. The standfirst read:

"The recent claims about police 'corruption' in Dunedin are not new. Deputy editor Bryan James looks behind the headlines and the shadows to reveal inadequate and incompetent investigations and to self-protective police culture."

Almost the entire article, which was lengthy, was devoted to what has become known as the "sex ring" case in Dunedin in the middle 1980s. That portion of the article was introduced by the following paragraph:

"The most notorious public scandal involving the Dunedin police occurred in

1984 and 1985, when one officer accused his superior of attempting to pervert the course of justice by failing to pursue possible charges against the father of a third. This was the so-called "sex-ring" case, and it received columns of publicity at the time."

The article referred to the basis of the complaint, namely that teenage girls were being approached by various means and offered large sums of money to provide sexual services. It refers to Detective Sergeant Lewis being given the file and deciding on an undercover "entrapment" operation. The chief suspect was the owner of a Dunedin hotel and the father of another detective.

The article referred to a police woman acting as an undercover agent meeting the proposed recruiter. As a result of this operation Detective Sergeant Lewis believed he had sufficient information to charge both the hotel owner and the woman being used for recruiting services. The head of the Dunedin CIB was not prepared to allow charges to be laid until there were further investigations. The article referred to the conflict between Detective Sergeant Lewis and the head of the CIB over the case and that subsequently Detective Sergeant Lewis lodged a formal complaint against his superior officer alleging an attempt to pervert the course of justice.

The article noted that it was seven months after the complaint was lodged before the Commissioner of Police was formally made aware of the accusations. A police three-man inquiry team was established to which the Commissioner of Police added a Wellington barrister. Members of the Police Association in Dunedin were reported as being in doubt about the inquiry and claimed it would be a "white wash".

The inquiry team determined that Detective Sergeant Lewis had not been stopped from investigating the "sex ring" and that there was insufficient evidence for charges to be laid. The piece reported that the report of the inquiry team was nevertheless damning of the Dunedin police hierarchy. The writer was also critical of many other unsatisfactory features of the police's handling of the matter.

The piece noted that Detective Sergeant Lewis "negotiated what he later described as 'a generous disengagement package' and resigned after 20 years in the force. He moved to Australia and took up a new career in the security business". The article also states that a later review "privately commissioned by Tom Lewis's wife and carried out by an experienced retired police officer, eventually alleged police had indeed been involved in a cover-up".

The Allegations

The letter of complaint to the *ODT* made serious allegations about the standard of investigation and reporting by the *ODT* of the events in the 1980s. It was suggested that deficiencies in reporting at that time influenced deficiencies in the article under review.

Mr and Mrs Lewis made a general complaint of inaccuracies but concentrated on what they described as "the more serious and blatant untruths" and said:

Detective Sergeant Lewis did not on his own volition decide on the undercover operation. This was agreed to and planned after a meeting of senior CIB officers.

The hotel owner had in fact made admissions when interviewed regarding his

involvement in the attempted recruitment of minors for his sex show. The article suggested to the contrary.

The statement regarding the intended transfer of Detective Sergeant Lewis and his generous disengagement package and his movement to a career in the security business in Australia, is also incorrect.

The inquiry by the experienced retired police officer alleging that the police had been involved in a cover up was not commissioned by Mrs Lewis but by John Kennedy, the then editor of the *New Zealand Tablet*.

The Newspaper's Response

The *ODT*'s position is that the article was a summary of many articles and reports published by the *ODT* in the mid-1980s. It did not purport to be an attempt to cover each and every aspect of the "sex ring". The purpose of the article was to indicate to readers that allegations made in 2007 against the police in various centres in the 1980s did not exclude Dunedin and that the "sex ring" case was the best known example.

The *ODT*'s response to the four particular factual allegations was:

The report did not say that Detective Sergeant Lewis on his own volition decided on the undercover operation, although it accepts that this implication can be taken from the article. It notes that he was the head of the inquiry team.

In respect of the allegations that the hotel proprietor did make admissions when interviewed, the *ODT* accepts that he may have done so but if so this is not a matter of public record. It notes that Mr Lewis in his book *Cover Ups and Cop Outs* claims that there were admissions made. On a related point where Mr and Mrs Lewis claim that the *ODT*'s statement that the case against the hotel proprietor was weak, is incorrect, it noted that the independent inquiry concluded that there was insufficient evidence to lay charges.

In respect of the allegation that Mr Lewis worked in security, the *ODT* noted that it had been given this information by a former colleague. In respect of the other allegation as to the disengagement package, the *ODT* says it relied upon statements made by the Police Commissioner at the time and not subsequently challenged.

The information about the initiation of the private inquiry came from an NZPA report in 1985.

In summary, the *ODT*'s position is that much of the information in the article was provided by the police upon inquiry and the newspaper was in no position to assume the information was false, misleading or incomplete.

Discussion

As has been said in several adjudications, this Council is usually in no position to determine disputed facts. This is particularly so if the facts have caused much controversy and have not been resolved by the Courts. Whether there was a police cover-up or police corruption is not an issue upon which this Council can make a finding.

The Council did not uphold the first complaint. It accepted that the article suggested that Detective Sergeant Lewis made the decision to proceed with the undercover arrangement and that it might have actually been a collective decision of police officers. However, Mr Lewis in his own book *Cover Ups and Cop Outs* at page 189

states "I decided on an undercover operation to identify and prosecute the persons behind the sex ring." There is nothing in this point.

Whether or not the hotel proprietor made admissions, cannot be resolved by the Council. However, the *ODT* made the statement "he had made no admissions …" While there might not be a public record of any admissions, there had been allegations particularly by Mr Lewis in his book that admissions had been made. The Council is of the view that the *ODT* incorrectly stated as a fact what is a contentious matter.

The statement that Mr Lewis received what he considered to be "a generous disengagement package" is confirmed by Mr Lewis in his own book when at page 239 he said he was offered such a package. He accepted that package. The *ODT* erred when it said he moved to Australia and took up a new career in the security business. This was obviously incorrect.

The *ODT* might have also been incorrect when it followed an NZPA report that suggested that the report prepared by a retired senior sergeant had been initiated by Mrs Lewis. The Council however sees this as an immaterial factor in the article.

As noted, the Dunedin sex ring was a highly controversial incident, which was used by the *ODT* in its article. The standfirst indicates that the purpose of the article was "to reveal inadequate and incompetent investigations and a self-protective police culture". There are the factual errors referred to above but the Council sees them as basically immaterial to the thrust of the article.

An overview of the article leads to the conclusion that, in the main, the article was supportive of Tom Lewis' position at the time. Any suggestions of a self-protective police culture did not target Mr Lewis.

Mr and Mrs Lewis are critical of the *ODT*'s coverage in the 1980s. Whether they are correct is not an element of the complaint and the Council cannot comment on that allegation.

The minor factual errors in the article were not sufficient for the Council to uphold the complaint. They did not make the theme of the piece inaccurate, unfair or unbalanced. The complaint was therefore not upheld.

Council members considering the complaint were Barry Paterson, Aroha Beck, Ruth Buddicom, Kate Coughlan, John Gardner, Penny Harding, Keith Lees, Clive Lind, Denis McLean, Alan Samson and Lynn Scott.

Failure to identify affiliation of columnist regrettable – Case 2016

Dr Michael Morris, past chair of the Campaign Against Factory Farming, complained to the Press Council about a column in the monthly magazine, *FMCG*, a trade publication of some 8172 circulation, which covers the businesses of manufacturing, logistics and supermarketing.

The column about broiler chickens appeared in the magazine's July 2007 edition. Written by Michael Brooks, it was headed *Chicken and eggs don't really go together.*

Dr Morris wrote a letter to the editor critical of the column. The editor declined to publish it, largely on the grounds that the magazine never published letters to the

editor. Dr Morris complained to the Press Council alleging inaccuracy and lack of balance and that the magazine had misled readers by omission.

The complaint was not upheld, although the Press Council noted that the absence of a descriptive sentence explaining the author of the column was the executive director of the Poultry Industry Association of New Zealand was unfortunate.

Background

Mr Brooks's column described the development of broiler chickens in New Zealand. It included the sentences: "Much like the two-legged New Zealanders, the modern Kiwi chook is demonstrating the benefits of good breeding, freedom from disease and an overall better quality of life and health brought about by modern farming methods and biosecurity measures. Just as we are taller and bulkier than our ancestors, the chicken which, by the same comparison, has advanced the equivalent of hundreds of generations, is an altogether larger, healthier specimen than it has ever been. It also remains a breed apart from its egg-laying cousin with natural breeding selection fostering the attributes of each breed suitable to its various production qualities. This means that the egg you eat today is not the poultry meat you eat tomorrow."

On September 14, Dr Morris wrote via email a letter for publication to *FMCG*'s managing editor, John Winter, wishing to "correct some untrue statements" about the welfare of broiler chickens. "Modern chickens are not larger because they are healthier and happier," he wrote. "Quite the contrary. The modern broiler is a genetic freak; selectively bred to grow so quickly that their legs and hearts cannot cope with the extra weight. Animal welfare scientists of international renown agree that this has meant increased incidence of lameness and metabolic disorders such as ascites in broilers. After studies showed that up to 20 per cent of European broilers are in constant pain from lameness for the last third of their lives, Professor John Webster of Bristol University described the modern broiler industry as perhaps the 'single most severe, systematic example of man's inhumanity to another sentient animal.' A recent New Zealand study on lameness has revealed that up to 40 percent of broilers may be suffering from this painful condition."

On October 15, Dr Morris asked when his letter would be published. The managing editor responded that it was not the magazine's practice to publish readers' letters. He added that he had forwarded the letter to Mr Brooks and had advised the columnist that if he felt the need to address issues raised by Dr Morris in a subsequent column, he would publish whatever he [Mr Brooks] submitted.

Dr Morris replied the same day saying he believed publication of one point of view and not providing equal space to an opposing viewpoint breached the Press Council's guidelines on balance, but he would be satisfied if his letter was published or if he could publish a longer and properly referenced article.

In reply the same day, the managing editor said he was not going to publish an alternative point of view on a subject he did not know and he had forwarded it to Mr Brooks because he was in a better position to know the substance of the complaint. The managing editor said this was a fair and balanced response to the complaint and Mr Brooks had chosen not to take further action because he disagreed with the points made. If Dr Morris wished to take up the matter with Mr Brooks and the latter agreed

to cover the points raised, he would publish this. He repeated it was not the magazine's practice to publish letters.

Substance of the Complaint

The same day, Dr Morris complained to the Press Council saying the column was factually in error and lacking balance.

He supported his criticism of the broiler chicken industry with seven peer-reviewed references and nine references to his own publications on animal welfare.

He believed forwarding his letter to Mr Brooks was unprofessional because the letter was clearly marked for publication, not for "private distribution" to a contributor. He sought an apology for this action and an assurance it would not happen again.

He also believed the managing editor's response to his complaint of lack of balance was unsatisfactory. He had admitted ignorance about broiler chickens but if he was too ignorant to publish an alternative viewpoint, he was surely too ignorant to publish the original column.

Dr Morris said it was understandable the managing editor would want his letter to be scrutinised by an independent expert but it was not acceptable for the letter to be vetted by the person whose views he was rebutting. As head of an industry lobby group, Mr Brooks would be expected to back the status quo.

He criticised the absence of any indication on the article that Mr Brooks headed the poultry industry's association

The Magazine's Response

The managing editor said the magazine had never had a letters section. Mr Brooks was one of a number of specialists who contributed a monthly column to the magazine.

Though the managing editor had a strong knowledge of supermarkets and how they worked, there were many specialisations and it would be impossible for him to have knowledge and understanding of every industry that dovetailed into it. That was why he had such specialists.

His initial reaction to Dr Morris's letter was to advise him he had no letters section and therefore there was no place to publish it, but Dr Morris insisted it be published in fairness and because Mr Brooks was wrong. He did not have the in-depth knowledge to know if that were so and his expert in that field was Mr Brooks. He considered the letter his property and he forwarded to Mr Brooks.

His other thought had been to run the letter as a news story but Mr Brooks did not wish to be involved. As a result, he advised Dr Morris he would not be publishing the letter.

The managing editor said the magazine was not available to the general public but was a business-to-business trade magazine. It was not a platform for those outside the supermarket industry to air their opinions merely because they disagreed with an expert option published within.

Rights of Reply

In his right of reply, Dr Morris reiterated Mr Brooks was not an expert in this field, and also disputed his letter was the managing editor's property. Copyright re-

mained with the writer. It was inexcusable to distribute his letter to a contributor.

While *FMCG* was a trade magazine for the supermarket industry, this made balanced information even more important. Supermarkets were important "gateways" in influencing consumer behaviour, as the debate over genetic modification had shown. It was his intention to provide an alternative viewpoint in the hope supermarket managers would be able to make a more informed choice on which products they wished to stock.

The managing editor, in his right of reply, said he had made no claim Mr Brooks was either an expert or independent. He wrote on behalf of the industry and was impartial in that he represented no company individually.

His affiliation was normally noted at the end of each article but was omitted on that particular column.

He disputed Dr Morris's view on copyright. It was addressed to him as an employee of the company and Dr Morris had no rights over to whom he showed it. To suggest otherwise would mean it would be impossible to verify the contents of anything sent to him.

FMCG was not available to the general public. If Dr Morris had an issue with supermarkets selling poultry, he should take this up with the two supermarket companies and not try to use the industry trade magazine as a lever to persuade them into action. If *FMCG* was both a trade and consumer magazine and available to the general public, there might be some substance in Dr Morris's complaint. But it was not.

As managing editor, he decided what the magazine would publish. Dr Morris seemed to be under the impression that anyone could dictate what a magazine could publish. *FMCG* did not encourage readers' letters and had no feature where they could be published.

Discussion

The complaint involved a column written by Michael Brooks for *FMCG*, and there is a difference between a column and an article, where balance and fairness would play a larger role. Columnists are entitled to state their views, and even to be wrong.

Nevertheless, where a columnist is an advocate for an organisation, as in this case, a publication should identify the columnist. *FMCG*'s failure to do so in this case was a regrettable lapse and could have misled the reader. The Press Council noted Mr Brooks was identified in the November issue of *FMCG*.

Dr Morris sought redress through a letter to the editor. *FMCG* has a policy of not printing letters from readers. Though that is unusual in that publications usually wish to encourage debate among readers, the Press Council cannot condemn the policy if the magazine is consistent.

Further, the Press Council's Principle 12 states: "Selection and treatment of letters for publication are the prerogative of editors who are to be guided by fairness, balance and public interest on the correspondents' views." Even if *FMCG* did publish letters from readers, the managing editor would not have been obliged to print Dr Morris's letter.

The managing editor's position was, however, weakened when he said he considered the letter as a possible article, with a response from Mr Brooks, but did not take this course when Mr Brooks would not further engage.

It is normal policy for many publications to refer critical letters to those who wrote the criticised articles or columns, and the Press Council does not criticise the managing editor for referring Dr Morris's letter to Mr Brooks.

At the same time, however, columnists should expect their views to be challenged and the managing director had allowed an unfortunate impression to arise that a columnist with a particular view was able to influence further coverage of a different viewpoint.

It was also difficult to accept the managing editor's belief that Dr Morris should take up the issue through the two major supermarket chains and not through a specific trade publication aimed at supermarkets. As the recent fireworks and genetic modification debates had shown, supermarkets were well aware of customer perceptions and reacted accordingly. It was odd a trade publication would not want to engage in such issues when it would appear to be an ideal platform.

Moreover, though the managing editor said the magazine was not for the general public, the Press Council noted *FMCG* does encourage subscriptions within the magazine itself and therefore ordinary members of the public could presumably buy it if they wished.

Decision

On balance, and despite disquiet at some of the explanations given, the Press Council did not uphold the complaint.

Council members considering the complaint were Barry Paterson, Aroha Beck, Ruth Buddicom, Kate Coughlan, John Gardner, Penny Harding, Keith Lees, Clive Lind, Denis McLean, Alan Samson and Lynn Scott.

The neighbours and the property developer – Case 2017

The New Zealand Press Council has not upheld a complaint against *The Dominion Post* arising from an article published on August 15, 2007.

Background

Under the heading *Anger at 'army shack' homes*, *The Dominion Post* reported the concerns of neighbours about a housing development in Reynolds Road, Havelock North. It said residents had organised a petition asking Hastings District Council to prevent further such developments. The first paragraph of the report said "a developer plonked three small houses on tiny sections".

The report said two of the houses sit on "minimum-sized 350 square metre sections but the third one comes with only 275 square metres of land". It quoted two residents as describing the houses as "flimsy, cheap looking 'shacks' that would sit well on an army base". One resident was quoted as saying "the developer is getting roasted over this but the council approval allowed it to go ahead".

The developer, Liam Nolan, was quoted as saying that "people complained about large houses on small sections – so he had put small houses on small sections". Mr Nolan was also quoted as saying the three houses, though not brand new, were architecturally designed and said critics should reserve judgment until he had finished the project.

The report was accompanied by a picture captioned: *Cottage industry: neighbours have taken exception to three small houses which have been erected on tiny sections in Havelock North*.

The material for the report was based on a visit to the street by the reporter and on a conversation with Mr Nolan, supplemented by an email from Mr Nolan containing his responses to a reporter from another newspaper on the subject of neighbours' unhappiness at the project. *The Dominion Post* reporter also spoke to an official of the district council.

The Complaint.

Mr Nolan complained to the Press Council in a letter dated August 17. He cited breaches of Press Council principles on accuracy, corrections, confidentiality, comment and fact, advocacy, subterfuge, headlines and captions and photography.

On accuracy the complainant said the minimum plot size for the area was 300 square metres, not 350 as stated. The actual size of the plots was two of 360 sq metres and one of 350. They were thus larger than allowed.

The statement that the houses "comprised three 44 square metre relocatable homes" was wrong. He complained "These false statements have materially affected the value of the homes." He said that the statement attributed to him that the houses were not new was incorrect. He further complained that the statement one of the residents "lived a few doors down" was incorrect.

Mr Nolan said the material required a correction.

On confidentiality Mr Nolan said the report had not taken reasonable steps to ensure its sources were well informed.

On comment and fact Mr Nolan objected to the description "plonked three small houses on tiny sections". The houses were properly installed on the site. The description of the houses as tiny was emotive.

The lack of professional qualifications or experience by the reporter disqualified "advocacy" of a position on the issue.

On subterfuge Mr Nolan said that on approaching the reporter he said he did not wish to make any comment for publication but would provide written information and subsequently did so. He said a 10-15 minute chat on a "not for publication" basis without notes being taken was not appropriate and resulted in misquotation.

Mr Nolan said the heading was "sensationalism" and inaccurate and the caption was both inaccurate and misleading, implying it showed a completed project.

The Response

The Dominion Post responded directly to Mr Nolan by email on August 21 including the reporter's account of her meeting with Mr Nolan and a rebuttal of his complaints. On September 17 the newspaper formally responded to the Press Council.

On accuracy the editor stated that the council's environmental manager had advised that the minimum section size for land sited near a public reserve was 300 square metres and that the developer had been required to obtain specific consent to create the third section at 275m square metres.

The description of the houses as relocatable was justified. They were pre-built and moved to the site. Describing one critic of the project as living "a few doors down" was entirely accurate.

Mr Nolan offered no evidence that the article "has materially affected the value of the homes".

The newspaper stood by its report that Mr Nolan had told the reporters the houses were not brand new and it was evident they were weathered.

The opinions held by neighbours were accurately reported and Mr Nolan was well aware that some residents had concerns.

Mr Nolan's views were accurately reported, including the statement the houses were architecturally designed and that further work was being undertaken on them, and he was given the opportunity to respond to the criticisms.

There was no need for a correction as there was nothing for the newspaper to correct.

On confidentiality the neighbours were perfectly qualified to provide well-informed comment as they lived in the same street and had seen the properties in question. There was no requirement for them to have professional qualification to express an opinion.

On comment and fact the newspaper accurately reported the fact of the neighbours' concerns.

Press Council principles grant media the right to take a stance but in this case this article had taken no such advocacy position, merely accurately reporting the residents' concerns.

There was no question of subterfuge as the reporter identified herself and at no time offered any acceptance of the position that Mr Nolan's remarks were not for publication. The reporter disputed Mr Nolan's recollection of the thrust of his remarks about small house on small sites and whether the homes were brand new.

Both the headline and captions were accurate, the caption did not imply the houses were complete and the reporting of Mr Nolan's remarks that critics should reserve judgment made this perfectly clear.

Further Comment

On November 6 Mr Nolan responded. He maintained the reporter had incorrectly stated the minimum size was 350 square metres after being advised it was 300sq m. The land area of the third section was 360 sq m, not 275 as reported. He needed no specific consent for the smallest section. The section had easement for secondary access and the council district plan excluded access roads when calculating area.

The use of the term "relocatable" was wrong for these homes, which were intended to be permanent but were merely built off-site. Relocatable homes were cheaper than the homes in question and this affected their value.

The description of the neighbour as living "a few doors down" was stretching the definition of "a few doors down" and he did not live in close proximity,

Mr Nolan denied telling the reporter the houses were not brand new. There was some weather staining.

Mr Nolan said he had not been given an opportunity to respond to criticism, as he had not been told what the concerns of the interviewees were.

He did not accept that the neighbours were qualified to comment on the structural stability of half- completed houses

On the issue of comment Mr Nolan said the description of the three houses being "plonked" on "tiny sections" was demeaning and the content of the report was advocacy.

In support of the complaint on subterfuge Mr Nolan said he did expressly state he would provide material for publication in writing only.

He said that on the matter of his stating the houses were not new, his recollection was quite clear and he made no such statement.

Mr Nolan repeated his objection to the use of the term "tiny sections" in the caption and said the newspaper should have identified the subject of the picture as a building site.

In a further response *The Dominion Post* supplied an application for building consent lodged with Hastings District Council. This stated the lots were of 360 square metres, 350 square metres and 276 square metres. As the properties were near a public space they could be permitted with two sites "which easily meet density requirements" and "one undersized site." The application described the dwellings as "small flat roofed houses". The newspaper stood by the accuracy of its story.

Discussion

The substance of the report was the dissatisfaction of the neighbours with the council policy under which Mr Nolan's project had proceeded and the nature of the houses themselves. It was clear that Mr Nolan was aware of these concerns as the provision of his response to a previous reporter's inquiry indicates.

There was dispute over the section size, with the standard minimum size being affected by proximity to public space and a difference about the nature of area calculations.

But it was doubtful if this distinction was such as to affect the burden of the report or evidence of, as the Press Council principle states, any attempt "to deliberately mislead or misinform readers". There was no suggestion that Mr Nolan was in breach of any size requirements and the story explicitly quoted a council official as saying the development was within the rules of the district plan. Mr Nolan did not dispute the suggestion that the sections and houses were small and in his response indicated the median section size in Reynolds Road was 759 square metres although some were cross-leased.

Neighbours were entitled to express their opinions of the appearance of houses and Mr Nolan's statements that they were architecturally designed and that decks, sunshades, fence and driveways were to be added were contained in the report.

There was a difference in the recollection of the reporter and Mr Nolan on the matters of his saying the houses were not brand new and whether he had said he had put small houses on small sections. The Council was not in a position to rule on these matters but they did not affect the main burden of the complaint.

The Council was also not in a position to judge whether or not Mr Nolan expressly stated that his views were not for publication and the Council has had previous occasion to remark on the need for this position to be clear to both parties. However, Mr Nolan's suggestion that he could not respond adequately because he did not know the nature of the views of the interviewees lacked substance, given that he subsequently provided *The Dominion Post* with a written response to previous criticisms.

The Decision:

The article was essentially a report of the feeling of some neighbours towards the development. There was no indication they were inaccurately reported. Mr Nolan's defence of his project was adequately covered. There was no suggestion of subterfuge being used to obtain the story. The heading accurately reflected the content of the report. The caption was not inaccurate and the picture itself clearly showed that work was in progress on the site.

Mr Nolan was understandably unhappy with the tenor of the neighbours' remarks but they were entitled to make them and *The Dominion Post* had not behaved improperly in reporting them.

Council members considering the complaint were Barry Paterson, Aroha Beck, Ruth Buddicom, Kate Coughlan, John Gardner, Penny Harding, Keith Lees, Clive Lind, Denis McLean, Alan Samson and Lynn Scott.

Statement of Principles

Preamble

The New Zealand Press Council was established in 1972 by newspaper publishers and journalists to provide the public with an independent forum for resolution of complaints against the press. It also has other important Objectives as stated in the Constitution of the Press Council. Complaint resolution is its core work, but promotion of freedom of the press and maintenance of the press in accordance with the highest professional standards rank equally with that first Objective.

There are some broad principles to which the Council is committed. There is no more important principle than freedom of expression. In a democratically governed society the public has a right to be informed, and much of that information comes from the media. Individuals also have rights and sometimes they must be balanced against competing interests such as the public's right to know. Freedom of expression and freedom of the media are inextricably bound. The print media is jealous in guarding freedom of expression not just for publishers' sake, but, more importantly, in the public interest. In complaint resolution by the Council freedom of expression and public interest will play dominant roles.

It is important to the Council that the distinction between fact, and conjecture, opinions or comment be maintained. This Principle does not interfere with rigorous analysis, of which there is an increasing need. It is the hallmark of good journalism.

The Council seeks the co-operation of editors and publishers in adherence to these Principles and disposing of complaints. The Press Council does not prescribe rules by which publications should conduct themselves. Editors have the ultimate responsibility to their proprietors for what appears editorially in their publications, and to their readers and the public for adherence to the standards of ethical journalism which the Council upholds in this Statement of Principles.

These Principles are not a rigid code, but may be used by complainants should they wish to point the Council more precisely to the nature of their complaint. A complainant may use other words, or expressions, in a complaint, and nominate grounds not expressly stated in these Principles.

1. Accuracy

Publications (newspapers and magazines) should be guided at all times by accuracy, fairness and balance, and should not deliberately mislead or misinform readers by commission, or omission.

2. Corrections

Where it is established that there has been published information that is materially incorrect then the publication should promptly correct the error giving the correction fair prominence. In some circumstances it will be appropriate to offer an apology and a right of reply to an affected person or persons.

3. Privacy
Everyone is entitled to privacy of person, space and personal information, and these rights should be respected by publications. Nevertheless the right of privacy should not interfere with publication of matters of public record, or obvious significant public interest. Publications should exercise care and discretion before identifying relatives of persons convicted or accused of crime where the reference to them is not directly relevant to the matter reported. Those suffering from trauma or grief call for special consideration, and when approached, or inquiries are being undertaken, careful attention is to be given to their sensibilities.

4. Confidentiality
Editors have a strong obligation to protect against disclosure of the identity of confidential sources. They also have a duty to take reasonable steps to satisfy themselves that such sources are well informed and that the information they provide is reliable.

5. Children and Young People
Editors should have particular care and consideration for reporting on and about children and young people.

6. Comment and Fact
Publications should, as far as possible, make proper distinctions between reporting of facts and conjecture, passing of opinions and comment.

7. Advocacy
A publication is entitled to adopt a forthright stance and advocate a position on any issue.

8. Discrimination
Publications should not place gratuitous emphasis on gender, religion, minority groups, sexual orientation, age, race, colour or physical or mental disability. Nevertheless, where it is relevant and in the public interest, publications may report and express opinions in these areas.

9. Subterfuge
Editors should generally not sanction misrepresentation, deceit or subterfuge to obtain information for publication unless there is a clear case of public interest and the information cannot be obtained in any other way.

10. Headlines and Captions
Headlines, sub-headings, and captions should accurately and fairly convey the substance of the report they are designed to cover.

11. Photographs
Editors should take care in photographic and image selection and treatment. They should not publish photographs or images which have been manipulated without informing readers of the fact and, where significant, the nature and purpose of the

manipulation. Those involving situations of grief and shock are to be handled with special consideration for the sensibilities of those affected.

12. Letters

Selection and treatment of letters for publication are the prerogative of editors who are to be guided by fairness, balance, and public interest in the correspondents' views.

13. Council Adjudications

Editors are obliged to publish the substance of Council adjudications that uphold a complaint. Note: Editors and publishers are aware of the extent of this Council rule that is not reproduced in full here.

Complaints Procedure

1. If you have a complaint against a publication you must complain in writing to the editor first, within 3 months of the date of publication of the material in issue. Similarly complaints about non-publication must be made within the same period starting from the date it ought to have been published. This will acquaint the editor with the nature of the complaint and give an opportunity for the complaint to be resolved between you and the editor without recourse to the Press Council.
2. If you are not satisfied with the response from the editor (or, having allowed a reasonable interval, have received no reply) you should write promptly to the Secretary of the Press Council at PO Box 10-879, The Terrace, Wellington. Your letter should:
   (a) specify the nature of your complaint, giving precise details of the publication, (date and page) containing the material complained against. It will be of great assistance to the council if you nominate the particular principle(s), from the 13 listed in the next section of this brochure, that you consider contravened by the material; and
   (b) enclose the following:
      • copies of all correspondence with the editor;
      • a clearly legible copy of the material complained against;
      • any other relevant evidence in support of the complaint.
3. The Press Council copies the complaint to the editor, who is given 14 days to respond. A copy of that response is sent to you.
4. You then have 14 days in which to comment to the council on the editor's response. There is no requirement for you to do so if you are satisfied that your initial complaint has adequately made your case.
5. If you do make such further comment, it is sent to the editor, who is given 14 days in which to make a final response to the council. Full use of this procedure allows each party two opportunities to make a statement to the council.
6. The council's mission is to provide a full service to the public in regard to newspapers, magazines or periodicals published in New Zealand (including their websites) regardless of whether the publisher belongs to an organisation affiliated with the council. If the publication challenges the jurisdiction of the council to handle the complaint, or for any other reason does not cooperate, the council will nevertheless proceed to make a decision as best it is able in the circumstances.
7. Members of the Press Council are each supplied prior to a council meeting with a full copy of the complaint file, and make an adjudication after discussion at a meeting of the council. Meetings are held about every six weeks.
8. The council's adjudication is communicated in due course to the parties. If the council upholds a complaint (in full or in part), the newspaper or maga-

zine concerned must publish the essence of the adjudication, giving it fair prominence. If a complaint is not upheld, the publication concerned may publish a shortened version of the adjudication. All decisions will also be available on the council's website www.presscouncil.org.nz and in the relevant Annual Report.

9. There is no appeal from a council adjudication. However, the council is prepared to re-examine a decision if a party could show that a decision was based on a material error of fact, or new material had become available that had not been placed before the council.
10. In circumstances where a legally actionable issue may be involved, you will be required to provide a written undertaking that, having referred the matter to the Press Council, you will not take or continue proceedings against the publication or journalist concerned. This is to avoid the possibility of the Press Council adjudication being used as a "trial run" for litigation.
11. The council in its case records will retain all documents submitted in presentation of a case and your submission of documents will be regarded as evidence that you accept this rule.
12. The foregoing points all relate to complaints against newspapers, magazines and other publications. Complaints about conduct of persons and organisations towards the press should be initiated by way of a letter to the Secretary of the New Zealand Press Council.
13 The Press Council will consider a third-party complaint (i.e. from a person who is not personally aggrieved) relating to a published item, but if the circumstances appear to the council to require the consent of an individual involved in the complaint it reserves the right to require from such an individual his or her consent in writing to the council adjudicating on the issue of the complaint.

Statement of financial performance

As at 31 December 2007 (Audited)

2006		*2007*
	INCOME	
2,700	Union	2,700
170,000	NPA Contribution	170,000
5,000	NZ Community Newspapers	4,997
8,500	Magazine Contribution	9,225
962	Interest Received	1,507
-	Loss on Sale of Asset	-
187,162	**Total Income**	**188,429**
	EXPENDITURE	
311	ACC Levy	281
826	Accounting Fees	907
60	Advertising and Promotion	401
975	Auditor	1,536
42	Bank Charges	45
549	Cleaning	512
1,370	Computer Expenses	1,430
1,744	Depreciation	1,903
4,035	General Expenses & Subscriptions	3,737
3,264	Insurance	2,400
590	Internet Expenses	550
-	Legal Expenses	-
-	Motor Vehicle Allowance	-
1,250	Postage and Couriers	2,640
3,029	Power and Telephone	2,166
8,600	Printing and Stationery	8,887
2,373	Reception	2,411
13,371	Rent and Carparking	14,836
120,199	Salaries - Board Fees	122,929
16,519	Travel and Accommodation	13,138
-	Interest - Term Loan	-
179,107	**Total Expenses**	**180,709**
8,055	Income over Expenditure	7,720
18,396	Plus Equity at beginning of year	26,551
100	Prior Period Adjustment	(578)
26,551	**Equity as at end of year**	**33,693**

Statement of financial position

As at 31 December 2007 (Audited)

2006		*2007*
	Represented by:	
	ASSETS	
10,448	BNZ Current Account	6,612
15,303	BNZ Call Account	24,323
-	Accruals and Receivables	2,531
2,495	Computer hardware(less depreciation)	1,431
7,365	Fit out (less depreciation)	6,525
420	Taxation	-
36,031	**Total Assets**	**41,422**
	LESS LIABILITIES	
5,718	Creditors and Provisions	4,633
3,962	GST	3,096
-	PAYE Payable	-
9,680	**Total Liabilities**	**7,729**
	EQUITY	
18,496	Accumulated funds	25,973
8,055	Income over expenditure	7,720
26,551	**Total**	**33,693**

Auditor's report

AUDITOR'S REPORT TO THE MEMBERS OF THE NEW ZEALAND PRESS COUNCIL

I have audited the financial statements that provide information about the past financial performance of the Council for the year ended 31 December 2007 and its financial position as at that date.

Council's Responsibilities

The Council is responsible for the preparation and presentation of financial statements that present fairly the financial position as at 31 December 2007 and its financial performance for the year ended on that date.

Auditor's Responsibilities

I am responsible for expressing an independent opinion on the financial statements and reporting my opinion to the members.

Basis of Opinion

An audit includes examining, on a test basis, evidence relevant to the amounts and disclosures in the financial statements. It also includes assessing:

a) The significant estimates and judgements made by the Council in the preparation of the financial statements; and

b) Whether the accounting policies used are appropriate to the circumstance of the Council, consistently applied and adequately disclosed.

I conducted my audit in accordance with generally accepted auditing standards in New Zealand. I planned and performed my audit so as to obtain all the information and explanations which I considered necessary to provide me with sufficient evidence to give reasonable assurance that the financial statements are free from material misstatements, whether caused by fraud or error. In forming my opinion I also evaluated the overall adequacy of the presentation of information in the financial statements.

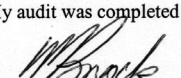
I have no relationship with or interests in the Council other than in my capacity as auditor.

Unqualified Opinion

I have obtained all the information and explanations required.

In my opinion the financial statements of the Council presents fairly its financial position as at 31 December 2007 and financial performance for the year ended on that date.

My audit was completed on 17 March 2008 and my unqualified opinion is expressed as at that date.



Walter Brock, CA (Retired)
Wellington

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