The 36th report of the

NEW ZEALAND
PRESS COUNCIL

2008

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NEW ZEALAND PRESS COUNCIL

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Mary Major	Secretary

Representing the public:

Aroha Beck	Lawyer and mother, Upper Hutt
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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*

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

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Chairman's Foreword

The Press Council in the year under review upheld in full or part thirteen of the forty-three complaints considered. Eleven complaints were upheld in full and two others in part only. Of the thirty complaints which were not upheld, twenty-eight of the decisions were unanimous. One decision was not upheld on a casting vote while on another decision, there were two dissenters. The comparative figures with recent years are set out later in this report.

While there was the usual number of complaints alleging a breach of the principle requiring accuracy, fairness and balance, there was an increase in the number of complaints relating to headlines, subheadings and captions.

In one case (2023) the Council determined that a montage on the cover contained unnecessarily misleading material. It took the view that the cover was part of the narrative and gave a misleading picture.

In another case (2032), which was not upheld, there was an allegation that the heading and stand first sensationalised the story. In that case, although the headline was in some respects inaccurate, the Council determined that a newspaper cannot be expected to cram all detail into a headline or stand first and was entitled to draw on the most newsworthy aspect of a story for its headline. While a newspaper may draw on the most newsworthy aspect for the headline, the decisions make it clear that the Council will uphold complaints relating to headlines, subheadings and captions if they do not accurately and fairly convey the substance of the report.

It is too early to say whether the number of complaints under principle 10 (headlines and captions) is a trend or was merely an aberration during the year.

The Council has consistently defended the right of opinion pieces to express columnists' views of events from their perspective. There is some overlap between principles 6 and 7 in respect of comment and fact on the one hand, and advocacy on the other. A columnist is required to distinguish between reporting of facts and conjecture, passing of opinion and comment (principle 6) and if the distinction is made and the facts are unchallengeable, then the columnist is entitled to express his or her view. A publication under principle 7 is entitled to adopt a forthright stance and advocate a position on any issue.

There were cases during the year where the Council has consistently upheld these principles. In one case (2030) it was noted that a columnist is able to give an interpretation of an event which may be different from that held by one or more of those involved in it, provided that columnist has taken care to get to the truth and is not deliberately misleading.

In another case the Council noted that the freedom of the press demands that the press is free to report views which sometimes cause argument or even offence to those who hold contrary views. The Council encourages New Zealand publications to continue to strive to present divergent views although it recognises that this at times results in residual and inevitable tensions.

The Council has, on more than one occasion, been required to consider the ad-

equacy of a correction. In one case (2020) it accepted that the newspaper had acted promptly to record the actual decision of a committee of a district council by publishing a second report. However the complaint was upheld because in the Council's view, it did not go far enough to correct the misleading impression of the first story. In making no reference to the first story in which the inaccuracy appeared, the newspaper may well have left readers confused about two apparently conflicting stories concerning the same matter.

Balance is a matter often considered by the Council. As noted in one of this year's decisions, "balance does not have to be achieved by providing an equal amount of space for the two contrary views".

The Council gave a decision (Case 2057) in which it said:

> "Covering overseas conflicts poses big difficulties for New Zealand's relatively small news media. It is understandable that a local newspaper should rely for its cover on respected news agencies such as Thomson Reuters".

In an obvious reference to that decision, John Minto in a December article in the *The Press* said:

> "A recent New Zealand Press Council decision on a complaint of bias reporting on the Middle East was not upheld, on the basis that our newspapers do not have the resources to report in an unbiased manner.
>
> "The Press Council effectively says we will have to get used to bias in reporting of international stories and there is little responsibility on our media outlets to do otherwise".

Mr Minto has misinterpreted the decision of the Council. The Council was not saying that the public would need to get used to bias in reporting of international stories. It was referring to a practical difficulty in the particular case, but the decision did not uphold bias on the grounds suggested by Mr Minto, in fact the Council noted that 'No evidence of bias lies before it'. The editor in that case took an editorial stance on a controversial issue as he was entitled to do, but in the Council's view there were no indications of inaccuracy in what he did.

A trend which is of concern is the tardiness of some editors in responding to complaints and the tone adopted by some editors in their responses to complaints. Fortunately the practices are not widespread but there have been concerns relating to these matters.

There continue to be occasions when editors do not respond to complaints directed to them and some occasions when editors are very tardy in responding to the formal complaint once it is sent to the editor from the Press Council. There have been other occasions, fortunately in only a very small proportion of cases, where the editor has been truculent in its response to the Press Council.

In the great majority of complaints the Council accepts that the complainant is sincere and believes he or she has a reasonable complaint. That complainant is hardly

likely to have his or her assessment of the press enhanced by a belittling reply, or a satirical reply which does not appear to take the complaint seriously. A complainant is entitled to be treated with respect.

Another matter which requires comment is the attempt by some editors to defend the indefensible. On some occasions this appears to be motivated by an altruistic desire to protect a journalist or support an employee. While this attitude may be laudable, a newspaper's or magazine's ability to face up to an error, be contrite in appropriate circumstances, and accept that there has been some error or misjudgement on behalf of the publication may well serve the press better than some of the defensive stonewalling positions sometimes taken. It may also prevent a complaint to the Council.

The Council set up a fast track scheme for the general election. Two complaints were received and neither upheld (Cases 2052 and 2053). The fast track scheme does not enable the panel considering the matter to give the consideration which is given to a normal complaint.

Because of time exigencies it is sometimes necessary to process a complaint within 24 hours and with less information than would normally be available. In the case of the two complaints received, the newspapers responded to the complaints promptly and the panel of the Council that considered the matter believed that it had adequate material upon which to base its decision.

In an election with so many issues being raised and so many contrary views being expressed on a particular issue, and because of the complexity of some issues, it can be difficult for a newspaper to comply with its requirement to be accurate, fair and balanced. There can also be a certain sensitivity on the part of the complainant who usually is associated with a political party.

In the complaints considered this year, the Council understands the reasons for the complaints and in one case would have upheld the complaint if the material complained about had been the only material on the particular point. However, in that case, the newspaper had previously published a considerable amount of detail on the topic and the position of the various political parties.

There was also other comment on the topic in the same newspaper. It is often necessary, as it was in this case, to judge comments on political material in the overall context of what appears in the newspaper and in other articles in previous editions.

There were two examples where the Council upheld complaints relating to children and young people. Newspapers are enjoined to take particular care and consideration for reporting on and about children and young people. Where care is not taken, or where there are inaccuracies, the Council will uphold complaints.

During the year the members of the Australian Press Council held a meeting in Wellington. The two councils held a joint public forum under the topic of "The Press and the Right to Know Under Seige: Are Press Freedoms Under Threat?" There was also a joint meeting of the two councils where views were exchanged as to their respective practices in the two countries. The members of the Council found this experience very beneficial.

During the year the Council made submissions to or appeared before Select Com-

mittees on the Land Transport Amendment Bill (no 4) and the Public Health Bill; to the Law Commission on areas where privacy laws had created barriers to the effective performance of our role; and to the Ministry of Culture and Heritage on the Review of Digital Broadcasting: Content Regulation.

In last year's report I reported on the progress of the review of the Council. For various reasons, outside the control of the Council, the implementation of the review has not moved as expeditiously as the Council would have hoped. However, there was considerable progress near the end of the year. The secretarial position was made full-time as from 1 October last. Steps were well under way at the end of the year to implement a new constitution and to review the Council's Statements of Principles. I am confident that the majority of the recommendations of the review panel will be implemented in 2009.

At the end of the year the Council bade farewell to Denis McLean whose term had expired and who, in fact, had remained for an extended period while the review was being undertaken. Denis filled the role of Deputy Chairman and was of considerable assistance to me, particularly in attending to make submissions to select committees when I was unable to do so. The Council is deeply indebted to Denis for his contribution while a member. He is wished well in his retirement.

I express my appreciation to the Council's secretary, Mary Major, who although until 30 September 2008 was employed on a part-time basis, in fact worked on an almost full-time basis. Her institutional knowledge is of extreme value to the Council and she has the support and respect of the Council.

Finally, I thank my fellow members of the Council for their support and contribution during the year. There have been changes to the Council since 31 December 2008 but these will be commented on in the next annual report.

New Zealand Press Council 2008: From left Alan Samson (Wellington), Mary Major (Secretary), John Gardner (Auckland), Keith Lees (Christchurch), Kate Coughlan (Auckland), Barry Paterson, Chairman (Auckland), Lynn Scott (Wellington), Clive Lind (Wellington), Aroha Beck (Heretaunga), Denis McLean (Wellington) and Ruth Buddicom (Christchurch). Absent Penny Harding (Wellington). 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.

Australia and New Zealand press councils meet: Back row: Rex Jory, Jack Herman, Clive Lind, Phil Dickson, Keith Lees, Aroha Beck, Sam North, Ruth Buddicorn, Adrian McGregor, Bruce Morgan. Middle rows: Alan Samson, John Gardner, John Fleetwood, Sharon Hill, Ros Guy, Lisa Scaffidi, Mary Major, Cheryl Attenborough, Lynn Scott, Bob Osburn, Deb Kirkman, Prue Innes, Wendy Mead, Peter Jeanes, Alan Kennedy, Brenton Holmes, Gary Evans. Front row: Kathie Sampson, H P Lee, Emma Boreland, Pam Walkley, John Dunnet, Ken McKinnon, Barry Paterson, Inez Ryan, Penny Harding, Denis McLean.

Australian Press Council visit

In early March, 2008 the Press Council welcomed a large contingent from the Australian Press Council for a series of joint meetings in Wellington. Over 12 and 13 March, various informal and formal functions were held to discuss matters of common interest.

The two Councils hosted a joint public meeting, *The Press and the Right to Know Under Siege: Are Press Freedoms under Threat?* which was chaired by the Hon Justice Tony Randerson, Chief High Court Judge. The speakers were Emeritus Professor John Burrows, QC (co-author of Media Law in New Zealand) and the respective Chairs of the Australian and New Zealand Press Councils, Professor Ken McKinnon and the Hon Barry Paterson, QC.

This public forum generated considerable interest and a large audience was present to listen to various concerns, in particular how a number of seemingly minor statutes and regulations could have the cumulative effect of gnawing away at freedom of expression. For example, restrictions on political speech in the Electoral Finance Act and the proposal to restrict access to the registers of births, deaths and marriages.

Among his comments the NZ Press Council Chair, Barry Paterson, suggested that the tension between freedom of expression and the right to privacy represented the greatest challenge facing bodies involved in the self-regulation of the press.

Commentators from both sides of the Tasman reflected on the difficulties journalists face in attempting to ascertain whether suppression orders have been made by various courts or, if they have, whether they are still operational.

Discussion at a more informal level continued at a dinner attended by Council members, administrative staff, the speakers and some invited guests.

The next day, after the two councils had met separately for their regular scheduled meetings, Professor Ken McKinnon and the Hon Barry Paterson chaired a joint meeting for members of both councils. Among the issues raised and discussed were the advantages and disadvantages of including minority or dissenting views in adjudications, the possible role of mediation and conflict resolution to settle complaints (regularly used by the Australian Press Council) and how to handle “fast-track” procedures.

Members also outlined the legal, political and social environments in their respective countries and discussed the main threats to the freedom of the press in general.

It is interesting to note that within their Independent Review of the NZ Press Council completed just a few months prior to this visit, in November 2007, the reviewers Sir Ian Barker and Professor Lewis Evans had recommended “The Press Council shall communicate with kindred organisations overseas — particularly its Australian counterpart”.

It is also worth noting that the Australian Press Council members were highly appreciative of the work of our Secretary Mary Major who undertook much of the detailed work in organising this successful joint venture.

Industry changes

Delivering the third Boyer lecture in Australia last year Rupert Murdoch was notably upbeat about the future of newspapers. He declared "readers want what they've always wanted: a source they can trust. That has always been the role of great newspapers in the past. And that role will make newspapers great in the future."

He acknowledged that the means of delivering news had changed and was changing but argued that "if papers provide news they can trust, we'll see gains in circulation - on our web pages, through our RSS feeds, in emails delivering customised news and advertising to mobile phones."

Others in the industry are less sure. Securing trust means providing reporting that not only has reader appeal but has integrity and that sort of news gathering has always been very expensive. Historically, cost mattered less when newspapers were, as Forbes magazine memorably put it, "able to generate rivers of cash decade after decade."

Advertising has always subsidised news gathering and, remarkably, the separation between advertising and reporting has remained substantially honoured.

But the flow of advertising from the print media has considerably affected those rivers. It is a worldwide phenomenon, arising before the current global financial crisis but now exacerbated by it.

The American press has been hit by what has been described by Sam Zell, the Tribune group chairman as "the perfect storm". The most revered bastions of the industry are shaking. In January 2009 the *New York Times* was grateful for a US$250 million bailout from the Mexican tycoon Carlos Slim. The *NYT* needed the cash from Slim's increased shareholding to help replace a US$400 million debt facility. The *NYT* has reportedly the most visited newspaper website in the world but the parent company posted a 13 per cent fall in advertising sales in the first eleven months of 2008 including a 21 per drop in November.

Three of America's greatest newspapers, the *Chicago Tribune*, *Los Angeles Times* and *Baltimore Sun*, have folded into the cover of Chapter 11 bankruptcy with the parent Tribune Company being an estimated US$13billion in debt. Trinity Mirror, Britain's biggest newspaper chain, has fallen out of the FTSE top 250 companies because the collapse of its share price has been so severe.

New Zealand and Australia are, inevitably, not immune to the crisis. Sir Anthony O'Reilly's Independent News and Media group announced plans to sell its 39.1% stake in APN News & Media, one of the two dominant newspaper groups in New Zealand, but was unable to find a suitable bidder. Announcing APN's results in February chief executive Brendan Hopkins said the advertising market was the worse since the company publicly listed.

Across the Tasman, David Kirk, chief executive of Fairfax Media, the other dominant group, resigned suddenly late in 2008 in the wake of collapsed share prices and heavy indebtedness. The company is looking to raise $872 million and to reduce debt.

The bullish Murdoch is suffering too. The market is moving so quickly that any figures are likely to be out of date before they are published but some estimates put

Murdoch and his family's losses at US$4.8 billion as the share price of News Corporation crumbles in the face of declining advertising revenues. Murdoch acknowledged the company was going through grim times while announcing a US$5.9billion first half loss for News Corp.

The consequences of this have been seen across the world and clearly in New Zealand with redundancies at both APN and Fairfax.

The revelation that newspapers must move away from dependence on print has not been exclusive to Mr Murdoch. As the audience has migrated into the electronic media so newspapers have gone there too but because the cash has declined, the demands of serving perpetual website updates, blogging and multi-media reporting have not always been met with correspondingly increased staffing.

Newspapers have gone into new recruiting specifically for an online audience but that recruiting has usually been at junior level and the immediacy is not encouraging for investigative reporting.

Journalists are notorious complainers but it is reasonable to question if print reporters being required to produce reports across a wide range of outlets across an ever-increasing time frame is conducive to good in-depth reporting.

If reporters on foreign or even out-of-office assignments are expected to file to websites almost as soon as they arrive, it may be hard to resist the temptation not to go out to investigate but to stay in the hotel feeding off local media or to seek easy sources who will quickly fill space or air-time.

There is some anecdotal evidence that the smaller, less well-funded publications are now more prone to fill editorial space with unchallenged handouts from business and official sources.

Handouts from any source should always be subjected to scrutiny. In a case considered under urgency just before the General Election (Case 2052), Jenny Kirk complained that the *New Zealand Herald*'s coverage of Labour's Job Search Allowance policy was inaccurate when it emphasised how the policy put working couples first and that the $50m safety net excluded single people and workers with a stay-at-home partner.

Ms Kirk said the package was for all working people, not just working couples, and quoted official party documentation in support of her argument. Ms Kirk compared a discrepancy between the *Herald* article and the policy releases and assumed the newspaper was wrong. In fact, the *Herald* was right and the policy documents were misleading.

It should be a matter for public concern when official documentation is misleading, particularly on important issues. But given the volume of such releases every day, it would be a well-staffed newsroom indeed that could provide each one with the level of scrutiny undertaken by the *Herald* in this instance.

It may also be difficult to resist the news values resulting from the immediate feedback of reader interest from websites. Most news executives are intellectually well aware of the pitfalls of following the Internet grazer seeking the quick news hit and attracted by the sexy headline. But can the news editor be blamed for putting scarce resources into what is known to have reader appeal instead of the more specu-

lative return from a heavier subject? The tail may wag the dog.

There is the view that this new environment is producing journalism that is not only different but better. Mainstream media, a term that has become almost always pejorative, have become institutionalised, boring and irrelevant, the argument goes. "Citizen journalism" delivered by electronic means is livelier, well informed, not bound by commercial considerations and more democratic.

Some mainstream practitioners are enjoying the change of voice that writing blogs gives them, developing a spontaneity hard to employ in the printed form.

But there is the problem that without the news branding, to which Murdoch alluded, it is a chancier business for the reader to know what to trust.

The challenge for newspapers, however delivered, is to earn or maintain that trust and develop a model to pay for it.

Growing awareness of right to privacy

There can be little doubt that some New Zealanders are becoming more concerned about and protective of their privacy.

The growing privacy debate in large part owes to the rapid growth of technology and the Internet. Information once disseminated in conversation at the corner store or even by post was never so threatening as material distributed at the push of a button, instantly - and enduringly – made available to millions.

The same technological jump applies to our newspapers, both in terms of their news gathering abilities and their publishing, invariably ending with postings on the World Wide Web.

Privacy complaints have always made up a significant proportion of cases to come before the Press Council. In 2008 six cases related specifically to the issue, double that of the previous year; from 2000 there have been more than 50 complaints related in part or wholly to the subject. Many of these have had to do with unwanted publication of private details or circumstances. The challenge for the news industry, as always, is to walk the difficult line between intruding on personal space and performing the task it is charged with: providing news of public importance to the public it serves.

It is not only the Press Council that is being tested. In recent years the decisions of a series of prominent court cases hearing complaints against the news media are sign that legislative authorities around the world are rethinking the extent of press freedoms. That the issue is becoming more prominent is evidenced too by a New Zealand Law Commission review underway of the legal implications of "changing privacy values". A first-stage publication of that review succinctly observes that our expectations of privacy are relative and must always be balanced against other countervailing values (p. 185).

Legally, there are rules in place forbidding clear privacy intrusions like interceptions of conversations the interceptor is not party to, the opening of other people's mail, and trespass. There are also clear understandings about the rights of the news media, as ears and eyes of the public, to have access to certain public records and data. Where such access is under threat, the Press Council has taken and will take a strong stance, such as when the Births, Deaths, Marriages and Relationships Amendment Bill proposed restricting journalists' access to documents.

Publication impinging on the personal space of individuals is more problematic. This issue was highlighted this year when Google put online 360-degree rotational views of large numbers of New Zealand houses and businesses, raising security fears, though individuals caught in the photography were masked.

The "countervailing" concern voiced by some in the news media is that renewed calls for privacy rights of the individual, though with the best of intentions, might go too far, restricting legitimate publication of material of genuine concern to the public. But what's too far?

In law, it is now widely accepted that a tort of privacy has been established out of

the legal decision-making. Media law expert John Burrows describes the tort as requiring the existence of facts which have a *reasonable* expectation of privacy, where their publication would be highly offensive to an *objective, reasonable* person, but with a defence available to the media of *public interest*.

The Press Council too places great store in the public interest justification. Just as it is a defence in law, it is a crucial justification in the Council's ethical considerations. While recognising that everyone is normally and properly entitled to privacy of person, space and personal information, the Council holds that such privacy must not interfere with publication of significant matters of public record or public interest.

That is because such freedom of expression goes to the very core of a democracy and the "fourth estate" function of the press as its watchdog. The Council is supported in this stance by the Bill of Rights, which defines New Zealanders' democratic right to freedom of expression as well as the right to impart information and opinions.

But when it comes to complaints to the Council, none of the above makes for easy decision-making, as evidenced by Graeme Hart against the *Herald on Sunday* (Case Number 2048) in which the Council was fiercely divided. Auckland businessman Hart had complained about the publication of pictures showing the location of renovations to his house, including a text box arrow indicating the location of a new bedroom for grandchildren.

Five members upholding the complaint said the central issue was to determine a balance between the private right to privacy and the public's right to know, that in this case the photographs served no public interest, and that the photographs represented an unacceptable intrusion into the private space of the house owners. Five members not upholding said there could be no presumption of privacy when everything published was publicly available, thus negating any requirement to balance privacy against public interest. They also noted that the Council was charged with promoting freedom of expression and should be wary of making any decision that would see such freedom diminished. The complaint, not upheld by way of the chair's casting vote, highlights the difficulties of drawing a line between proper and improper publication.

Other complaints were easier to resolve. Complaints, for instance, about a reporter who gained access to a house without identifying herself and without the consent of the elderly home-owner - a relative of a figure prominently in the news, though not herself part of the news - resulted in rulings of a clear breach (Cases 2054 and 2055). The Council found no pressing public interest to warrant the reporter's action.

The Council also upheld the complaint over the naming of the 14-year-old son of a public figure (Case 2019) who had posted material deemed homophobic on an Internet Bebo site. The uphold was for the naming of a young person; the judgement made it clear that websites such as Bebo were public and that that should be understood by users who posted comment and other information on it. "If they do so in their own name they must anticipate the consequences, including a reaction from groups who take exception to remarks made."

Just what is to constitute "public interest" continues to be studied carefully by the Council. In its 2007 annual report, it lent support to the British Press Complaints

Commission's Code of Practice definition which includes: detecting or exposing crime or a serious misdemeanour; protecting public health and safety; and preventing the public from being misled by some statement or action of an individual or organisation. But the definition may, in some circumstances be wanting. Does it adequately convey, for instance, the justification of exposing hypocritical behaviour of a role model, public figure or celebrity? Does it cover the revealing of facts that the public should know about if they are to judge a social concern or the performance of a public figure?

University of Leeds researchers David Morrison and Michael Svennevig argue that the term "public interest" is inherently confusing and that, for complaints to be made sense of, privacy has to be understood as a *social* concept. They recommend the use of a new term – "social importance" – which, they say, allows for much clearer judgement. "What for example is the social importance of a picture of a female newsreader sunbathing on a holiday beach? In other words, in what way can it be said that not to see such a picture, not to possess such 'knowledge', would have repercussions on how we negotiate our lives?"

Their definition, unfortunately, will not remove the abundant grey areas. While watching the evolution of public expectations and legal decision-making, the Press Council will continue to debate and refine its understanding for application in future rulings.

Regulatory review of digital broadcasting

The converging world of newspapers and the internet gathered momentum in the past year. Many newspapers now have their own websites where they break stories, add audio and video links and run a variety of other features aimed at attracting readers, new and old. Overseas, some newspapers are dropping their print editions altogether.

Broadcasters, radio and television, also have large web operations so it was perhaps no surprise that these and other digital broadcasting developments prompted the Labour-led Government to announce a broad regulatory review of digital broadcasting which included a review of content regulation (*Broadcasting and New Digital Media: Future of Content Regulation*). As the organisation responsible for the self-regulation of newspapers and magazines, the Press Council was most interested in this development.

Two large volumes that accompanied the announcement of the review contained little about the Press Council and its work, or acknowledgement of the fact that the Press Council was deliberating on complaints against websites of newspapers and magazines which are effectively digital broadcasters.

The Council regarded this as a surprising oversight. Taken literally, the content review, undertaken through the Ministry for Culture and Heritage, could have been regarded as a Trojan horse for the introduction of state regulation of what appears on newspaper or magazine websites and therefore by extension possibly to publications themselves.

One of the questions raised in the review documents asked the extent to which it would be appropriate for administration of the separate content standard functions of the Broadcasting Standards Authority, the Advertising Standards Authority, the Office of Film and Literature Classification and the Press Council, as they relate to broadcasting-like content, to be amalgamated into a single body.

Some 85 public submissions were made to the review, among them one from the Press Council which pointed out the content regulation paper raised three questions – should there be one set of principles or code to govern all media, who would prepare the principles and who would administer it?

The Council argued that an important element to consider in any regulation of the media was independence, and any regulatory system should ensure independence was preserved.

What had once been separate media interests now overlapped between newspapers and broadcasters and the Council could see the logic in the proposition that there be one code or set of principles to govern all media so that consumers knew the same standards applied to all media.

But the situation was not straightforward because existing codes of practice or statements of principles suggested a unified document might not necessarily be appli-

cable to all media. For example, the Council suggested, readers of specific-content publications or websites were less likely to be offended than someone who came across it randomly.

Further, who would prepare the one code? In the Council's view, no code could encroach on freedom of expression and that meant the code should not be imposed by Government regulation or by a body appointed by the Government. Freedom of expression was at risk if the Government, either directly or indirectly, had the power to influence a single code.

Any such code had to come from discussions and agreement with media representatives who, the Council believed, were capable of devising a single code if that were deemed appropriate. "It has been said that Government regulation of freedom of the press is a contradiction in terms."

The Council also argued that any such code should be self-regulated and administered by a self-regulatory body, either the Council itself or a media regulatory body with a wider role, comprising a majority of independent members but based on the Council's structure.

After considering submissions, Cabinet agreed to further work on three key areas, including a review of current institutional arrangements for regulation of broadcasting and telecommunications, and another round of consultation.

In the meantime, of course, the Government has changed and it will be interesting to see if and how the new National-led Government will continue the work to date. According to the Ministry's website, the Government has "identified a number of clear priorities for broadcasting and for investment in broadband infrastructure." Ministers are assessing work done on the previous government's regulatory review of digital broadcasting "in light of those priorities."

A larger issue is how anyone can regulate the internet. Only authoritarian governments have tried, and western governments have traditionally steered away from trying to regulate the media, apart from common laws that apply to all and legal remedies for the worst transgressions.

The Council believes that by and large the New Zealand media is responsible and fair, and that all the words produced to date have failed to produce any evidence that any problems and issues existing cannot be repaired by the inexpensive, relatively fast processes that already exist with the Council, which is made up of a majority of independent, public members.

Freedom of expression is too important to be left to the whims of governments, and reviews of regulations from state agencies must be treated with suspicion.

Press Council Submissions 2008

Submission to the Health Committee from The New Zealand Press Council on the Public Health Bill

1. The principal objects of the Council, as set out in its Constitution, are:
   a. To consider complaints against newspapers and other publications. Such complaints must be directed at editorial content – a separate body deals with complaints against advertising. The Council may also consider complaints about the conduct of persons and organisations towards the press.
   b. To promote freedom of speech and freedom of the press in New Zealand.
   c. To maintain the New Zealand press in accordance with the highest professional standards.
2. The Council considers its object of promoting freedom of speech and freedom of the Press in New Zealand as being of the utmost importance. It should not be necessary to state the reasons for maintaining freedom of speech and freedom of the Press in a democratic country. It is in pursuit of this object that the Council makes this submission.
3. The Council is concerned about Part 3 of the Bill, which provides that the Director-General may issue Codes of Practice or Guidelines on activities undertaken by a "sector" if the Director-General believes that the sector can "reduce or assist in reducing, a risk factor associated with, or related to, the activity"(s 81).

The Issues

4. The Council acknowledges that Codes of Practice and Guidelines issued under Part 3 of the Act are not legally enforceable (s 87). However, the Council wants to raise issues that are relevant to the Council and its objects:
   a. The need for a news media exemption; and
   b. The danger of creeping regulation and concomitant encroachment on freedom of expression.

News Media Exemption

5. In relation to its news activities, the news media must be exempted from Part 3 of this Bill. This could be achieved by means of an express exclusion in the definition of "sector" in s 79. (Compare the identical news media exemption from the Privacy Act 1993 by means of exclusion from the definition of "agency" in s 2 of that Act.)

Creeping Regulation

6. Section 88 of the Bill provides for what is essentially a review of the operation of Part 3 of the Bill. Three years after enactment, the Ministry of Health is required to report to the Minister on, among other things, whether it is desirable to change the law so that Codes of Practice are binding on the par-

ticipants of sectors to which they relate (s 88(d)) and whether to amend the Act to include further options for intervention "for the purpose of preventing, or reducing the impact of, non-communicable diseases or improving the management of risk factors" including further regulation-making powers (s 88(e)). That report must be tabled in the House (s 88(2)).

7. The Council is concerned about a creeping regulation that could see a move from initially voluntary Codes of Practice or Guidelines, to a Ministerial recommendation for compulsory compliance, and increasingly heavily regulated "activities" including advertisement, promotion, sponsorship or marketing of particular goods or services (see s 79) in the name of public health risk management.

8. There is a real risk of a corresponding encroachment on freedom of expression. Measures necessary to mitigate that risk include:

Freedom of expression - a principle to be taken into account

a. Section 80 of the Bill lists a number of principles, the importance of which the Director-General must take into account in performing his or her functions under Part 3 of the Bill. The principles currently listed reflect governmental health policy imperatives. Freedom of expression, as affirmed in s 14 of the New Zealand Bill of Rights Act 1990, should also be included in the list of relevant principles.

Oversight of Parliament

b. Codes of Practice (and perhaps even Guidelines) ought to be subject to the oversight of the Regulations Review Committee. That would be consistent with other regulatory arenas in which Codes of Practice are used as a means of industry regulation. The standard formulation for such a provision is

> All codes of practice issued under this Part shall be deemed to be regulations for the purposes of the \l "DLM195534" Regulations (Disallowance) Act 1989, but shall not be regulations for the purposes of the \l "DLM195097" Acts and Regulations Publication Act 1989.

(see, for example, s 50 of the Privacy Act 1993 and s 79 of the Animal Welfare Act 1999)

Definition of 'Disease'

c. Part 3 of the Bill relates to "non-communicable diseases" but neither that term nor "disease" is defined in the Act. Section 4 of the Bill includes a definition of "condition" – which includes "diseases (whether communicable or not)" – and a definition of "communicable condition" but nowhere in the Act is "disease" defined, whether communicable or non-communicable.

Jurisdiction to issue a Code of Practice or Guidelines under s 81 of the

Bill is dependent on reasonable belief that it may reduce or assist in reducing a "risk factor" associated with the activity in question. The definition of "risk factor" is tied to the incidence of "non-communicable diseases (such as cancer, cardio-vascular disease, or diabetes)" (s 79).

The use of examples after the term "disease", in itself, suggests the need for a definition.

More importantly, a definition would preclude any attempt to apply the provisions to areas not properly the province of this Part of the Bill.

The Press Council wishes to be heard in support of this submission.

The Press Council also made an oral submission to the Health Select Committee

NZ Press Council submission on the consultation paper

BROADCAST & NEW DIGITAL MEDIA:
FUTURE OF CONTENT REGULATION

1. **Introduction**

1.1 The New Zealand Press Council ("the Council") was established in 1972 by newspaper publishers and by the then Journalists' Union, in response to consumer concerns about some sections of the press of the day. It was set up as the model best suited to answer these concerns. At the time of its establishment as the body to administer self-regulation of the Press, it had the support of the government of the day. It was modelled on the British Press Council, established in 1953.

1.2 The Council is funded entirely by the industry and comprises 11 members. Six of those, including the Chairman, are independent. Since its inception, the Council has been chaired by a retired Judge of either the High Court or the Court of Appeal. Five members are appointed by the industry:

two by the Newspaper Publishers' Association,

one by the Magazine Publishers' Association, and

two by the NZ Amalgamated Engineering, Printing & Manufacturing Union (EPMU) as successor of the Journalists Union.

1.3 All of the major newspapers in New Zealand, both national and local, together with all of the major magazines, accept the jurisdiction of the Council. Both weekly business newspapers also accept the Council's jurisdiction.

1.4 The principal objects of the Council, as set out in its Constitution, are:

(a) To consider complaints against newspapers and other publications. Such complaints must be directed at editorial content – a separate body deals with complaints against advertising. The Council may also consider complaints about the conduct of persons and organisations towards the press.

(b) To promote freedom of speech and freedom of the press in New Zealand.

(c) To maintain the New Zealand press in accordance with the highest professional standards.

1.5 The Council considers its object of promoting freedom of speech and freedom of the Press in New Zealand as being of the utmost importance. The Council sees this object as important in considering the issues in this paper.

1.6 The Council observes the paper largely addresses "Broadcasting" or "broadcasting-like" activities and not the print media (i.e. the Press). However, as the paper notes, the nature of broadcasting has changed and is changing. Content can be accessed on websites. Some of these websites come within the jurisdiction of the Council as they are operated or associated with newspapers or other print media.

1.7 Volume 2 of the Digital Broadcasting : Review of Regulation Discussion Paper raises, in question 5.1, the extent to which it would be appropriate for administration of the separate content standard functions of the Broadcasting Standards Authority, the Advertising Standards Authority, the Office of Film & Literature Classification, and the Press Council, as they relate to broadcasting-like content, to be amalgamated within a single body. The Council wishes particularly to address this question.

2. THE ISSUES

2.1 The Papers raise three issues which are relevant to the Council:

(a) should there be one set of principles or one code to govern all media?

(b) if so, who prepares the principles?

(c) who administers the principles?

3. PURPOSE OF REGULATION

3.1 Before commenting on the individual issues, it is appropriate to consider the purpose of regulation of the media.

3.2 In 2005, the Ministry of Consumer Affairs commenced an inquiry into the effectiveness of practices in industry-led regulation and its role in the broader mix of regulatory approaches to consumer protection, redress and enforcement. The Ministry's strategic priority relating to regulation is to ensure that regulation is well designed and implemented to foster achievement of economic objectives, while also ensuring that social and environmental objectives are met.

3.3 In this Council's view, one of the social objectives is the independence of the media. Freedom of speech and freedom of the Press are essential elements of the constitution of a democracy. Recent events in, for example, Fiji demonstrate the need for such independence. A media regulatory system must, in the Council's view, ensure that this independence is preserved.

4 ONE SET OF PRINCIPLES

4.1 The Council notes that there is now considerable overlap or genuine convergence between what were formerly separate media interests. Websites of television stations, radio stations and newspapers contain video clips, radio broadcast clips and written word. A journalist may not only write for a newspaper, but may present via audio or video on radio, television or on-line. The different types of media are intertwined and the Council believes that the convergence will become greater, rather than smaller.

4.2 While the Council can see logic in the proposition there should be one code or set of principles to govern all media and establish consistency for consumers, it is not in a position to advocate such a common code or set of principles at this stage. It is not cognisant of the reasons for the different codes and principles which currently operate.

4.3 The recent Review of the Council by Hon. Sir Ian Barker and Professor Lewis Evans noted that the majority of press councils operate under a code of practice, while this Council operates under a statement of principles. It is suggested that a code gives complainants a framework for assessing whether their complaints will be successful and thus a framework for consistent adjudications. However, a code that is too prescriptive might turn away potential complainants because no such ground has been stipulated in the code. It has been felt that a Statement of Principles allows more latitude in that regard.

4.4 Although this Council operates under a statement of principles, it nevertheless endeavours to rule consistently and in accordance with previous decisions. It also notes that many codes include general statements upon which it is necessary for the regulatory body to make an ethical decision. An example is the Broadcasting Standards Authority's requirement of "the observance of good taste and decency". It would seem that the application of this principle requires ethical judgments about the acceptability of content in the same manner as application of the Council's principles requires it to make such judgments.

4.5 Nevertheless, the existence of different codes and statements of principle among different sections of the media suggest that a unified document may not be applicable to all media. The Council would require a greater understanding of the reasons for the differences before it could conclusively agree that one code or one statement of principles should apply to all media. For example, a subscriber to a specific-content magazine or website is likely to be less offended by such content than a person who comes across it randomly. The Council would want to further consider the matter once it had information from other media as to the reasons for their particular codes and statements of principle.

5 WHO PREPARES THE ONE CODE?

5.1 This issue may be the nub of the problem and would have to be satisfactorily

answered before the Council could agree that there should be only one code.

5.2 Freedom of expression or freedom of speech is not only a fundamental right in a democratic society but it is in New Zealand a statutory right under the New Zealand Bill of Rights Act 1990. It is imperative that any code or statement of principles should not encroach on this fundamental right. In the Council's view, this means that a single code should not be imposed by Government regulation or by a body appointed by the Government. This submission is not a criticism of the operations of a body such as the BSA but is a recognition of the risk to freedom of expression which may arise if the Government has, either directly or indirectly, the power to influence the single code.

5.3 Thus, if there is ever to be a single code, it has to arise, in the Council's view, from discussions and agreement with media representatives. It is the media itself which has to be the driving force in formulating the single code. It has been said that Government regulation of freedom of the press is a contradiction in terms.

5.4 The Council accepts that the Fourth Estate has corresponding duties when exercising freedom of speech such as the need to treat news and information in an accurate and balanced manner. The Council's experience is that this duty is generally well-recognised by the press outlets in this country. The Council believes that a group of responsible media representatives would be able to devise a single code for media, if that were deemed to be appropriate. Such a code would recognise the ethical responsibilities of the media as well as such aspects as genre, access and availability which change over a period of time.

6 WHO ADMINISTERS A SINGLE CODE?

6.1 The Council is of the view that, in respect of the press, the code should be self-regulated in a manner similar to that which presently applies. It adopts the general views on the subject contained in the recent review of the Council by Hon. Sir Ian Barker and Professor Lewis Evans.

6.2 Not only is self-regulation an inexpensive way of regulating an industry (the Council does not have any Government funding) but it is inexpensive to the complainant and is relatively quick compared with other methods of dispute adjudication. This submission does not rule out improvements to the present structure of the Council, as recommended by the recent review.

6.3 The fundamental reason for self-regulation of the Press, in this Council's view, is that Government regulation (or even the perception of it) of freedom of the press is untenable in a democracy.

6.4 It is, therefore, this Council's firm view that, if there is to be one code, it should continue to be administered, in the case of the press and their multimedia activities, by a self-regulatory body. That regulatory body should be the Council which has already shown itself to be adaptable to changing media, or possibly a media regulatory body with a wider role, comprising a ma-

jority of independent members, but based on the Council's structure.

6.5 The Council notes that, in the United Kingdom, the Press Complaints Commission of the United Kingdom was retained after the formation of Ofcom.

The following letter was sent to the Law Commission on May 16, in response to its request for information on any instances where privacy laws had created barriers to the effective performance of the Press Council/media.

Law Commission Review of Privacy

I refer to your letter of 26 February last updating the review and requesting input. The Council has as one of its principal objects "*to promote freedom of speech and freedom of the press in New Zealand*". In its Statement of Principles, it states:

> "*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.*"

The Statement of Principles also notes that individuals have rights which sometimes must be balanced against competing interests such as the public's right to know. One of the reasons for jealously guarding freedom of expression is the public interest, and the public's right to be informed. The Council knows that it does not have to justify to the Law Commission the importance of freedom of expression in a democratically governed society. It is enshrined in section 14 of the New Zealand Bill of Rights Act 1990, which provides that "*everyone has the right to freedom of expression, including the freedom to seek, receive and impart information and opinions of any kind in any form*".

In the Council's view, an issue which requires attention during your Commission's review is the tension between the principle of privacy and the right to freedom of expression. Not only has it arisen in Court cases in recent years but there have been examples of this tension existing in complaints to this Council. It is possible to limit the freedom of expression if the limitation is, in the words of section 5 of the Bill of Rights, "*reasonable*" and such as can be "*demonstrably justified in a free and democratic society*".

The Council takes the view that section 14 of the Bill of Rights grants to all members of society a fundamental right. There is no other provision in the Bill of Rights which grants the same status to privacy. The Council notes from paragraph 8.13 of your Commission's Study Paper that there is a view that both freedom of information and privacy are of equal standing, and one starts the balancing exercise with no presumption in favour of either of them. The United Kingdom precedent is not necessarily applicable because of the different provisions in the European Convention for the Protection of Human Rights and by what is contained in the United Kingdom Human Rights Act. This Council supports the first view referred to in paragraph 8.13, namely that because freedom of expression is an expressly guaranteed right under the Bill of Rights, it is of the primary value. It is suggested that this view is supported by section 5 of the Bill of Rights and that any encroachment on freedom

of expression must not only be reasonable but must be demonstrably justified in a free and democratic society.

It is the Council's view that section 5 of the Bill of Rights does give freedom of expression priority over any privacy right.

The other issue relating to the friction between freedom of expression and privacy is an appropriate definition for "*the public interest*". The Council asks that your Commission consider appropriately defining "*public interest*" and does so in a manner which means that any encroachment on the right of freedom of expression is demonstrably justified in a free and democratic society.

While not wishing to finally commit itself at this time to a definition, the Council notes the Australian Press Council definition*: "Public interest" involves 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 may happen to them or others.* This may be a useful starting point.

A second issue which the Council believes should be addressed is the definition of "*agency*" in the Privacy Act 1993 and in particular whether the definition applies to the Council. The Council accepts that it is an "*agency*" for the purposes of the Act, but the grey area is whether the exclusion "*in relation to its judicial functions, a Tribunal*" applies. The Privacy Commissioner takes the view that it does not apply to the Council. A recent High Court decision suggests that the Privacy Commissioner may be correct. (*The Director of Human Rights Proceedings v The Catholic Church for New Zealand* CIV 2006-404-006162). We note that leave has been granted to appeal to the Court of Appeal.

The practical application applies in cases where the Council considers a complaint and during that complaint a party provides a report or material which contains a reference to a non-party. If the principles of the Act apply to that information, there is the potential in the view of the Council for parties to be reluctant to provide such reports. While the parties have access to all information provided to the Council, that information is kept confidential from non-parties. It believes that it needs to keep such information confidential if it is to act "*judicially*". The Council asks that the Commission look at this definition and the underlying concern of the Council and recommends an amendment to the law to make it clear that a body such as this Council when acting on adjudications is not an agency within the meaning of the Act.

The Council thanks you for the opportunity to make its views known and would make members available to you for further discussion during your review.

Decisions 2008

Complaint name	*Publication*	*Adjudication*	*Date*	*Case No*
Complainant	*Otago Daily Times*	Upheld	February	2018
Hon Bill English	*Southland Times*	Upheld	February	2019
Alan McRobie	*Northern Outlook*	Upheld	February	2020
Alan McRobie	*Northern Outlook*	Not Upheld	February	2020
Kevin Meates	*The Press*	Not Upheld with dissent	February	2021
Waitaki Boys High School	*The Oamaru Mail*	Not Upheld	February	2022
Air New Zealand	*Investigate*	Upheld	March	2023
Coalition for Open Government	*New Zealand Herald*	Upheld	March	2024
B R Driver	*The Dominion Post*	Not Upheld	March	2025
Bernard Harris	*The Dominion Post*	Not Upheld	March	2026
Felicity Marshall	*Herald on Sunday*	Not Upheld	March	2027
Ministry of Education	*The Dominion Post*	Upheld	March	2028
Gemma Claire	*NZ Listener*	Not Upheld	May	2029
Gordon Copeland	*NZ Listener*	Not Upheld	May	2030
Gordon Copeland	*The Dominion Post*	Not Upheld	May	2031
Air New Zealand	*New Zealand Herald*	Not Upheld	July	2032
Kirstyn Barnett	*The Kaiapoi Advocate*	Upheld	July	2033
Bill Benfield	*NZ Listener*	Not Upheld	July	2034
Wayne Church	*The Dominion Post*	Not Upheld	July	2035
Michael Laws	*Wanganui Chronicle*	Not Upheld	July	2036
NZQA	*Sunday Star-Times*	Part Upheld	July	2037
Babak Mahdavi	*NZ Herald*	Not Upheld	September	2038
C J O'Neill	*NZ Herald*	Not Upheld	July	2039
PrimeVal	*The Organic Equine*	Upheld	July	2040
Philip Wright	*NZ Herald*	Not Upheld	July	2041
Money Managers etc.	*The Dominion Post*	Part Upheld	August	2042
Money Managers etc.	*Southland Times*	Not Upheld	August	2043
John Fulton	*The Press*	Not Upheld	August	2044
Peter Hausmann	*Hawkes Bay Today*	Upheld	August	2045
Graham Anderson	*Waimea Weekly*	Not Upheld	October	2046
Penny Griffith	*Waimea Weekly*	Not Upheld	October	2047
Graham Hart	*Herald on Sunday*	Not Upheld on Chairman's casting vote	October	2048
Christopher Jones	*NZ Herald*	Not Upheld	October	2049
New Tang Dynasty etc.	*NZ Herald*	Not Upheld	October	2050
Ken Ring	*Canvas Magazine*	Not Upheld	October	2051
Jenny Kirk	*NZ Herald*	Not Upheld	November	2052
Helen Kelly	*NZ Herald*	Not Upheld	November	2053
John Hay	*Timaru Herald*	Upheld	November	2054
Rob Veitch	*Timaru Herald*	Upheld	November	2055
Allan Golden	*Stuff*	Not Upheld	November	2056
Kiwis for Balanced Reporting On the Mideast	*Otago Daily Times*	Not Upheld	November	2057
Darryl Dawson	*Eastern Bay News*	Not Upheld	December	2058
Peter Waring	*The Dominion Post*	Not Upheld	December	2059

An Analysis

Of the 40 complaints that went to adjudication in 2008 11 were upheld in full; two were part upheld; one was not upheld with dissent; one was not upheld on the casting vote of the Chairman and 28 were not upheld.

Twenty-seven complaints were against daily newspapers; five were against magazines; three against Sunday newspapers; six against community newspapers; one was against *Stuff* website and one against a newspaper-inserted magazine *Canvas.*

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 20 occasions where a member declared an interest in 2008.

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 2021) or written up as a dissenting opinion (Case 2048).

The Statistics

Year ending 31 December	*2005*		*2006*		*2007*		*2008*	
Decisions issued		41		32		40		43
Upheld	4		6		8		11	
Upheld with dissent			1		1			
Part upheld	4		2		2		2	
Part upheld with dissent			2		1			
Not upheld with dissent					3		1	
Not upheld with dissent on casting vote of Chairman			1				1	
Not upheld	33		19		25		28	
Declined			1					
Not adjudicated		39		23		38		31
Mediated/resolved	3				1		3	
Withdrawn	5		2		2		4	
Withdrawn at late stage	1		1		2		1	
Not followed through	11		6		13		3	
Out of time	2		2		3		3	
Not accepted	2				4		8	
Outside jurisdiction	7		2		4			
In action at end of year	8		10		9		9	
Total complaints		80		55		78		74

Adjudications 2008

Name suppression breach – Case 2018

The Press Council upheld a complaint against the *Otago Daily Times*.

The Complaint

The newspaper published a report about a criminal proceeding. When referring to the charge faced by the defendant the newspaper published the names of the two child victims of the alleged offending.

The complainant is the mother of the two children.

After publication of the report the mother complained in person to the newspaper, but she was not at that time able to speak to the reporter who had filed the report. She spoke to two other members of the newspaper staff and acknowledges she did receive an apology at that time. However she also subsequently wrote to the editor recording her complaint. This communication remained unacknowledged. Perhaps, not surprisingly, she felt further aggrieved by that lack of response. She initiated her complaint to the Press Council.

The Newspaper's Response

The editor told the Council he had no recollection of the complainant's initial letter of complaint, but indicated that had he been aware of it he would have apologised immediately. After the complaint was brought to his attention by the Press Council he made a formal and unreserved apology by letter.

The editor acknowledged that the publication of the children's names was an "unintended error". He advised that in subsequent reports on the case the newspaper had taken particular care to ensure the children were not identified.

Discussion

It is common ground between both parties that the newspaper erred in publishing the children's names.

Principle 5 requires an editor to "… have particular care and consideration for reporting on and about children". The editor appears to accept that this was a situation where there was inadequate care towards children.

The Council recognises that an apology has been tendered on two separate occasions. In some instances this might suffice to persuade the Council that the complaint should not be upheld. However this error was a significant and egregious one.

It was unfortunate that the newspaper's systems did not result in the complaint being formally referred to the editor on the complainant's first contact with the newspaper, for it does appear that the delay exacerbated the sense of grievance and this was regrettable for all concerned.

Conclusion

The Council upholds the complaint but in doing so also acknowledges that the newspaper has now unreservedly apologised to the complainant.

Council members considering the complaint were Barry Paterson, Aroha Beck, Kate Coughlan, Penny Harding, Keith Lees, Denis McLean, Alan Samson and Lynn Scott.

Child's privacy requires greater consideration – Case 2019

The Press Council has upheld a complaint lodged by the Clutha-Southland National MP Bill English against *The Southland Times*.

The Southland Times ran a front page lead story on September 26, 2007, under the headline 'English may sue GayNZ on article', reporting on a piece from the GayNZ website about provocative remarks, which had appeared on a Bebo site in the name of Mr English's 14-year-old son. Mr English was said to be seeking legal advice about what he described as unsubstantiated and potentially damaging claims about the supposed views of his teenage son.

The Complaint

Mr English based his complaint against *The Southland Times* on Press Council principles relating to privacy and the obligation on editors to 'have particular care and consideration for reporting on or about children and young people'. He contended that *The Southland Times* had no grounds for "selecting my son for special treatment". Other media ran stories, including the GayNZ allegations, but had taken care not to name the boy. Even GayNZ had been careful not to identify his son directly.

Only *The Southland Times* had identified him by name and had published "selected comments" from his site, which had made the consequences of naming the boy the more damaging. The paper had also allowed an employee of Fairfax, the group which owns *The Southland Times*, to offer "harsh personal criticism of my 14-year-old son." No balancing comments from others less closely associated with the newspaper, or the website, had been offered. His son had been unable to "defend himself against a front-page attack on his character".

The boy was entitled to privacy. In no way could he be seen as a public figure or as any kind of prop to his (Mr English's) political activities. Mr English maintained moreover that he had not, in his political career, campaigned on family values as claimed by *The Southland Times*

The Newspaper's Response

The editor asserted that there was no doubt as to whether the reported comments had actually appeared on the Bebo website in the name of Mr English's son, although there was a question about whether they – or some of them – had been pasted from other sites.

Bebo is one of the most popular profile and chat sites and comments made on it could be visited by millions of viewers. Individual profiles on the site could be masked to be readable to only selected viewers. This had not been done in this case. The comments were accordingly open to viewing by the public at large.

The editor contended that there would be considerable public interest given that Mr English was a national public figure, deputy leader of the National Party and was known to have "a strong focus on family values and good parenting". His justification for this claim was to quote from a column in the newspaper written by Mr English: "I am totally responsible for my children's physical and moral welfare…in fact too many parents now lack confidence in their ability to give children direction".

He had decided to publish detail of what was on the website to allow readers to make an informed judgment because of Mr English's public profile in the newspaper's circulation area. He did not accept that a distinction could be made between Mr English's public status and that of his son because of Mr English's "strong Christian beliefs and public statements on family responsibilities".

The reporter had asked Mr English to comment on the apparent contrast between the importance he had placed on family values and the material that had appeared on his son's website. Mr English had declined comment.

One other newspaper had, in fact named the boy in its coverage of this incident (but without details from the website).

Discussion

The Southland Times had essentially justified publication of this article on the fact of Mr English's local and national prominence and on what the newspaper believed to have been his public advocacy of "family values".

The Press Council found it unacceptable that a regional newspaper should justify naming and – in effect – shaming a 14-year-old on the grounds that his father was a local representative in Parliament and a national figure and on the basis of assertions as to the father's political position on morality issues.

This was the more so since the newspaper seemed to have had little heed for the requirement to proceed with care in reporting on the activities of a young person, who, in this case might simply have done something very immature.

The boy, after all, was a minor. As Mr English pointed out, he would have been entitled to name suppression, even if he had committed a crime – up to the age of 17. Mr English also made the point that he had no obligation to comment, when asked to do so by the reporter, since he had never brought his family into the public arena.

The newspaper had a point in respect of the principle of privacy. The Bebo website is public and users who put out comment and other information on it should understand that. If they did so in their own name they must anticipate the consequences, including a reaction from groups who took exception to remarks made.

There was, however, a linkage between the twin grounds on which this complaint was based – privacy and the need for care and consideration in reporting on young people. This is because a child's privacy is one of the factors that needs to be taken into consideration when reporting on or about children.

The need to protect a young person from being harmed by the glare of publicity necessarily means that matters that can be published about an adult should be treated with greater circumspection and sensitivity in the case of a child.

There is now considerable debate about the extent to which celebrities and those

identified with them are entitled to the protection of privacy. But the Press Council did not see that Mr English's privacy was a factor in this matter.

The Press Council accepted nevertheless that a public figure has the same right as every other citizen to expect his or her young children to be protected, unless there is a demonstrable justification for drawing the young person into the limelight.

The Council upheld Mr English's complaint.

Council members considering the complaint were Barry Paterson, Aroha Beck, Kate Coughlan, Penny Harding, Keith Lees, Denis McLean, Alan Samson and Lynn Scott.

Local body reporting draws two complaints – Case 2020

The Press Council upheld one complaint by Alan McRobie against the *Northern Outlook* over reports about the setting of building consent fees by a Waimakariri District Council committee. It did not uphold a second complaint concerning the use of a press release.

Background

Former Waimakariri District councillor Alan McRobie made two complaints about the accuracy of reports published in the *Northern Outlook* between July and September last year. The first complaint concerned its coverage of the council's resource management and regulation committee's deliberations concerning the setting of consent fees for solar water heating installation.

A second complaint involved the use of a comment published from a press release issued by Mr McRobie. He also took issue with the newspaper for its failure to respond to his complaints.

The Complaints

Mr McRobie's first complaint began with a report of the council's resource management and regulation committee meeting on July17, 2007. The committee was considering a council officer's report recommending that it introduce a set fee of $385 for building consents for the installation of solar water heating systems.

The committee's decision, as recorded in the minutes, was that the report lie on the table and be referred back to all the council's ward advisory boards for their comments.

The report of the meeting that appeared in the *Northern Outlook* on July 25 said the committee had agreed to lower its building consent fees to $385.

Mr McRobie, at the time a Waimakariri District Councillor and member of the resource management and regulation committee, contacted the newspaper to point out that its report was wrong and inform it of the committee's decision to seek comment from the boards. He said the reporter was not present at the meeting and had relied on the officer's report.

A further report was then published by the *Northern Outlook* on July 28 saying that a decision to reduce consent fees had been deferred until the matter could be

referred to the Rangiora Ward advisory board for comment.

Mr McRobie said the second report was also incorrect in that it failed to say that the issue was being referred to all the advisory boards. Nor did the second report indicate that it was a correction of the earlier report.

On September 11, the issue of building consents for solar water heating installations came back to the committee with the recommendations of the advisory boards. At this meeting, the committee deferred its decision to allow the council to first review its user-pays policy for building consents.

On September 15, *Northern Outlook* reported that the council "has shied away again from setting consent fees", a view Mr McRobie rejected. He said a decision to defer was not the same thing as avoiding the issue, which was implied by the newspaper report.

Mr McRobie's second complaint concerned a press release he issued on August 16, 2007 questioning the judgment of a mayoral candidate. The *Northern Outlook* did not use the press release in the form that Mr McRobie drafted it, but instead drew a comment from it, concerning another candidate, to use in a story about a potential conflict of interest involving that candidate. That story was published on August 25.

He said the newspaper extracted one comment from the press release "to bolster another, unrelated story". In his view, this was improper and unethical.

The Newspaper's Response

Concerning the first complaint, the *Northern Outlook* editor said a reporter was present at the July 17 meeting last year when the council's resource management and regulation committee considered a report recommending a set fee for solar water heating installations.

When Mr McRobie contacted the newspaper to draw attention to the misreporting, a correction was promptly published in a prominent position. The fact that the report referred only to the Rangiora Ward advisory board was because it had been difficult to ascertain how many boards were to be asked to comment, and the Rangiora board had raised the issue with the council.

When the matter again came back to the committee, the *Northern Outlook* reported the committee's decision in a report on September 15 stating that the "Waimakariri District Council has shied away again from setting consent fees for solar hot water heating systems". The editor said the report accurately reflected the meeting's decision to defer the matter again. Its use of the phrase "shied away" implied that something had been delayed or deferred, which was the case.

As to Mr McRobie's second complaint, the editor said it was standard practice to filter press statements for newsworthy information.

In this case, Mr McRobie's press statement mentioned a potential conflict of interest involving a Kaiapoi Ward candidate, who was also employed as a journalist for a local newspaper. The *Northern Outlook* had been following the issue and included Mr McRobie's comment in a report published on August 25 focusing on the view of a Local Government New Zealand manager on the potential conflict.

The editor said the reporter was in contact with Mr McRobie regarding his state-

ment before and after the August 25 report was published. She said Mr McRobie's comment from the press statement was published accurately and was a true representation of his view.

The editor agreed that the comment was not used in the context of the press statement itself but, as it was not incorrect or not his opinion, she did not publish a correction.

She apologised for her failure to respond to Mr McRobie's letter of complaint, believing, as other issues had intervened, that he was not pursuing it.

Discussion

On the matter of the first complaint, the *Northern Outlook* responded to Mr McRobie's objection to its incorrect report on July 25, by publishing a follow-up report on July 28. The first report, saying the Waimakariri District Council had introduced a set fee for solar water heating installations, was clearly incorrect. The second report correctly recorded that the decision on the fee had been deferred while other views were sought. It, however, wrongly said the views being sought were those of the Rangiora Ward advisory board when all the other ward advisory boards were being asked to comment.

The Press Council accepted that the newspaper acted promptly to record the actual decision of the committee, but believed that the second report did not go far enough to correct the misleading impression of the first story. It made no reference to the first, incorrect, report and might well have left readers confused about two apparently conflicting stories concerning the fate of the proposed new set fee. It was regrettable that the second report also contained an error, in that there was no mention of the role of the other ward advisory boards.

When the *Northern Outlook* again reported on the committee's deliberations about the fee, on September 15, it said the committee had "shied away again" from making a decision. There might have been good reason for describing the committee's deferral like this; the committee minutes record that at least one other councillor was anxious to have the council's position clear sooner rather than later. But the September 15 report contained no supporting information for the view expressed that the committee had shied away from making a decision. The Press Council took the view that many people would consider the phrase to imply that committee had been unwilling or unable to make a decision.

As to the second complaint concerning the use of the press statement, newspapers would always look for anything newsworthy in a press statement, whether or not it was the angle taken by the writer of the statement. Newspapers must use the material with integrity.

In this case, the *Northern Outlook* saw Mr McRobie's comment about the potential conflict of interest involving the Kaiapoi candidate and pulled it out to use in a story focusing on her candidature. Mr McRobie did not say that the view attributed to him was incorrect, but he was concerned that it was taken out of context. The Press Council considered the newspaper was within its right to use that comment – even if it was not couched in the terms that Mr McRobie intended. It was not used out of

context, dealing as it did with the Kaiapoi candidate's situation. Mr McRobie was concerned at a potential conflict of interest and his comment said so.

There was disagreement about whether the reporter spoke to Mr McRobie about his statement before the story was published. If so, the other comments attributed to him that were not in the press statement might have been made during that discussion. The Press Council is not a position to determine whether a discussion took place, but as it stands the newspaper seemed to have drawn an inference from Mr McRobie's statement that the candidate should step aside. Mr McRobie simply said the conflict of interest could make it inappropriate for her to perform both roles. Neither did he say in the statement that he agreed with other candidates who had called on her to stand down.

Conclusion

The Press Council upheld the first complaint on the grounds of accuracy. It did not uphold the second complaint about the use of Mr McRobie's comment out of context. As to the delay in responding to Mr McRobie, the Press Council noted the apology by the newspaper's editor, but could understand the frustration of complainants when their concerns fell on apparently deaf ears. Complainants are entitled to a prompt response.

Council members considering the complaint were Barry Paterson, Aroha Beck, Kate Coughlan, Penny Harding, Keith Lees, Denis McLean, Alan Samson and Lynn Scott.

Further fracas from that French game – Case 2021

The Press Council has not upheld, by a majority, a complaint from Kevin Meates against *The Press*. Mr Meates objected that the abridged form in which a letter he wrote to the editor was published, on December 1, 2007, was unfair.

The letter Mr Meates submitted for publication was two paragraphs long and is here quoted in full:

> **All Black Coach**
>
> The very strong reason to reappoint Graham Henry is that he has now participated in a World Rugby Cup as coach and knows the pressures, the need for a cool head and how to make decisions under pressure. That is experience beyond a price.
>
> It was precisely because they had the same experience playing in the previous World Cup, that Aaron Mauger should have started and Reuben Thorne should have been on the bench against France.

Only the first paragraph was published in the *In a few words* section of the Letters to the Editor. Mr Meates complained that the omission of the second paragraph substantially changed the meaning of his letter. The newspaper responded that the letter had made two largely separate points, one of which had been printed; it was a straightforward abridgement.

In his complaint to the Press Council, Mr Meates explained that he had intended the first paragraph of his letter to summarise the argument in support of the reappointment of the incumbent All Black coach and the second paragraph to undermine that argument by pointing out that the same coach had not fielded experienced players when needed at the World Cup. He argued that it was unfair to quote the first paragraph without the context of the second.

Notwithstanding Mr Meates' intentions, the letter was ambiguous. It might equally be read as one paragraph expressing support for reappointment of the incumbent All Black coach because of his experience and a second, somewhat oblique paragraph about what might have been in the World Cup quarterfinal. On that reading, the two paragraphs are not obviously and necessarily interdependent and, accordingly, the abridgement was straightforward and not unfair.

The Press Council rarely interferes with the selection and treatment of letters written to the editor for publication (Principle 12). In this case, the point that Mr Meates sought to make, and consequently the interdependence of the two paragraphs, was not readily apparent on the face of the letter. The complaint of unfairness is not upheld.

As soon as Mr Meates complained to the editor, pointing out the misunderstanding, the newspaper could have had the grace to print a short correction or acknowledgement in the Letters section. However, it was not compelled to do so.

Dissent

Two members of the Press Council would have upheld the complaint. In their view the letter was critical of the reappointment of Mr Henry. It was saying that if Mr Henry was reappointed for his experience, it was ironic that that experience had not resulted in two experienced players being in the 22 for the French match.

While the meaning of the letter might not have been obvious to all, and therefore *The Press*'s abbreviation in itself may not be a ground for upholding the complaint, the position changed when *The Press* was advised by Mr Meates of his intention. *The Press* should have then promptly published a correction.

It left on record a statement from Mr Meates that did not express his view. It was no answer, and in the members' view disingenuous, to say that the publication did not change the meaning of the first paragraph, when publishing only that one paragraph had the effect of completely reversing the implication in Mr Meates' letter when read in its entirety. The members would have upheld on failure to correct.

Council members considering the complaint were Barry Paterson, Aroha Beck, Kate Coughlan, Penny Harding, Keith Lees, Denis McLean, Alan Samson and Lynn Scott.

Council members dissenting were Barry Paterson and Keith Lees.

'Injustice' in ERO reporting – Case 2022

The Press Council has not upheld a complaint by Waitaki Boys' High School about an *Oamaru Mail* story of an Education Review Office report on Waimate High School.

Background

Waitaki rector Dr Paul Baker complained about the July 25 story for breaching Press Council principles of accuracy, and headlines and captions.

The headline to the page 3 lead story read: "Waimate High students excelling – ERO report"; the caption began "Good report …", before identifying the group of students pictured.

Dr Baker referred to an earlier (March 2) story in the paper about the ERO report on his own school. Though saying this article was not complained about "per se", he said it was included in his correspondence for the sake of comparison.

The Complaint

Dr Baker's complaint was that reports of Waimate's excellence were not borne out by the actual language of the ERO report. He singled out the story's first sentence, which read "Waimate High School students are excelling due to the school's attractive learning environment, according to a recent Education Review". But the word "excelling" was used nowhere in the report which, in fact, stated that some students are performing below the national average, some around the average, and some above.

The phrase "attractive learning environment" *was* used in the report, "but not in any sense as an explanation for excellence".

Saying that ERO reports were hugely important for schools, he contrasted the story with the earlier report of his own school which, he said, received an outstanding judgment – "significantly above the average for similar schools" - but rated a much smaller cover in the paper.

To correct "the injustice", the newspaper should have published verbatim a summary section contained in the two reports, and adopt the practice in future.

Dr Baker also complained that two letters he wrote to the newspaper were not replied to.

The Newspaper's Response

Responding, *Oamaru Mail* editor in chief Barry Clarke accepted the word "excelling" did not appear in the ERO report. He supported the word, however, because of a report finding that "students achieve at or above the average" of other schools of the same type and decile.

The earlier story on Waitaki had been "very fair" and "in many ways treated similar to the Waimate High coverage". Although the Waitaki report had not been given page 3 lead treatment, this was because of different news structures and options taken into account at the time. The suggestion that the paper publish verbatim ERO summaries had merit and would be looked at in 2008.

On the matter of non-response to letters, he had received just one. If he had received the second, which "may not have been forwarded to me from the Oamaru office" and would have been "the one in which he presumably seeks a response", he would certainly have telephoned in reply.

Further correspondence

Dr Baker reiterated that "above average" was not the same thing as "excelling".

The report clearly stated that it was only Year 12 and 13 students achieving above average. Further, the same report paragraph said that in Year 9 and 10 the proportion performing above the expected level was lower than national expectations, but this was not mentioned in the story.

The coverage of the two ERO reports had not been similar, either in terms of length, the extent of the praise, or the use of photographs.

Mr Clarke's only added comment was to dispel a suggestion the Waimate information had come from a press release. The Waimate principal had been interviewed.

Discussion

The main strand of this complaint was accuracy. There was no doubt that Waimate's ERO report was, some small provisos aside, largely complimentary of the school's learning and teaching performance.

Notably, the ERO's letter to the school's parents and community said the school had made good progress in addressing earlier ERO recommendations. It praised the overall good standard of teaching and noted a high quality learning culture that was ongoing.

Whether or not "excelling" was the best term to describe the school's overall positive achievements was subjective.

For Dr Baker to give his complaint standing required, even though it was not part of the complaint, a comparison with the ERO report of his own school which, though also praised, did not receive the same hyperbolic newspaper treatment.

This is not a reasonable comparison to be attempted. The essence of newspaper work is that news is a relative and moveable feast; what warrants the front page on one day, might be deemed far from that stature on another. Many variables might be taken into account, including, in this case, expectations: perhaps Waitaki's reputation had been so high for so long, a sterling report was deemed unremarkable. Nothing should be read into the facts of disparate lengths, the lack of picture in the case of Waitaki, or a slightly less ecstatic headline.

Where Dr Baker did have ground for upset, was the non-response of Mr Clarke to his letters. It is easy to understand mishaps where there is a cumbersome newspaper structure with the editor-in-chief residing in a distant city. But that is no excuse. Setting aside the issue of how such a newspaper can know its community from afar, all newspapers have a responsibility to be able to respond quickly and fairly to their constituents.

Dr Baker's call for the running verbatim of ERO summaries also deserved address. Mr Clarke had offered to consider this. The idea might indeed have some merit – but not as a substitute for traditionally-reported stories. If the summaries were to be readers' sole source of information they would be ill-served the moment something warranted deeper questioning.

Conclusion

For the reasons given above the substantive complaint was not upheld.

On the issue of non-response to letters, Mr Clarke was enjoined to implement a system where letters of complaint reach him quickly and are responded to quickly

(this is not the first time communications have broken down between Oamaru and Christchurch). An alternative would be to ensure a senior staff member with delegated authority works in Oamaru, within the area of the newspaper's readers.

Press Council members considering the complaint were Barry Paterson, Aroha Beck, Kate Coughlan, Penny Harding, Keith Lees, Denis McLean, Alan Samson and Lynn Scott.

US troops and the Air New Zealand jet – Case 2023

The Press Council has upheld complaints by Air New Zealand about an article in the September 2007 issue of *Investigate* magazine headlined on the cover: "Exclusive. Air NZ's secret flights. Why our state-owned airline is flying US troops into war."

The Press Council upheld complaints that the cover headline and some details in the article were inaccurate, that the article lacked fairness and that the cover montage of an armed soldier, a queue of people and the familiar Koru on the tail of an Air New Zealand jet was misleading and inaccurate.

Another complaint relating to comments within the article was not upheld.

Background

Investigate magazine's major story in its September issue was headed "Mission Impossible: Air New Zealand's cloak and dagger flights rattle staff." A standfirst reported: "New Zealand's state-owned airline has been going where angels fear to tread, shipping Australian combat troops up to the Iraqi border under fighter-jet escort, and flying US marines between military bases on top secret flights."

The magazine cover heading referred to flights involving US troops and a promotional piece in the index referred to both US and Australian combat troops being shipped to the Iraqi border in Air New Zealand 767s.

The article itself referred to "regular secret flight missions to the Middle East and elsewhere carrying US and Australian combat troops".

More specifically, it referred to one such flight to Kuwait carrying Australian soldiers. An anonymous source was quoted as saying the jet was recognisable as one from Air New Zealand through the koru on the tail, that for the last part of the journey it was escorted by US jet fighters and that staff were sworn to secrecy.

The article also quoted another source as saying that on July 29, an Air New Zealand 767 was contracted to fly US marines from an exercise in Darwin to Hiroshima in Japan, which it said was beside a large marine base at Iwakuni. *Investigate* reported it confirmed the flight itself, even though it said the plane's destination was not disclosed on official records, and its arrival at Hiroshima, which is not on Air NZ's regular landing schedule, and where similarly there was no record of where the plane had come from.

The details filled about one and a-half columns of an eight-page article about Air New Zealand. Most of the article detailed alleged failings of management, recruitment, training and security by Air New Zealand. These aspects were not part of Air New Zealand's complaint to the Press Council.

The article included responses from Air New Zealand in connection with parts of the article not subject to complaint, but not to the material complained of. Instead, a sentence at the end of the article said: "The airline's response to the military flights will be posted on the magazine's website."

The editors of *Investigate* also editorialised on the flights and said they thought the use of a branded New Zealand airliner was a mistake. "The koru on the tail is distinctive enough to raise eyebrows in the Middle East, especially if it is under fighter escort."

On September 10, through its solicitors, Air New Zealand wrote to *Investigate* stating its concerns about the cover picture, the cover heading, the claim that the Kuwait flight had a fighter escort, the claim that the airline was flying US marines between military bases on "top-secret flights" and that staff had been sworn to secrecy.

The letter, which also raised other concerns, was published in the November issue of the magazine with a response from the editor and writer of the article, Ian Wishart.

Inter alia, in his response, the editor said the magazine accepted Air New Zealand's assurance that an instruction for staff not to talk about the flight had not emanated from head office. But there was no wide public awareness of the flights.

If the flight crew was mistaken about the fighter jets, the magazine accepted Air New Zealand's assurance on the matter, although it was hardly a substantive issue, and the magazine accepted US troops were not being flown to war zones and withdrew the allegation and apologised. The response continued: "As for the rest, get over it . . . We stand by our opinion that flights to the Middle East in airline colours were not the smartest PR stunt in the book, and MFAT is on record as saying the reason it didn't have a problem with the proposed flights was because the airline had initially promised to carry them out in non-liveried aircraft."

The Complaint

The airline's complaint to the Press Council, dated December 20, 2007, covered nearly identical ground to the letter published in the magazine. Specifically, the complaints were:

The magazine cover depicted a photograph of a soldier guarding an Air New Zealand plane. The photograph was a fabrication and designed to create a sensational and false impression. Although there was a small reference inside the cover to the fact the picture was a montage, there was no prominent indication the image had been manipulated.

The cover heading, "Air NZ's secret flights – why our state-owned airline is flying US troops into war", was inaccurate. Air New Zealand had not conducted any secret flights or flown US military personnel into a war zone.

The editorial and article said that Air New Zealand flights had been under fighter escort and this was untrue.

The stand-first that Air New Zealand was flying US marines between military bases on top secret flights was untrue. The airline had only ever carried US defence

personnel on commercial routes, under commercial air traffic control and out of commercial airports.

No Air New Zealand staff had been sworn to secrecy.

The airline also complained about references in both the editorial and article, which it said implied Air New Zealand had engaged in activity that could endanger the safety of other Air New Zealand flights and of New Zealanders generally by using a branded airliner. Those implications were untrue and were based on incorrect statements.

Air New Zealand said the article was also unfair and unbalanced because the magazine failed to make any genuine attempt to verify the allegations with Air New Zealand before publication.

Investigate had contacted the airline by email on August 14 asking: "Why has Air New Zealand been using its liveried passenger aircraft to ship US and Australian troops involved in deployments to the Middle East and elsewhere? Was authorisation obtained from MFAT or Civil Aviation for these flights?"

Air New Zealand said the questions were sent to the airline two days before the magazine was available in stores and one day before a summary appeared on the magazine's website. At that late stage, any response from Air New Zealand could have had no effect on the article. It was not given a genuine opportunity to respond to the questions.

The Magazine's Response

In his response to the Press Council, the editor said montages, particularly for covers, were "de rigueur" in magazine and television graphics, and this one was acknowledged in the usual way.

Investigate was informed the flight crew to Kuwait had been instructed not to talk about the flights, that US jets had appeared to escort the flight at one point and that staff were concerned a government-owned airline was carrying combat troops to a zone of war that the Government was opposed to.

Investigate knew of this flight before any other media, and it was under the clear impression the flight was secret because of the sensitivity surrounding it.

During the latter course of its investigation, another contact revealed the troop flight from Darwin to Hiroshima, which the magazine was able to confirm. The fact that no flight plan was filed with the control tower gave the further impression the flight was secret.

The editor said the cover sub-heading, "Why our state-owned airline is flying US troops into war," was supposed to have read "coalition" but the correction was overlooked because of the late arrival of another article. However, the magazine considered Air New Zealand's complaint as semantic, not substantial. "We apologised for the flow-on implication that US troops had been flown into warzones, precisely because we had cocked up on the cover line. If it had read Coalition or Aussie troops, however, the sting would have remained the same".

The editor said the magazine accepted Air New Zealand's assurances, with qualifications, about the secrecy and jet-fighter claims only because "challenging them would require us to burn sources whose information overall proved remarkably accurate".

The magazine's criticism about the failure to use an unmarked aircraft had been foreshadowed by the Ministry of Foreign Affairs and Trade, which had given approval on the understanding that Air New Zealand would not be using its own livery.

As for not giving the airline the opportunity to comment on the troop-carrying story before publication, the editor said the airline had briefed government officials of the *Investigate* story as soon as its questions were sent in, and it also prepared and released its own media statements without reference to the *Investigate* story.

"After our dealings with Air New Zealand's less than honest behaviour with the media over the past eight years, we had no intention of blowing our major story by giving the airline, and the Government, effectively 10 days' advance warning of what we were publishing. Because the magazine operates a high-traffic news website, we saw no journalistic problem in incorporating Air New Zealand's response there, and in fact we did so."

The editor believed the feature at the centre of the complaint was fair and balanced. The airline's full response to the military flights was available on the website.

Further Debate

The airline's solicitor responded that the continued assertions about the fighter escort did not relieve the magazine of its responsibility to take reasonable steps to ensure the information published was accurate. The airline did not accept the editor's reasons for failing to seek confirmation from Air New Zealand. "The desire to ambush Air New Zealand with an article should not override the magazine's obligation to provide fair, accurate and balanced reporting."

Mr Wishart said it was inherently unjust for the airline to single out *Investigate'*s printed monthly magazine and hold it to the urgency standards of a daily newspaper or radio station while ignoring the significant exposure the magazine provided Air New Zealand's views online where it could compete with daily media.

The editor said that from memory, he thought the military portion of the cover was taken at Darwin and was no more a fabrication than Air New Zealand's computer-generated publicity shots of airliners in the stratosphere or other such marketing elements. "The point of the cover is to lead people to the story inside."

Discussion

The details in the magazine's article about the flights, particularly the one to Kuwait, became a major public issue. The story was of significant public interest.

Montages are a common form for magazine covers, and these are not usually acknowledged on the cover itself but inside the magazine. *Investigate* did acknowledge it was a montage inside the cover with the words "Cover montage/ DEFENSELINK/News." The Press Council notes Defenselink is the official website of the United States Department of Defense and the kit of the soldier looks more like that of the US than Australia.

The Press Council has debated in the past (Case 1060) the desirability of accuracy in cover headlines. That case related to *Woman's Day*, a magazine that deals in gossip and rumour which might or might not be true. The Press Council upheld a complaint of inaccuracy by a majority.

In this instance, accuracy was required. Moreover, there was a question around the accuracy of the montage itself. It was designed to tell a story and readers were unaware that what they are seeing is not a genuine photograph.

The Press Council notes the practice of altering photographs has caused considerable anguish in the past. Last year, the *American Journalism Review*, in an article on picture doctoring, said that "with readily accessible, relatively inexpensive imaging tools and a low learning curve, the axiom 'seeing is believing' never has been more at risk".

It quoted John Long, chairman of the ethics and standards committee of the US National Press Photographers' Association, as saying, "The public is losing faith in us. Without credibility, we have nothing; we cannot survive".

The *Investigate* cover photograph gave a clear impression of recording an actual event.

Similarly, claims within the article about US fighter escorts, top-secret flights and staff sworn to secrecy needed to be solidly based.

The editor had been unable to do that. In the larger scale of the story itself, those incorrect details might be the sauce to the main dish but they still spoiled the taste. It has been said that a good story is only as good as its dumbest mistake.

The editor conceded and apologised for one mistake, and sought to minimise others. Those mistakes, however, would likely have been amended or at least challenged had the magazine referred its story to the airline. The editor's explanation for not doing so reveals a regrettable lack of faith in Air New Zealand that serves neither journalism nor the airline well. Good journalism demands fairness and the editor's allegation that taking such a step would have led to his scoop effectively being sabotaged is disturbing.

This tension between journalists and organisations is bound to grow as organisations seek to control the way information is released and journalists withhold information to the last minute to minimise the possibility of that happening.

But is it acceptable to decide an organisation should not have the opportunity to respond properly in time for publication, and that questions can be put to the organisation just before publication and any response is put up on the internet as soon as possible after publication? That, in effect, was what happened in this case, even with the "pointer" to the website for the response.

The Press Council does not believe so. *Investigate* cites a distrust of Air New Zealand, based on previous dealings, but the magazine still had an obligation to give the airline an opportunity to respond for publication, if only to give its readers as full an account as possible.

The email bearing two questions should have been more fully detailed and contained a deadline. Further, a direct phone call would seem more appropriate on such an urgent matter.

Investigate's approach indicated it did not want to consider another side of the story or to seek to provide as much information as possible at time of publication. It is not unreasonable that an organisation, believing it was about to be "ambushed," would want to minimise any fallout and take pro-active steps.

The Press Council does not believe it is sufficient to say a response will be on a website following publication without first making a reasonable attempt to get a response in time for publication.

When the magazine learned of the flights, they had not been made public. On the information available, the Press Council believes it is a stretch to say they were secret or top-secret. Indeed, the magazine was able to confirm the Darwin-Hiroshima flight quite quickly, although it is reasonable to surmise these were facts the airline did not want made public.

The Press Council acknowledges that this was an article about a matter of considerable public importance. *Investigate* had a good story worth telling. But in its reporting, *Investigate* was guilty of a careless error, for which it has apologised. It was also unfair in that it should have more rigorously sought a response from the airline.

Conclusion

Montages or a grouping of composite pictures are a common means of making magazine covers eye-catching. But they should not contain unnecessarily misleading material. In this instance, the cover was narrative in that it appeared to be a photograph of a US soldier alongside an Air New Zealand jet, and its purpose was to illustrate a story about the airline flying US troops into war, a story that was untrue. It was misleading and inaccurate. This complaint was upheld.

On balance, after considering all aspects carefully, the Press Council also upheld the complaint of inaccuracy relating to claims of the fighter jet escort; the level of secrecy surrounding the flights; and that staff had been sworn to secrecy. Although concessions regarding the accuracy were made by the editor in his November response to the published Air New Zealand letter, the information should have been subjected to verification checks before publication.

On the issue of questioning whether Air New Zealand was wise to use a liveried aircraft, the Press Council did not uphold the complaint. This was fair comment and the magazine was entitled to make it.

But it upheld the complaint of lack of fairness. *Investigate* might have distrusted the airline, but there were ways the magazine could have tried to get a response in time for publication while protecting its exclusive story.

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, Alan Samson and Lynn Scott.

Spending limits and the Electoral Finance Bill – Case 2024

The Coalition for Open Government complained that two editorials in *The New Zealand Herald* concerning the Electoral Finance Bill contained inaccurate statements. The complaint is upheld.

Background

The New Zealand Herald ran a vigorous campaign against the passing of the

Electoral Finance Bill. Two of its editorials, which were part of this campaign, were the subject of the complaint by the Coalition.

The Coalition complained to the editor of the *Herald* about the contents of the editorial on December 4, 2007. In its reply the *Herald* referred to its considerable news reporting and other editorials during the previous three weeks. This reply caused the Coalition to complain about a previous editorial published in the November 20, 2007 edition.

The December editorial appeared on the front page under the heading:

"DEMOCRACY UNDER ATTACK
Speak now, or next year
hold your peace"

The words in the December editorial to which the Coalition objects were:

> "From next month until a probable November election, any person or group wanting to promote an issue of concern would face a legal and bureaucratic minefield. For the right to spend their money they would need to register as a "third party", file declarations about donors and expenses and keep within a spending limit of $120,000, just 5 per cent of the amount MPs' parties may spend."

The editorial contained quotes from other newspapers that supported the editor's view.

The second editorial complained about had appeared previously on November 20, 2007 in its normal position on the perspectives page. It was headed:

"Electoral bill still an outrage"

The editorial appeared after the Select Committee had proposed amendments to the Bill, which alleviated some of the public concern about the proposed legislation.

The part of the November editorial which is subject to the complaint read:

> "The bill still seeks to control not just donations to parties and their spending but also the campaigns that any other group in the community might mount for the purpose of speaking to voters. To spend their own money at any time in election year they will have to register themselves as "third parties", make financial declarations about their donors and expenses, and keep within a statutory spending limit. The committee has doubled their spending cap to $120,000 but that is only 5 per cent of the amount permitted to parties."

The Complaint

The Coalition accepts the *Herald*'s right to run a campaign and to express its views. However, it complains that the editorials mis-state a key fact which "serves the paper's purpose in highlighting the ill effects of what it regards as an odious bill. But because its error greatly exaggerates those ill effects, the editorials mislead readers."

The Coalition was concerned about the following words in the December editorial:

> "any person or group wanting to promote an issue of concern would face a legal and bureaucratic minefield. For the right to spend their money they would need to register as a 'third party'."

The point at issue was that under the revised bill, no person or group would have to register as a third party unless they wanted to spend more than $12,000 on election advertisements. In the Coalition's view most groups looking to take part in an election debate did not spend more than $12,000 and used relatively inexpensive means of participating, namely press releases, websites, letters to the editor, comments in the media or organised marches. The editorial suggested that everyone would need to register and this was not correct.

In reply, after the *Herald* had made the concessions referred to below, the Coalition made the following submissions:

(a) The error was a significant one because it appeared in a rare front page editorial; had an alarming banner headline emphasising the gagging effect of the bill on everyone; it repeated an error in an earlier editorial; the error formed part of the foundation of a prominent, protracted and critical campaign by the *Herald*; it related to a significant piece of legislation affecting the workings of the national democracy; and the error was published at a crucial time while the bill was going through Parliament.

(b) In the Coalition's view the three previous articles were insufficient to alleviate the *Herald* from responsibility for its errors. They were not in the same papers as the editorials, one of which was a front page editorial, and they did not draw attention to the errors in the editorials. In response to the *Herald*'s submission that the error "*does not undermine our general view of the shortcomings of the bill*", the Coalition believed that was a matter of opinion and the *Herald* should have properly provided the correct information to its readers to let them make up their own mind, particularly as the *Herald* was taking an openly partisan stance itself.

The Herald's Response

The *Herald* in its response conceded that the Coalition had a point that, although it was not trivial, it was by no means as serious as the Coalition made it out to be. The *Herald* believed that the mitigating factors were overwhelming. It did, however, concede that the November editorial was misleading as it mentioned the doubling of the spending cap from $60,000 to $120,000, but did not mention the $12,000 threshold for registration, leaving it open for readers to assume that anyone spending any money, would have to register.

The *Herald* said that when it received the complaint relating to the December editorial, it was not inclined to oblige the Coalition because the key phrase in the passage referred to was "to promote an issue of concern". Its view was that no third party would be able to promote a cause effectively for less than $12,000 and would therefore be required to register. The allowable amounts for third parties were, in the

Herald's opinion, so small by comparison that no third party would be able to promote a cause effectively. It had made this point previously in an editorial on August 13, 2007 when the registration threshold was $5000 and the maximum spending cap, $60,000. Having made the point that no third party would be able to promote a cause effectively, it saw no necessity to refer to the threshold as it did not regard the $7000 increase as sufficient to change its opinion.

The *Herald* also noted that the $12,000 threshold figure had already appeared in its news columns three times before the Coalition made its first complaint.

The *Herald* submitted that its error was not serious or significant because:

(a) The increase of the threshold to $12,000 did not undermine its basic position. That sum fell well short of the amount required to promote a cause effectively. It referred to the Electoral Commission comment that $40,000 would be needed before a campaign would begin to register. It agreed with that assessment. If it overlooked the matter in its editorials it was rather because the matter was relatively unimportant to it and it had already made the point.

(b) A further complication was that it was not correct as the Coalition said that "no person or group will have to register unless they want to spend more than $12,000 on election advertisements". There was a threshold of $1000 for anyone who wished to run an advertisement that refers to a candidate. This minimised the consequences of the *Herald'*s error because the statement that "anyone will have to register" was much closer to the truth than no-one will have to register unless they spend more than $12,000. This more realistic assessment of the significance of the $12,000 threshold mitigated the effect as did its coverage as a whole.

Discussion

The *Herald* acknowledged it erred, but said that the error was not significant and that factors mitigated the effect of its error. It accepted that it was not trivial.

The *Herald* was entitled to run the campaign it did against the Electoral Finance Bill. This was accepted by the Coalition. However, comment or advocacy, as this was, must be based on fact. In this case, as the *Herald* acknowledged, it mis-stated the fact. The need to register for third persons applied only to those who wished to spend more than $12,000 on advertising.

The Council accepted that it was probably correct that any person or group wanting to promote an issue of concern would be required to spend more than $12,000. However, this was not the point. The editorial suggested that anyone who wished to promote an issue of concern would need to register as a third party. The failure to note the $12,000 threshold was a mis-statement of fact, which in the Council's view was not minimised by the words "to promote an issue of concern".

Nor was it sufficient in the Council's view to say that the correct amount had been mentioned on other occasions. The December editorial was given prominence on the front page, and although some readers would have been aware of the $12,000

threshold, many would not. In the circumstances, the other articles and editorials could not be relied upon in support of a submission that readers were not misled.

It was noted that the *Herald* later included in its potted summaries the $120,000 spending cap, the $12,000 threshold and the $1000 threshold, which applies to naming candidates. The *Herald* has taken appropriate steps subsequently to mitigate its mis-statements.

Conclusion

For the reasons given, the Council finds that the omission of a significant detail led to inaccurate statements being published in two *New Zealand Herald* editorials and the Council upheld the complaint.

The Council is also of the view that in this particular case, a prompt correction given reasonable prominence, would have been an acceptable acknowledgement of its error.

Press Council members considering this complaint were Barry Paterson (Chairman), Aroha Beck, Ruth Buddicom, 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.

Our Father and the Netballers – Case 2025

The New Zealand Press Council has not upheld a complaint against *The Dominion Post* arising from an item published on November 9, 2007.

Background

A reworked version of The Lord's Prayer, headlined "Let us pray", published on the front page of *The Dominion Post* Sport and Raceform, invoked the Lord's assistance in beating the Australian national netball team in a forthcoming competition.

The Complaint and Newspaper's Response

B R Driver complained by letter on November 12 to *The Dominion Post* that the piece was discriminatory, placed "undue gratuitous" emphasis on Christianity and was offensive.

The Dominion Post editor Tim Pankhurst rejected this and argued that it was a light-hearted comment that drew both compliment and criticism.

Mr Driver, in a subsequent complaint to the Press Council, argued that the rewritten prayer was prejudiced, inconsiderate and offensive towards religion in general and Christianity in particular. He argued that it breached Principle 8 of the Press Council's Statement of Principles relating to discrimination in that it placed a gratuitous emphasis on religion. He stated that Christians have a special regard for The Lord's Prayer and that lampooning and ridiculing it was, by implication, lampooning and ridiculing Jesus Christ.

He felt the published version of the prayer was sneering and that the layout and use of colours was designed to cause further offence.

Mr Pankhurst, in reply, said that the newspaper had not set out to offend readers

and it was always regrettable when that happened. He added "Ours is a broad church and I'm afraid it is inevitable that from time to time we will publish material that offends someone somewhere".

Discussion

The Press Council considered Mr Driver's well-argued complaint carefully. However it could not find that there had been a gratuitous emphasis on religion which had resulted in discrimination against Christians.

The Dominion Post had used the format of The Lord's Prayer precisely because, with its recognisable rhyme and meter, it is so widely known.

The publication reflected the feelings of many of its readers who were in many cases "praying" that the netball team would be more successful than other New Zealand sporting teams had been in the preceding months.

Decision

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, Alan Samson and Lynn Scott.

Local body election coverage endorsed – Case 2026

Bernard Harris complained to the Press Council about *The Dominion Post*'s coverage of the Wellington City Council election in the local body elections of 2007.

His complaint was not upheld.

The Complaint

In his complaint to the Press Council (February 10, 2008,) Mr Harris suggested that the omission of essential information from the newspaper's coverage had had a "substantial effect" on the final electoral results.

In his earlier, formal complaint to the newspaper itself (October 30, 2007) Mr Harris was more specific: the lack of information about alternative choices amounted to "interference" in the electoral outcome.

Further, *The Dominion Post*'s practice of only providing detailed information about mayoral candidates had the effect of giving preferential treatment to those who stood for both mayoral and council positions, over those who offered themselves solely for positions on the council. Such uneven treatment was, in his view, unfair and unbalanced.

Mr Harris suggested that there seemed to be a *Dominion Post* policy decision limiting coverage of candidates for city councils, regional councils and District Health Boards and argued that this meant that citizens were limited in exercising their democratic right to vote because they could not have an informed understanding of the candidates and why they were putting themselves forward.

He also submitted to the Press Council, as background material, a series of letters, submissions and e-mails, which formed an on-going exchange with the media, often on the general theme of public apathy in local body elections. The references

(dating back to July 2006) stressed the importance of highlighting local body issues, council members and prospective candidates in order to combat low turn-out at the polls.

The Newspaper's Response

The editor, Tim Pankhurst, in his reply to the initial complaint to the newspaper, suggested that Mr Harris was "unrealistic" in his expectations of what and how much material could be published.

He said that *The Dominion Post* had given "extensive coverage" to the local body elections, including backgrounding the "top 10" issues as identified by polling a 500-member reader panel.

He noted that Mr Harris had often had letters and articles published in *The Dominion Post*, but this complaint was firmly rejected.

In further e-mail correspondence with Mr Harris (later submitted to the Press Council by the complainant), Mr Pankhurst explained there had been no outright ban on publishing material about candidates campaigning for positions other than mayor – any publicity would be dependent on news merits. However, the newspaper could not profile each and every candidate.

Discussion

This was a complaint about omission rather than any fault of commission by the newspaper. However, the complainant contended that when the newspaper decided to focus on mayoral candidates and largely forgo any attempt to profile all candidates, such an act of omission became unfair and unbalanced journalism.

He argued that the newspaper's policy led to some candidates being favoured over others, and contributed to both a limited democratic process and a low voter turn-out.

This complaint raised the question of what is fair and reasonable coverage during local body elections.

A large regional newspaper is in an unenviable if not impossible position, when it comes to attempting to provide background information and profiles on all the candidates. This is the more so when its circulation covers a wide geographical area.

There are city councils, various community wards and boards, regional councils, district health boards, contests for the position of mayor. At times there are scores of hopefuls vying for election for several of these bodies.

There is simply not enough space to cover all candidates and many newspapers have to restrict their coverage.

In the Press Council's view it was entirely reasonable for *The Dominion Post* to "draw the line" and focus on the campaigns for the mayoral position.

The Council also noted its features and articles on the "top 10" issues, as delineated by the large reader panel, its creation of public mayoral forums in both Wellington and Lower Hutt, and editorials urging readers to participate in the electoral process by asking questions and by voting.

Finally, it was also important to note that any policy to highlight the mayoral contest did not include a blanket ban against covering any candidate for the various

elected bodies. Candidates who could make themselves or their campaign or their policies newsworthy, would still be featured.

Conclusion

For the reasons given above, 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, Alan Samson and Lynn Scott.

Were obese people dehumanised? – Case 2027

Felicity Marshall complained to the Press Council that a headline on an article published on December 16, 2007 in the *Herald on Sunday* breached the Press Council's principles on discrimination and fairness.

The complaint was not upheld.

Background

The article, headlined "Should your money be used to slim this?" noted that the Counties Manukau District Health Board had approved funding to provide stomach-stapling operations for 60 diabetic patients. The board was using the trial to see whether this could be a cost-effective way of treating patients with obesity-related problems. A small, rear view photograph of a severely obese person sitting on a chair, cropped to exclude the subject's head and shoulders, was positioned alongside the story.

The article gave a range of views and information, and indicated that a public opinion poll was being carried out to gauge public opinion on the state funding stomach-stapling operations, most of which currently are done privately.

A summary of the issues involved was boxed under the heading "Fighting the flab".

The Complaint

In her initial complaint to the editor, Ms Marshall stated that she recognised that the article was fair and balanced. However, she believed that the headline (placed next to the shot of a person with severe obesity) dehumanised the person in the photograph, and as a corollary dehumanised all people with severe obesity.

She went on to say that people with severe obesity faced discrimination every day. She asked for a formal retraction, and an apology to the severely obese people humiliated by the article.

In addressing her complaint to the Press Council, Ms Marshall suggested that the headline should more appropriately have read: "Should your money be used to help obese people slim?"

The Newspaper's Response

In his initial response to the complainant the editor said that the "this" in the headline referred to the person's body fat not the person, who was not recognisable, and that the photograph was sourced from overseas. There was never any intention of offending anyone.

When responding to the complaint to the Press Council, the editor further stated

that he considered Ms Marshall was taking a "very extreme politically correct view" and that "obesity is an extremely serious public health issue in New Zealand, and the article and accompanying headline were an accurate, valid reflection of the matters raised".

Further Comment and Information

The complainant provided the Press Council with a copy of the Rudd Report, from the Rudd Centre for Food Policy and Obesity, Yale University (2008). This report identified that obese people encounter extreme discrimination in many areas of public life, employment and in academic institutions.

Ms Marshall stated in her further letter that she did not believe that she was taking a "very extreme" and "politically correct" view. "Weight bias is an important issue, and more needs to be done, both socially and politically, to combat it."

In his final response, the editor reiterated that the headline was not offensive, but was accurate and valid, and drew the reader into a very balanced article.

Decision

The complaint was not upheld. The Council said that discrimination involved a gratuitous emphasis. The word "this" in the headline could be read to include the photographic depiction of severe obesity. However, it could also be read as a fair reflection of the subject matter of the article, which was itself both fair and balanced. The Press Council acknowledged that severely obese readers might have found the headline offensive, humiliating or even hurtful but that did not make it discriminatory.

Press Council members considering this complaint were Barry Paterson (Chairman), Aroha Beck, Ruth Buddicom, 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.

Blowout charge blown away – Case 2028

The New Zealand Press Council has upheld a complaint by the Ministry of Education against *The Dominion Post* arising from an article published on October 18, 2007.

Background

Under the heading "$94 million salary cost blowout 'an outrage' " *The Dominion Post* reported that salaries at the Ministry of Education had risen by 154 per cent since 2002 while staff numbers had risen only by 16 per cent. It said those earning more than $100,000 had grown from 27 to 142 and quoted critical comments from Wellington College headmaster Roger Moses, Principals' Council chairman Arthur Graves and National spokeswoman Katherine Rich.

The report quoted the Ministry's human resources manager, Donna Hickey, as saying organisational changes involving the inclusion of 220 special education staff had skewed the figures. Ms Hickey was also quoted as explaining other factors in the "surge in staff on higher pay".

The report was based on material provided by the Ministry under the Official Information Act and additional information from the Ministry's senior media adviser, Iain Butler.

Immediately after the article appeared Mr Butler contacted the newspaper with a letter from Karen Sewell, the Secretary for Education, stating that the article was misleading and inaccurate, particularly in reporting the staff increase as 220 when it was, in fact, more than 2000. While accepting that an error had been made the newspaper objected to the wording of a corrective letter from the Ministry and it was not published.

The Complaint

The Ministry complained to the Press Council on November 19 on the grounds of inaccuracy, failure to print a correction, an incorrect headline, and failure to publish a letter to the editor that sought to remedy the damage.

The Ministry stated that 2200 additional special education and early childhood staff had joined its ranks, accounting for the increase in the total salary bill. This information had been supplied to the newspaper. The proportion of staff paid more than $100,000 had not changed at around 4 per cent and, using head count figures, average salaries had dropped.

The report also attributed to Donna Hickey the words "the surge in staff on higher pay", which she had never used.

The Dominion Post had declined to print a corrective letter, objecting to what the newspaper described as its "snide tone."

The headline was inaccurate because the story was inaccurate and in failing to publish a letter from the Ministry the newspaper was showing a lack of fairness and balance.

The Response

The editor of *The Dominion Post* replied to the complaint in a letter to the Press Council dated December 21. He explained that the article originated in a request made to the Ministry in July under the Official Information Act and against a background of widespread concern about education funding.

The information was received in a letter dated September 19 and handled by the reporter when he returned from extended leave. He sought comment from interested parties, which was included in the report. The reporter also sought further comment from the Ministry.

The Ministry asked for the story to be delayed while this was obtained. The newspaper agreed and provided the home e-mail address of the reporter who was off duty on that day. The material did not reach that home address before deadline and the final version of the article was prepared by another reporter who incorporated material, including figures supplied by the original writer who was relying on memory as his notes were in the office. The original reporter had had further conversations with Mr Butler outlining the report that the newspaper intended to run. Mr Butler apparently made no comment on the figures.

The editor acknowledged that incorrect figures were used and that some comment was wrongly attributed to Ms Hickey. He had indicated to Mr Butler that they were happy to correct the errors and this offer was still open.

The critical responses from the other parties quoted in the story were based on the actual figures supplied by the Ministry and not the incorrect information and were, therefore, valid.

The total increase in salary at the Ministry was $94 million, 157 per cent, as reported.

The heading that recorded this basic fact and the reaction was accurate.

When informed of the factual errors the newspaper was prepared to publish a corrective letter but the editor challenged the tone, specifically the comment "the facts were all there, using them would have avoided the need for this letter." The Ministry was asked to reconsider the letter but did not respond before complaining to the Press Council.

Further Comment

In a letter to the Press Council dated February 12 the Ministry's group communications manager, Michael Pearson, said nothing in *The Dominion Post*'s response altered the substance of the complaint. The views of those interviewed had not been mentioned by the Ministry in its complaint.

The newspaper had acknowledged the essential error in the figures but had done nothing to correct it. The headline was inaccurate because there had been no blowout in salaries when the staff numbers were taken into account.

The Ministry rejected the description of its letter to the editor as "snide", saying it was moderate and reasoned.

In his final response in a letter dated February 28 the editor said he stood by his initial response. The newspaper remained willing to publish a correction and had been in discussion with the Ministry about this. The Ministry had chosen to disengage from the process and exercised its right to pursue the matter with the Press Council.

Discussion

The newspaper agreed that there were two errors in the story, in the numbers of additional staff the Ministry had employed and in the attribution of a quote. While the total salary bill figure was correct, the failure accurately to record staff numbers fatally undermined the comparison. In the absence of this figure the implication of a cost blowout was not sustainable. The newspaper could quite properly have pointed to the total salary bill and raised the issue involved but the failure to put the figure in context was misleading. That error was compounded by the erroneous attribution of the phrase "surge in staff on higher pay" to a Ministry official.

The newspaper was within its rights in objecting to a phrase in the Ministry's letter of correction. However the factual errors, which the newspaper admitted, should have been corrected. The Ministry did not respond to the newspaper's continued offer of publishing an amended letter, but to allow the differences between the Ministry

and the newspaper to prevent the correction being published, effectively deprived the readers of accurate reporting. The Council has previously drawn attention to the desirability of the early publication of corrections.

The Decision

The complaint on inaccuracy was upheld. The newspaper accepted that a wrong figure was used and that a quote was incorrectly attributed. The figure was of crucial importance to the report.

The complaint on the failure to correct was also upheld. The disagreement between the Ministry and the editor on the wording of the letter did not remove the newspaper's obligation to ensure its readers had the correct information.

The headline accurately reflected the story but as the blowout charge was based on an inaccurate premise it must be inaccurate.

While the Council has always defended the right of a newspaper to choose what letters to publish the failure to print the Ministry's letter in any form resulted in a lack of fairness and balance.

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, Alan Samson and Lynn Scott.

Are early high school leavers a minority group? – Case 2029

Gemma Claire complained to the Press Council about a cover story comprising two articles respectively titled "Murder, they said" and "Malice aforethought" published in the *New Zealand Listener* ("the *Listener*") in issue 3530. Her complaint is not upheld.

Background

The articles complained about canvassed particular views about the conviction of Scott Watson for the murders of Ben Smart and Olivia Hope on New Year's Eve of 1998. These articles were noted in the stand-first as representing the views of "two men who know the case inside out [and who] have no doubt at all that the right man is behind bars".

Ms Claire submitted a letter to the editor on January 5, 2008 objecting to various aspects of the articles. Her letter was not published. She wrote again to the editor on January 14, 2008 detailing why, in her opinion, it was important for her letter to be published. Following that correspondence, the editor published an abridged form of her letter in edition 3533 of the *Listener*. By email, Ms Claire advised the *Listener* that she considered the abridgement had, by omission, misrepresented her views.

The editor responded to her email explaining the reason for the abridgement. Ms Claire remained dissatisfied and complained to the Council.

The Complaint

Ms Claire's complaint could be summarised under these heads:

- the editor's decision to publish an abridged version of her letter to the editor resulted in a misrepresentation of her views;
- the publications complained of contravened Principle 8 in that they placed gratuitous emphasis on a "minority group";
- the publications contained inappropriately colloquial, misleading and emotive phraseology for a reputable magazine such as the *Listener*;
- the author of the articles had subsequently paraphrased parts of the letters of complaint submitted by Ms Claire for use in an unrelated column in a later edition of the *Listener*; and
- the author of the article had (allegedly) subsequently expressed contrary views to some of those expressed in the articles and that this called into question her professionalism.

The Magazine's Response

The magazine responded that an editor has the right to abridge letters without explanation.

The editor rejected the claim that the articles breached Principle 8. She maintained that the descriptions of Scott Watson as a "high-school drop-out" living "a life apparently based around dope, drink and the dole" were not factually incorrect. The editor did not accept that there could be any implication drawn that someone who left school early would become criminally active. Similarly, she rejected any possibility that the implication could be drawn that someone on a government benefit would become a criminal.

The editor defended the use of the colloquial terms such as the "dole" and "nicked" on the basis that these terms had come from interviews with Scott Watson's parents at the time of his convictions. She also defended the description of the magazine of Watson living a "life of crime" maintaining that a person with 48 convictions over his adult life can properly fall within such a description.

In relation to the complaint of Ms Claire as to description of the victims of the murders as being "promising and attractive young people", the editor claimed that the evidence given at the trial was such as to make this statement valid.

In relation to the complaint that a subsequent column by the same journalist allegedly plagiarised ideas from Ms Claire's letters of complaint, the editor explained that the journalist would not have seen these letters of complaint at the date at which her subsequent column was written.

Discussion

Ms Claire quite properly acknowledged that an editor reserves the right to abridge letters without explanation. In this case, Ms Claire's letter was edited down to one salient point, which had not been covered by other correspondents. While this did result in the omission of other points Ms Claire wished to make, the Council was satisfied that such an editing decision is the sole preserve of the editor. In relation to the point made in the abridged letter, the Council was satisfied that Ms Claire's view was accurately expressed.

Principle 8 provides that "[p]ublications 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 those areas."

Ms Claire's complaint was premised on a claim that being an early high school leaver can entitle Mr Watson to fall within the description of being a member of a minority group. Further, Ms Claire said that the description of Mr Watson as a "high-school dropout" used "emotionally loaded terminology to reinforce negative perceptions of certain groups".

The Council was satisfied that readers of the *Listener* magazine will not group all early high school leavers within a descriptive categorisation which was made specific to Mr Watson. Further the Council considered it stretched the term "minority group" to embrace all early high school leavers.

In relation to Mr Watson being a person who receives an unemployment benefit, the same conclusions apply. The Council also did not find that there was any implication/s in the articles that being an early high school leaver or the recipient of a benefit predisposes a person to become criminally active.

The Council did not find the language complained about to be contextually inappropriate. Where comments derived from other publications were re-used, it might be best practice to make this more evident, but this must ultimately be a matter for the exercise of an editor's discretion. In a case such as Scott Watson's, there had been a huge amount of earlier media coverage. It seemed unlikely that there would be many readers who had not already encountered the use of common colloquialisms from that earlier coverage.

The Council agreed with the editor of the *Listener* regarding the descriptions used of the victims. While these may stand in stark contradiction to the description of Mr Watson, the descriptions are consistent with the evidence adduced at the trial.

On the paraphrasing complaint, the Council did not find there to be sufficient similarity in the phrase complained about to accept any alleged paraphrasing particularly where an editor had explained that there had not been any opportunity for the journalist to have seen that prior material.

On the final head of complaint, the Council noted that the second publication was in an opinion column by the journalist who had done the initial cover story. The opinion column was not in any way about any aspect of the Scott Watson case. The former cover story was clearly stated to reflect the views of two men who had in-depth knowledge of the case against Mr Watson. The column was an opinion piece by the columnist on entirely separate matters. There can be no requirement in good journalistic practice to suggest that two views expressed on peripheral matters should coincide.

For the reasons set out above, the Council did not uphold the complaint.

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

Aroha Beck took no part in the consideration of this complaint

Mr Copeland and the 'anti-smacking' bill vote
Complaint 1 – Case 2030

The Press Council has not upheld a complaint by the Independent MP, Gordon Copeland (formerly a United Future MP), against the *New Zealand Listener*. His complaint related to a sentence in a political opinion piece by Jane Clifton, published in the *Listener* on December 29, 2007.

Mr Copeland and Ms Clifton appeared before the Council to make submissions in support of their respective positions on the article.

Background

The article, entitled *Little 'Bro Town*, gave the columnist's summary of the year's political events. The final paragraph of the article referred to Mr Copeland, his "shunning" of United Future over the anti-smacking bill, and then missing the vote. It also stated (the words particularly complained about) "the devout Christian also admitted lying to his former leader Peter Dunne about his intentions" [to leave the party].

The Complaint

Mr Copeland stated that he had never admitted lying to his former leader, Peter Dunne, about his intentions, for the simple reason that he never lied to him; accordingly that part of the sentence was a fabrication.

There were other comments in the paragraph that he had initially complained about, but these complaints were satisfied by the publication of his letter to the editor on January 19, 2008. However, the part of the sentence referring to his admitting to lying to his leader was deliberately misleading, unprofessional, unfair and wrong.

The Editor's Response

In her initial response to the complaint from Mr Copeland, the editor pointed out to him that in interviews both he and the leader, Peter Dunne, were asked whether Mr Copeland had plans to leave United Future, and "you said no".

Ms Clifton, in writing her article, was confirming Mr Dunne's impression of events; clearly Mr Dunne "considers himself to have been lied to, both by commission and by omission".

The editor noted that Mr Copeland's own view on the matter, that "you did not lie and could not therefore have admitted lying", was given prominence in the *Listener*'s Letters to the Editor column.

In responding to the formal complaint to the Press Council, the editor stated that the *Listener* upheld the rights of columnists to describe, record and comment upon the events they chose to write about. What they wrote was clearly signalled as their own opinion.

She reiterated that her columnist's take on the events was confirmed by Mr Dunne.

Conclusion

The events leading up to Mr Copeland leaving the United Future Party were clearly distressing to all parties. That there are differing views of discussions that were held in private was inevitable, given the tensions involved. Mr Copeland had furnished the

Press Council with his version of events leading to his resignation from the party.

The Press Council has consistently defended the right of opinion pieces to express columnists' view of events from their perspective. Where the columnist has taken due care to get to the truth, and is not deliberately being misleading, then the writer is able to give an interpretation of an event that might be different from that one or more of those involved in it.

In this case, Mr Copeland considered that he did not lie; rather he withheld information from Mr Dunne. He was offended by being reported as "admitting to lying" because he did not make this admission. However, Mr Dunne clearly believed that this omission was a lie, given the circumstances.

The *Listener* published in a timely fashion the complainant's letter in which he stated categorically that he did not lie, and did not admit to lying.

The Press Council believes that in this instance, the editor took the appropriate steps to deal with the complaint. For that reason, this complaint to the Press Council was not upheld.

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

Kate Coughlan took no part in the consideration of this complaint.

Mr Copeland and the 'anti-smacking' bill vote Complaint 2 – Case 2031

The Press Council has not upheld a complaint by former United Future MP Gordon Copeland against *The Dominion Post* over the content of an article reporting he had forgotten to vote on the so-called anti-smacking Bill, and omitting to mention he had subsequently cast his vote.

Mr Copeland appeared before the Council to make a submission in support of his complaint.

Background

On May 17, 2007, *The Dominion Post* referred to Mr Copeland having forgotten to vote against the legislation he opposed. A subsequent (May 21) piece said he had *failed* to vote against the bill. Mr Copeland advised the newspaper that Parliament had in fact granted him leave to vote against the Bill, and he had done so. The newspaper ran a correction which, at the time, largely satisfied Mr Copeland.

On December 17, 2007, *The Dominion Post* published a list of "Polly" awards, a humorous bric-a-brac summing up the newspaper's opinion of the 2007 performance of various politicians and others in the public eye. Included in the list, under the heading "Wally of the Year", was a four-paragraph report on Mr Copeland. Among other things, this report included that Mr Copeland had *forgotten* to be in the House for the final vote. No mention was made of his having subsequently voted.

The Complaint

The complaint lay with the December 17 publication. Mr Copeland said his only

issue with the original article was the use of the "pejorative word forgot", when his absence had been because the debate had ended more quickly than expected. He had complained about the May 21 article's claim he *failed* to vote, but had accepted a published apology.

His complaint was therefore for omitting in the December report that he had voted against the Bill, and for the repetition of the word "forgot" which, he says, was pejorative and inaccurate. His complaint says: "*The Dominion Post* have by their actions, deliberately misled and misinformed their readers. In publishing only half the story (by omitting the fact that I voted against the Bill that same night) they have knowingly misled their readers and besmirched my reputation".

Of the term "forgot", he said he missed the vote because the debate collapsed unexpectedly. "*The Dominion Post* knew the correct position but chose to tell a different and therefore misleading story. That is unprofessional". In a letter to the newspaper he said the complained-of paragraph was published "in the foreknowledge that it was factually incorrect", and therefore a serious breach of professional standards.

The Newspaper's Response

Before referring the complaint to his political staff for explanation, *Dominion Post* editor Tim Pankhurst wrote to Mr Copeland saying, "The fact is you were not in the House when the vote on the Anti-Smacking Bill was taken. It may have been more appropriate to say you neglected to be in the House rather than forgot but, however you dress it up, you were not present to vote on legislation that is fundamental to your party."

After meeting with his staff he and political editor Tracy Watkins, in near-identical responses, refer the complainant to an Oxford Dictionary definition of "forget" which includes, "to fail to remember, inadvertently neglect to do, or cease to think of". "All of these definitions would seem to apply to the act of failing to turn up to a vote that held quite some significance to you since it had only been a matter of some hours since you resigned from your party over it."

Mr Pankhurst further suggested that a long-standing politician's failure to put in place checks in regards to the debate, was tantamount to forgetfulness. "That you failed to put in place such checks (or even used the fall-back option of having your radio or television set to the parliamentary channel … somewhat bolsters my view that you forgot about – or, if you prefer, inadvertently neglected, or ceased to think of – the upcoming vote. Hence our use of the term 'forgot'."

Further correspondence

In subsequent correspondence, Mr Copeland conceded there might be subjective understandings of dictionary definitions of "forgot". However, the forgetfulness issue was not the main driver for his complaint. "Rather it is the fact that, for the second time, your paper opted to tell just half of the story by omitting to mention that, immediately after the dinner break, I registered my vote against the Bill with the leave of Parliament."

Mr Pankhurst says: "The fact remains that you missed the vote on the Anti-Smacking Bill at the time it was presented to the House."

Discussion

Mr Copeland was quite correct when he alluded to subjectivity in the reading of dictionary definitions. Webster's, for instance, includes as a definition, "omitting unintentionally", which is precisely what happened in his missing of the vote. Mr Pankhurst in one letter concedes there might have been a more appropriate word to use than "forgot", but the breadth of understanding of the word mitigates against an uphold over word choice.

Mr Copeland himself pointed out that his real complaint lay with the December 17 omission of any mention that he had the same day registered his vote against the Bill. But *The Dominion Post's* mock provision of an "award" for "Wally of the Year", for missing the final vote in the House, did not need to tell the ending of the voting story. Mr Copeland *did* leave United Future over his leader's support for the anti-smacking legislation and did miss the final vote. That he subsequently rectified his omission is important detail in any account of the day's events. But, especially in a clearly satirical piece, *The Dominion Post* has the right to poke fun at a public figure who, for whatever reason, failed to be on hand for the official final vote on a bill he so strongly opposed.

Decision

For the reasons given above, the complaint was not upheld.

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

The cost of the second bag – Case 2032

Introduction

Air New Zealand ("Air NZ") complained about two articles published on page 1 of *The Weekend Herald* on April 5, 2008. The principal article was headed "Air NZ plans $20 bag charge". A side-bar story was headed "UP IN THE AIR – IT'S A BIT STEEP FOR SOME".

The principal article dealt with a plan by Air NZ to charge domestic travellers for a second bag. The side-bar article dealt with passengers' response to the proposed new baggage charges. It included a response from a cruise ship steward who was stranded at the Auckland airport because his five bags, totalling 40 kg, were too many "even now for his flight to Christchurch".

The complaint is not upheld.

The Complaint

Air NZ not only complained about the articles and their captions but also the promotional material that preceded them on both television and radio. The Council does not have jurisdiction to consider complaints in respect of the promotional material on television and radio.

The complaint relating to the headlines fell within Principle 10 of the Council's Statement of Principles, namely that the headlines did not accurately and fairly con-

vey the substance of the report they were designed to cover. In respect of the principal headline, the specific complaint was that a charge of $20 would be made for a second bag and there was no reference to the existing free weight allowance of 20 kg being increased to 30 kg or that cabin bags did not count as a "second bag". The stand-first of this article, which read "One is free, then you pay – airline unveils its answer to check-in queues and delays", was also said to be inaccurate and misleading. Air New Zealand complained that there was no indication or, at least, insufficient indication that the changes were proposals on which further planning and research was being undertaken.

The complaint in respect of the side-bar article was that, when taken with a photograph of the cruise ship steward, there was an indication that the problem he was facing was related to the proposed changes. Thus, the photo and captioning inaccurately conveyed the substance of the article.

The complaint also alleged that both articles were unbalanced and unfair and were, therefore, in breach of the Council's Principle 1, namely that publication should be guided by accuracy, fairness and balance.

The Newspaper's Position

The Weekend Herald's response was that the principal article was fair and balanced and traversed the range of initiatives proposed by Air NZ and contained seven paragraphs giving Air NZ's explanation. The side-bar article gave the reader's reaction as it was.

The principal article resulted from an interview between a deputy editor of the *Business Herald* and an Air NZ general manager (the manager) before the article was published. It was only after the article was published that Air NZ issued a press release saying the plan was subject to customer research. The manager had previously indicated that he was confident the plan would be finalised within 2-3 weeks.

Discussion

The nub of Air NZ's complaint on the heading of the principal article and stand first was that the newspaper deliberately chose to sensationalise the effect of baggage changes that were under consideration. It was not correct that Air NZ was to charge $20 and, indeed, the article itself did not say so.

The article itself made it clear that the plan was to charge between $10 and $20 a bag. The headline indicated that the charges were $20 a bag. This was not accurate and did not fairly convey the plan of between $10 and $20 a bag, the airline argued.

The Council noted that readers of the headline, who did not go on to read the substance of the article, could have been misinformed. But a newspaper cannot be expected to cram all detail into a headline or stand-first. Besides, under the new planned regime, as it was at the time of publication, some passengers would attract the $20 charge. A newspaper is entitled to draw on the most newsworthy aspect of a story for its headline. The Council did not uphold this complaint.

The first paragraph of the article made it clear that the charges were to be up to $20 for a second bag; the second paragraph noted between $10 and $20.

Subsequent paragraphs provided the detail of the policy.

The Council did not uphold the complaint in respect of the side-bar article. In the main, the article was a response from air travellers to the "proposed new baggage charges". While the statement from the cruise ship steward appeared in that article and is slightly out of context, it is clearly a statement of how he saw the current position and not the proposed new charges.

In other respects, the Council did not find either article unfair or unbalanced. The principal article gave reasonable coverage to the views of Air New Zealand's General Manager and his explanation of the plan.

Finding

The complaints are not upheld.

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

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

Councillor or reporter? Readers deserve to know – Case 2033

The New Zealand Press Council has upheld a complaint against *The Kaiapoi Advocate* arising from an article published on April 4, 2008.

Background

Under the heading "Councillors look west" and under a photograph captioned "Status quo: Councillors have voted to reject a bypass to the east of Woodend' was a report of a Waimakariri Council decision to evaluate a bypass route to the west of the town of Woodend.

The report outlined a council decision to seek an independent assessment of a western route bypassing the North Canterbury township of Woodend. It stated that one councillor dissented from the decision, that there was a staff recommendation to adopt a modified eastern route and quoted deputy mayor Elaine Cole's concerns about an eastern route including an outline of what, in her view, would be the negative impact of an eastern bypass. Also reported were comments by Councillor Sandra Stewart regarding an offer from Pegasus developers to provide an alternative route to the west of the town and Councillor Stewart's concerns about Transit New Zealand's future plans.

The Complaint

By email to the publisher of *The Kaiapoi Advocate,* Michael de Hamel, on April 15, Kirstyn Barnett complained about inaccurate and unbalanced reporting in the article. She complained it was factually incorrect to state that the council had rejected an eastern bypass. She had sought and received confirmation from council executives that bypass options were still being evaluated. The council had not made a final decision to accept or reject any route, and an eastern option was still on the table.

She complained the article lacked comment from community members other than the two councillors quoted. She requested a published clarification and for majority

community views to be canvassed and reported upon as well as some comments from those who favoured other options.

After a response from the publisher she complained to the Press Council on April 19 that:

i. the caption was inaccurate

ii. the article lacked balance and used emotive language

iii. the information contained in the article had been supplied by one councillor only and that this councillor was a reporter and saleswoman for the newspaper.

The Response

On April 16 Mr de Hamel replied by email apologising for mistakenly sending Ms Barnett an email intended for Sandra Stewart who works for the newspaper complained of and who is also the Councillor Stewart quoted in the story complained of by Ms Barnett.

He suggested to Ms Barnett that her complaint could be treated as a Letter to the Editor, he disagreed that contrary opinions should have been canvassed for the article and expressed a view that both possible bypass routes had severe problems. He suggested he might publish her letter. He also suggested that if she had a complaint, she take it up with the Press Council.

Further Comment

Ms Barnett's subsequent complaint to the Press Council expanded on her point that the information for the article was "largely supplied by Councillor Sandra Stewart". Ms Barnett argued that Sandra Stewart was the only *Kaiapoi Advocate* reporter in the council chambers at the time of the debate and that the minutes of the meeting were not released until after the publication of the April 4 edition.

She asked that the Press Council clarify the issue of ethics relating to the dual role of an elected council member, who is also acting as a reporter on council decisions.

Mr de Hamel did not address this question of a potential conflict nor did he attribute authorship of the article. His response also overlooked answering the inaccuracy in the caption. He argued that the issue "boils down to whether my offer to publish Ms Barnett's original late night (and possibly defamatory) email as a letter to the editor was reasonable given the nature of her complaint and the language in which it was expressed".

Decision

The Press Council found that Ms Barnett's original email was clearly a complaint, contained no potentially defamatory material and was reasonable in tone. It correctly identified that the caption for the photograph was incorrect as the council had not voted to reject a by-pass to the East. The complaint of inaccuracy was upheld in regards to the caption.

The Press Council was surprised that the editor in his reply to Ms Barnett suggested her complaint was defamatory. On one interpretation this could be taken as a threat.

The complaint that the article used emotive language rather than factual detail to advocate for a particular position was not upheld. The report was poorly written and confusing. However, the language was not emotive.

The question of balance was more difficult for the Press Council to address, since it has not been made clear whether Councillor Stewart was the author, and neither was it clear if the quoted comments came from the council meeting itself. The Press Council would have concerns if the article were substantially Councillor Stewart interviewing herself for an article but, in the absence of confirmation, could not rule on this.

The fourth aspect of Ms Barnett's complaint related to a potential conflict of interest. If the article was written by Councillor Stewart, and this question remains unanswered by the newspaper editor, it was necessary for Councillor Stewart to be identified as both a participant in the council decision and a reporter on it. Readers have a right to know if a reporter is involved in the substance of a report. In this case, as a council member, Councillor Stewart would have had to vote on the issue of the western bypass feasibility study. Readers were entitled to know that and failing to advise them was an ethical breach.

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

The 1080 debate – Case 2034

The New Zealand Press Council has not upheld a complaint from Bill Benfield against the *NZ Listener* arising from a column published on December 22, 2007.

Background

Under the heading "Poison Pens" and with the stand-first "1080 has had an unfairly bad press" the *Listener* on December 22, 2007, published an Ecologic column by Dave Hansford. This suggested that the use of 1080 had been stigmatised by campaigners, "more often than not, recreational hunters." It quoted arguments used by the Department of Conservation in favour of its use and suggested that opponents of its use exaggerated the risks. Hansford pointed out that a recent Environmental Risk Management Authority review had cleared 1080 for further use.

The Complaint

In a letter to the Press Council of February 20, later copied to the *Listener,* Bill Benfield complained the article was false and misleading in that it sought to minimise the hazardous nature of 1080. The article also sought to demonise outdoor recreational groups, especially hunters. Mr Benfield listed some 15 individual points in the article that he disputed and in totality rejected what he described as the gist of the whole article - "that 1080 is a comparatively safe answer to New Zealand's pest management problems".

Mr Benfield acknowledged that the writer and the magazine were "entitled to promote what they like" but the *Listener* had "a duty to perform with some integrity".

Mr Benfield also provided the Council with several submissions from various sources, addressing the risk involved with the use of 1080.

On March 13 Mr Benfield wrote to the *Listener* saying he had no response from it but suggested that the magazine consider publishing the full text of his complaint to the Press Council.

The Response

On March 18 the magazine replied to Mr Benfield. It took up some, but not all of his points of detail, and differed with his conclusions but its main defence was that the column was an opinion piece, and like most such articles, aimed at provoking debate. It offered to consider publishing a letter from Mr Benfield, following the same protocols as for other letters.

Further Comment

Mr Benfield rejected the *Listener*'s response and proposed remedy. In a letter of March 30 he disagreed with the suggestion that the article was an opinion piece designed to provoke debate. It had "the air of truth and right", not of opinion. In its letter the magazine had offered no evidence to rebut his detailed claims, other than referring to DOC which, he suggested, "may not be telling the real story".

In a letter to the Press Council of April 18 the *Listener* stood by its earlier response and repeated the invitation to Mr Benfield to write a letter for publication.

Discussion

The Press Council observed that the use of 1080 in New Zealand was controversial and had attracted fervent opponents and defenders. It was to be expected that the press would reflect that debate. Dave Hansford's piece was clearly polemical and manifestly took a position. Few readers would interpret it as an even-handed and objective treatment of the issues. Mr Benfield took a different view of 1080 and his detailed submissions made out his case. But it was not the Press Council's role to adjudicate on the use of the pesticide.

Even if the Council was totally convinced by Mr Benfield's arguments it could not be the Council's duty to prevent the publication of dissenting opinion, even if it were to come from a discredited minority. There are, for example, few believers in a flat earth but publications would be entitled to run material in defence of that proposition, provided it was clearly identifiable as opinion.

The Decision

The complaint was not upheld. The *Listener* is entitled to publish columns expressing strong opinions on public issues. This was such a column. The repeated offer to consider publishing a letter from Mr Benfield critical of the column was an appropriate and responsible response to his complaint.

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

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

With God on their side – Case 2035

The Press Council has not upheld a complaint from Wayne Church, President of the NZ Secular Society, about a feature article in the Farming section of *The Dominion Post* published on May 8, 2008.

The article in question was based on an interview with a young couple who had recently been awarded the title of Sharemilker of the Year for their region. Their farming practices, family, background, and hopes for the future were canvassed. They also openly acknowledged that their Christian beliefs were fundamental in their lives and influenced their approach to farming.

The Complaint

Mr Church complained first to the editor, then to the Press Council about the references to the couple's religious beliefs and about the newspaper's use of a capital letter for Him, in relation to the word "God". He returned to the issues in a further letter to the Council addressing the arguments used by the editor in his response to the original complaint and also the handling of the complaint by the Press Council.

Mr Church noted that as a retired farmer he was keen to read farm-related features in the newspaper. In this case, however, he had been upset to find that the article became "slanted towards a heavily accented religious tract". He argued that the article should have run without the religious references and questioned why the newspaper should have included them in an article on farming; the use of a capital H on Him, he maintained, belonged only in religious tracts and not a secular newspaper.

Mr Church complained under Principle 1 that readers were misled in that they did not expect a sharemilking article to include the "type of religious symbolism many readers would undoubtedly avoid, plaguelike, if given the chance". He said *The Dominion Post* "readers were entitled to be able to delineate between what is religious and what isn't, without the risk of cross-pollination, particularly since many readers (myself included) find such an intrusion significantly offensive".

Under principle 8 Mr Church complained that the article placed a gratuitous emphasis on religion on the basis that the concept was somehow intrinsic to sharemilking.

The Editor's Response

The editor noted that the context was the award of the Sharemilker of the Year to a farming couple who have strong religious convictions. He thought the complainant should respect their views even if he did not agree with either the views or the newspaper's treatment of them.

To suggest that the newspaper should not report on religion or individual's religious conviction was absurd.

Tolerance, he said, was a fundamental tenet of a democracy.

Discussion

The New Zealand Bill of Rights Act expressly provides (s 15) that every person has the right to "manifest their religion or belief in worship .... either in public or in private". Clearly the couple in question was happy to express their beliefs to the reporter and would have known that this factor in their lives was likely in turn to

figure in any subsequent article. The newspaper accordingly acted correctly in noting the importance of religion to them. The couple were entitled to their beliefs and entitled to express them in an interview with a reporter. The newspaper was entitled to report their views, provided it did so accurately, and there had been no complaint from the interviewees on that score.

The Press Council did not accept Mr Church's argument that readers expecting a report devoted to farming would be misled by the religious references. The importance of religion in the couple's lives came in the second sentence of the report. If affronted the reader needed to go no further. Mr Church contended that the Council should endorse the right not to be exposed to such beliefs. But this would clearly infringe the basic right of free expression.

The Council noted that the use of a capital H on Him in the context of this article was a matter of style to be determined by the newspaper and followed widely observed practice, not least in English literature.

Principle 8 is intended to provide protection for those who might be discriminated against. The complainant's views, in this instance, were not in question. The issue was to do with the views, as reported, of the farming couple. Principle 8, therefore, did not apply.

Finding

The Press Council found nothing inaccurate or misleading, in the sense of Principle 1, in way the newspaper reported the views of this couple. Equally, and for the reasons cited above, the Council did not find the article in breach of Principle 8.

The complaint is not upheld.

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

Mayor's complaint not upheld – Case 2036

The Mayor of Wanganui, Michael Laws (the "Mayor"), complained about an article published on the front page of the *Wanganui Chronicle* on January 16, 2008. The article was headlined "Silence from City Hall on huge council shortfall".

The article dealt with a projected $6 million revenue shortfall faced by Wanganui District Council (the "Council") over the next three years as a consequence of projected zero profits from Wanganui Holdings, the umbrella entity for the Council's commercial interests. It made reference to an earlier meeting held in December 2007 and referred to the next meeting scheduled for January 18, 2008. The article made it clear further information would be made public following that January meeting.

The complaint is not upheld.

Background

The Council became aware of a significant projected revenue shortfall in December 2007 at a meeting, which was held in camera due to the commercial sensitivity of the information that was then being discussed.

The meeting was adjourned until January 18, 2008 to enable further financial information to be tabled.

The Mayor issued a press release dated January 8, 2008. This release referred to both meetings and indicated that the dividend from Wanganui Holdings "may not be as expected" and that this would have repercussions for the Council and ratepayers over the coming three years.

The newspaper did not base any report on the Mayor's press release in its January 9 edition. This led to a phone call from the Mayor's office to the newspaper – presumably to try to obtain some reportage of his press release. Later that day a reporter contacted the Mayor and sought further information for an article in the January 10 edition. This article "Council set to tighten spending" gave readers notice of the two meetings and explored, in a preliminary way, areas in which the Council might seek to put brakes on its spending.

Two correspondents responded to this article and had letters to the editor published on January 11 and 12, respectively. On January 13 the Mayor submitted a reply to these letters, which was not published.

On January 15, 2008, a reporter from the newspaper contacted the Mayor to seek additional information about matters which had been raised in the Mayor's correspondence. The Mayor, in accordance with his earlier indication, declined to make any further comment until after the scheduled January 16 meeting.

The newspaper then published its lead article on January 16. The Mayor complained to the Press Council.

The Complaint

The Mayor complained:-

- That his letter to the editor addressing the concerns of two earlier correspondents was not published;
- That the January 16 article gave the impression that he was deliberately withholding information from the public despite his earlier assurance that he would not do so;
- That the article also suggested that information had been gleaned from other sources and not from the Mayor or the Council;
- That the newspaper knew that he would be making further comment after the January 16 meeting so the allegation of silence was not fair; and
- That the headline to the article was deliberately misleading.

The Newspaper's Response

The editor acknowledged that the Mayor was not in a position to disclose sensitive information, which had not yet had full consideration by the Council. The newspaper was, however, interested in further comment on a suggestion contained in his letter to the editor where it appeared he was blaming the previous district council for the current financial predicament. He referred, for example, to "trading issues surrounding Wanganui Gas … which were inherited by my council and have only just

become apparent. Further, he warned, "[y]ou may well find that the causes of this latest reverse pre-date my council's life".

The editor maintained that such strong allegations required the newspaper to seek further information particularly when the Mayor was requesting that his letter be published verbatim. The editor advised that the Mayor's letter "demanded answers and [she] would have been seriously remiss had [she] published it without instructing [her] staff to seek more information".

When that information was not forthcoming, she declined to publish his letter to the editor. The editor stood by her decision not to publish the Mayor's letter noting that, in her opinion, it amounted to little more than propaganda when viewed in isolation and that it "did not answer the questions that ratepayers deserved to know".

The newspaper's next report made reference to that lack of comment. This article also, however, made it very clear that public comment would be made after the Council meeting. The editor maintained that it was appropriate for the newspaper to report on the Mayor's lack of comment.

Insofar as the purported impression of information having been obtained from sources other than the Mayor, the editor explained that the use of the terminology "*The Chronicle* understands…" contained in the article was not used to give an impression of another source, but to differentiate between information that had been confirmed as fact and information that the reporter had concluded as deduction. She maintained there was nothing untoward about this differentiation in the circumstances.

She stood by the headline used as accurately informing readers that questions which the newspaper were trying to have answered, had not been answered at the time of publication. There was not, she argued, any editorial bias.

Discussion

The Press Council has always held that the decision whether any letter to the editor is published is the sole prerogative of the editor of the newspaper. Further information was sought about important aspects of that letter but this was not provided. On that basis, the editor declined to publish the Mayor's letter as she was entitled to do. There was nothing to support the Mayor's claim of editorial bias.

The Press Council found the Mayor's claim that the article suggested that he was withholding information to be unduly sensitive and, on balance, unfounded. A newspaper has the right to seek further information; the Mayor had the right to withhold further comment. A newspaper can, however, report on any lack of comment.

The use of the phrase that "[t]he *Chronicle* understands …" as a differentiating technique between two different types of information is, in the Press Council's view, an entirely acceptable journalistic device.

The Press Council was satisfied that the newspaper made it very clear that there would be public comment made by the Council in two day's time. It rejected any purported need to report this more extensively than had already occurred.

Finally, the Press Council was satisfied that the headline accurately and fairly conveyed the substance of the report and that it was not, therefore, misleading.

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

man), Aroha Beck, Ruth Buddicom, Kate Coughlan, John Gardner, Penny Harding, Keith Lees, and Denis McLean.

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

No 'secret report' and no 'battering' – Case 2037

The New Zealand Press Council has upheld in part a complaint against the *Sunday Star-Times* by the New Zealand Qualifications Authority following the newspaper's publication of an article on March 16, 2008, headlined: "NCEA battered by secret report."

Background

The page three article began: "The first major analysis of schools' NCEA marking shows many teachers are awarding better grades than examiners do – with high-profile schools among the dozens suspected of marking too high." The second sentence said: "This means students who shouldn't have passed NCEA may have. Others might have missed out on university entrance because their school marked tougher than others."

The newspaper went on to say the release of what it called the "secret analysis" to the *Sunday Star-Times* under the Official Information Act had sent the NZQA into "damage control" to warn schools about the results, and it said many principals had said they didn't know about the study or findings.

"NZQA is now scrambling to refine its figures, work out the size of the problem, and bring school marking into line," the article continued, explaining in the seventh paragraph that in 2007, NZQA had analysed all schools' marking, comparing their 2006 exam results with internal assessments grades. According to the report, one in four of the country's schools would be under scrutiny for the marking.

The newspaper reported in the eighth paragraph that the results were tentative and should be interpreted with caution. Some 63 schools had given more generous markings than examiners while 61 schools had given lower grades.

In the 13th paragraph, it reported: "Although the gap between internal assessment grades and exam results tended to be bigger at low-decile schools, many top schools featured on the list."

Discussion between the NZQA and the Sunday Star-Times

On March 20, the chief executive of the NZQA, Dr Karen Poutasi, wrote to the editor of the *Sunday Star-Times*, expressing her disappointment about the article. The research data had been released to the reporter with an explanation that the research was at its early stages and that only tentative conclusions, at best, could be drawn from it.

The nub of the complaint was the newspaper's reference to schools statistically identified as "outliers" for certain subjects. These were schools at which results for internal assessment were either unexpectedly better or poorer than those for external assessment and greater than the majority at other schools. As part of the analysis, however, the NZQA was automatically treating 5 percent of schools in each subject as outliers.

In her letter, Dr Poutasi said the work was far from secret and had been announced at a media conference on May 29, 2007. It was also explained on the NZQA website. Contrary to the article and heading, there was no report as the process was still being refined, and raw data was still being analysed. The NZQA was mid-way through this process.

It was nonsense to say the NZQA was "scrambling" to refine its figures. A key part of the research was the inclusion of "Not Achieved" data for internal assessment, which was being reported for the first time this year, and couldn't be included until it was reported.

The NZQA was not in "damage control" over release of the information. It was keeping its customers informed that the raw data was being released halfway through a research process because it was required to release the information under the OI Act.

There was no evidence students had received incorrect grades as a result of the internal assessment. The raw data merely identified instances where the results varied from the mean by more than two standard deviations. There were a number of reasons why this might occur.

The editor of the *Sunday Star-Times* responded on March 26, saying the story was not misleading and that it had made clear the figures should be interpreted with caution.

"The key trend" in the article that internal assessment marks were generally higher than externals, and that gap tends to be larger at low-decile schools, was confirmed by the NZQA itself.

The headline had referred to a "report" and while she accepted it was not strictly a report, the distinction was not significant from a reader perception.

The editor said she believed the use of the word "secret" was justified. While the intention to compare results had been mentioned in May of the previous year, references NZQA had sent were fleeting and vague.

While a principals' meeting in August 2007 had discussed the figures, principals of schools the newspaper had spoken to did not know they were considered "outliers" until the NZQA contacted them as a result of the newspaper's inquiries.

A version of Dr Poutasi's letter was published on March 30. At the bottom was an unsigned note, presumably authorised by the editor, saying the newspaper had responded privately to a not-for-publication version of the letter published, "strongly rebutting each of the points raised." The note defended the article.

The Complaint

Not satisfied with the outcome, on April 10, Dr Poutasi formally complained to the Press Council. With her letter, she included correspondence between the newspaper and the NZQA in the days prior to publication.

Dr Poutasi reiterated that the main heading – "NCEA battered by secret report" – was inaccurate. There was no such report and NCEA was not battered by the raw data supplied.

The first paragraph stating "analysis of schools' NCEA marking" showed many

teachers awarding better grades than examiners was the newspaper's own analysis. NZQA had repeatedly stated any conclusions were at best tentative and there could be a range of reasons why a school might appear in an "outlier" category, most of which were not due to any inappropriateness in marking. No schools were "suspected of marking too high."

There was no "secret analysis." The work had been discussed at a May 2007 media conference, written about in other newspapers and referred to in background on the NZQA website.

The article referred to NZQA Deputy Chief Executive Bali Haque discussing the issue at a Principals' meeting and said he "made it clear that he was deeply concerned about them (the results)." This suggestion was not raised with Mr Haque prior to publication and his concern when discussing the issue with principals was not about the data but the likely tone of coverage by the *Sunday Star-Times.*

The editor had said the article had said the "results" were tentative and should be interpreted with caution. But that was in the eighth paragraph and, as stated repeatedly to the reporter, the data provided was in raw form and did not constitute results. Any conclusions were at best tentative and that was by no means made clear in the tone or content of the article or headline.

The release of the information to the *Sunday Star-Times* had not sent NZQA into "damage control." It was carrying out its normal practice of informing schools involved if they were likely to be the subject of media interest and the NZQA's response.

It was baseless to say NZQA was "scrambling to refine" the figures because the data supplied remained the only data and identical data had been supplied to other media.

In her letter, the editor had misrepresented the article when she said the key trend outlined was that internal assessment marks were generally higher than externals. Its theme was that a serious issue existing in that internal assessment led to students receiving incorrect grades. There was no evidence of that. It had long been recognised that achievement was higher in internal assessment than in external.

Dr Poutasi said it was unacceptable that in spite of being referred to research at Auckland University indicating the validity of NCEA assessment, the *Sunday Star-Times* printed "a sensationalist, negative article" and then attempted to "hide behind" qualifiers such as "might" and "may" as representing balance.

The Newspaper's Response

The newspaper's deputy editor wrote at considerable length of the efforts the reporter had gone to so that a balanced and comprehensive report could be written about the data. The reporter had repeatedly asked for access to the methodology used and to speak to an NZQA statistician. The requests were declined.

Because of the "lack of assistance" offered by NZQA, the newspaper had sought the advice of two independent statisticians who had supported trends about internal and external examinations and low-decile schools. These trends had been confirmed by the NZQA.

Because of the NZQA's concern over figures, the newspaper took great care in choosing which figures to quote.

The deputy editor defended the heading. The raw data showed clear trends, and the anomalies clearly damaged the credibility of NCEA marking.

Similarly, she justified the word "secret" because references to the work had been fleeting and made no mention of their findings or potential import.

Dealing with the first paragraph, she said it could not be disputed that there was a suspicion that some schools were making too high.

The deputy editor reiterated her editor's remarks that the newspaper had reported the results were tentative and should be treated with caution, and that the newspaper had good cause to believe the proposed article sent NZQA into "damage control."

Justifying the newspaper's statement that NZQA had been "scrambling to refine its figures", the deputy editor said the tone of its communication to principals "to us implied a hasty response to a damaging revelation in the wake of confirmation that the *Star-Times* was doing a story it clearly would have preferred to remain unreported".

The reporter had two sources for the information that Mr Haque had told principals he was deeply concerned about the results and that their variability revealed a huge problem for NCEA. The paper did not think it necessary to take those concerns to Mr Haque because the NZQA's significant efforts to follow up the data confirmed the level of the authority's concern.

The deputy editor also said that NZQA's concerted efforts to investigate internal assessment issues confirms "the scale of the marking variability is more than the authority believes is appropriate … The story served simply to highlight that the new data had revealed the disparities and work was under way to monitor and resolve them."

Discussion

The analysis of raw data and statistics requires the greatest of care, and it was clear to the Press Council from the correspondence and additional material supplied that both parties to this complaint understood that. The additional material, in particular emails and written responses, gave the Press Council insight into the complexity of the subject and how the parties negotiated with each other.

This material proved helpful to the Council when it came to deliberate on the complaint, even though the anchor points for those deliberations had to be the details of the complaint and what was published in the newspaper article.

Of the headline, Dr Poutasi complained there was no actual report and certainly not a "secret report". The word "report" usually indicates some formal documentation and the newspaper seemed prepared to concede there was no such document but that readers had not been badly misled.

As to its use of the word "secret" in the heading and in the story when referring to analysis, the newspaper said any public references to the issue were fleeting and vague. The New Zealand Oxford Dictionary definition of "secret" is "kept or meant to be kept private, unknown, or hidden from all or all but a few."

Some details of the NZQA's analysing of its data were known and had been made public – they were not a secret.

The issue of whether Mr Haque's comments to principals should have been put to him before publication is a troubling one. The deputy editor saw no reason to do so, yet the newspaper's reporter had said in an email on March 4 to the NZQA's senior media advisor: "Just to fill you in, I had a call from Bali this afternoon … I repeatedly reassured him that we will not be running this without putting everything to NZQA first …" In view of such assurances about "everything," the newspaper was unwise to overlook the commitment of its reporter.

The newspaper article made at least two references to the tentative nature of the data but Dr Poutasi complained they were not sufficiently prominent, especially when the emphatic heading and introduction were taken into account. An ordinary reader of the entire article would have received that message but at first glance, there was a strong indication that NCEA was in trouble.

The bold first heading sat oddly with the tentative nature of the research and analysis, which the newspaper said it accepted. It followed therefore that any conclusions had to be tentative – reported as such - and could not bear the weight of unconditional conclusions.

The newspaper rightly said it did advise readers the results were tentative. The issue for the Press Council in considering this aspect was whether the overall impression from the heading and article supported that contention.

The discussion over whether the newspaper's inquiries sent the NZQA into "damage control" seemed based on semantics. The NZQA said advising principals of likely media interest was normal procedure; the newspaper saw something more sinister and feared other media were being alerted. The newspaper's description of what happened, while more than the NZQA believed justified, was not unreasonable.

The claim that NZQA was "scrambling to refine its figures" could also be considered reasonable in that the NZQA was going to analyse the data further and take up issues raised with relevant schools.

Dr Poutasi said the editor had misrepresented the thrust of the article when she said the "key trend" of the story was that internal assessment marks were generally higher than external. But as this criticism did not apply directly to the article itself, the Press Council had no need to make judgment.

Conclusions

The Press Council accepts that there is huge public interest in NCEA. The *Sunday Star-Times* was justified in making its inquiries. But it had a duty to ensure its article was accurate, fair and balanced. Articles based on raw, incomplete data have their risks.

Documents presented to the Press Council helped explain some of the processes both parties went through to ensure a balanced report would be published. Both parties appeared to begin the process in good faith but it is clear that towards the end, some tensions arose. This was regrettable.

The heading pushed beyond the boundaries of accurate reporting or correct analysis

of the data. Given that everyone agreed that the raw data had to be treated with caution, there was no place for absolutes or firm conclusions.

It was unfortunate, in the Press Council's view, that it was presented unconditionally because the article would have suffered little from a less emphatic initial tone and without dramatic references to a "secret report" or "secret analysis". Nevertheless, the *Sunday Star-Times* was entitled to make its own analysis of the raw data received.

There was, however, a semblance of balance about the incomplete nature of the data within the body of the story.

Findings

The complaint that the headline was inaccurate was upheld. There was no report as such, and the error quite significant. Given that the data was inconclusive – something the newspaper conceded – it was a step too far to say that the NCEA had been "battered".

The complaint that the use of the word "secret" in the heading and text is inaccurate was upheld. Secrecy implies a deliberate withholding of or attempt to conceal information and this was clearly not the case.

The complaint alleging in effect a lack of balance in not giving Mr Haque an opportunity to respond to statements he was reported to have made at a meeting of principals, which appeared to be at variance with later statements, was upheld. The newspaper's reporter had said she assured Mr Haque "everything" would be put to the NZQA for a response. Having given that assurance, the newspaper should have kept to its word.

The complaint that insufficient prominence was given to the tentative nature of the data was difficult. Its tentative nature was acknowledged but offset by the strong first heading. Such an important aspect should have been accommodated. The emphatic nature of the heading contrasted confusingly with the later statements about the tentative nature of the data. On balance, however, the shortcomings of the data were acknowledged and the complaint was not upheld.

The complaint about the statement of "damage control" was not upheld. The *Sunday Star-Times* was entitled to draw that conclusion.

The complaint about the statement of "scrambling to refine its figures" was not upheld. The newspaper had reason to believe this statement was true and, given that the figures were to be refined, it was not inaccurate.

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

Persian Gulf, Arabian Gulf or The Gulf? – Case 2038

Introduction

Babak Mahdavi complained to the NZ Press Council about the *New Zealand Herald*'s usage of "Arabian Gulf" or more simply, "the Gulf" instead of "Persian Gulf". In Mr Mahdavi's view, both "Arabian Gulf and "the Gulf" are inaccurate and

he cited one of the Press Council's Principles… "that publications should be guided at all times by accuracy, fairness and balance and should not deliberately mislead or misinform readers…".

His complaint is not upheld.

The Complaint

Mr Mahdavi wrote to the editor about a financial article, which appeared in the *Herald* in March 2008 and included the phrase "the oil-rich nations of the Arabian Gulf".

He objected to "Arabian Gulf", pointing out that the New Zealand Government and the United Nations both used "Persian Gulf" for that body of water.

He viewed both "Arabian Gulf" and "the Gulf" as "illegal and fabricated" terminology.

The deputy editor's reply was short. He accepted that there had been a breach of their own style in using "Arabian Gulf". However, "the Gulf" was normal *NZ Herald* usage and the newspaper would continue that policy.

Dissatisfied, Mr Mahdavi made a formal complaint to the Press Council.

In support, he suggested that UN recognition of Persian Gulf had the force of international convention and attempting to change such a long-accepted, historical term smacked of "bias and discrimination".

He supplied further examples where "Arabian Gulf" had been used in the *NZ Herald*, to show that the newspaper had contravened its own house style (The Gulf).

Finally, he pointed out that the Broadcasting Standards Authority had upheld a similar breach of accuracy complaint, against the use of "Arabian Gulf" during a broadcast news item. (A complaint filed by Mr Mahdavi.)

The Newspaper's Response

The deputy editor replied that the newspaper had deliberately adopted the term "the Gulf" to avoid being seen to take sides in the dispute.

Many newspapers used "the Gulf" for that reason and he gave examples of such publications (largely British).

If the very occasional error had been found, some three in five years, this was "not unacceptable" and certainly not systematic breaches of the house style guide.

He stressed that the newspaper had the right to set its own house style and that the *Herald* would continue to use "the Gulf" despite the complaint, because "the Gulf" allowed the newspaper to maintain its neutral stance.

Further Correspondence and Argument

The complainant replied by pointing out that this complaint was about the specific usage, "Arabian Gulf", (although "the Gulf" was also inaccurate in his view).

He acknowledged that arguments about the correct name for this body of water were largely political, citing, for example, Egyptian President Gamal Nasser's repeated use of "Arabian Gulf" in an apparent attempt to awaken pan-Arab forces in the Middle East.

In short, the complainant saw "Arabian Gulf" as propaganda. If the *NZ Herald*

used that term (or even "the Gulf") it would be taking the Arab side, whereas using the "accurate" term, "Persian Gulf") they would be taking the side recognised by both the New Zealand Government and the UN and sanctioned by international laws and conventions.

In his view British publications that avoided "Persian Gulf" were supporting the political and financial interests of the British Government and the British media.

He argued that just because it was a well-established policy of the *NZ Herald* to use "the Gulf", that did not mean that it was the correct policy; nor was it a correct policy just because it followed the practice of some (largely British) publications.

The final comment from the deputy editor of the *NZ Herald* was to reiterate the newspaper's right to set its own house style on such controversial issues. He also noted that the stretch of water between England and France is called the English Channel by the English and La Manche by the French and no one would expect the English to call it La Manche or the French to call it the English Channel.

Discussion and Conclusion

The Press Council believed some geopolitical background was relevant.

This body of water is bordered on the north and east by Iran, on the south and west by Oman, the United Arab Emirates, Saudi Arabia, Qatar and Bahrain. To the north-west lie Kuwait and Iraq. In summary, it separates Iran from the Arabian Peninsula.

Sectarian, ethnic and territorial disputes are endemic. Iraq and Iran fought a bloody war from 1980 until 1988. The war following Iraq's invasion of Kuwait in 1991 was variously known as the Persian Gulf War, or, more frequently, the Gulf War.

Three islands in the waterway are the subject of a dispute between Iran and the United Arab Emirates. Iran controls the islands but the UAE claims them.

Many organisations wishing not to take sides use "The Gulf". This term also seems to have increasingly wide usage: one can read academic papers about medical problems endemic to the Gulf region, buy cooking books with recipes from the Gulf, examine the interplay between oil and politics in the Gulf.

However, this linguistic middle ground is as unacceptable to Iran as Arabian Gulf.

The complainant stressed that Persian Gulf was the only accurate usage, not only because of the undoubted history of the term, but also because the United Nations uses Persian Gulf.

However, that guideline applies only to its own papers, publications and documents.

There is no "international convention" on the use of Persian as opposed to Arabian Gulf/the Gulf, as the complainant would have it.

The UN cannot "rule" on language use nor on place name use throughout the world.

The UN is not the final arbiter here.

If it were some kind of Supreme Court of Toponymy, we would never hear the name Taiwan (which is not recognised by the UN). Equally, countries and publications would use Myanmar (which the UN recognises) and not Burma, but many coun-

tries, including the United Kingdom, the United States and Australia, for example, have not accepted that the name change was the legitimate choice of the Burmese people. The twin form Burma/Myanmar is general use in the European Union. In summary, much of the world takes a position different from the UN.

New Zealand's official stance, as confirmed by the Ministry of Foreign Affairs and Trade, is to endorse the term "Persian Gulf", although it is recognised that in some instances the Gulf will be used (e.g. the Gulf Cooperation Council).

Even so, there are transgressions. A Cabinet Minister welcomed a new Emirates air service with "it will boost efforts to attract visitors from the Arabian Gulf". (Practical politics and diplomacy interplay in matters of this kind – would one welcome a new Emirates route by referring to the Persian Gulf?)

A crown owned entity has noted that "the states of the Arabian Gulf represent a dynamic and high-yielding opportunity for NZ".

The NZ Defence Force issues press statements that use Arabian Gulf and "the Arabian Gulf region" appears in its briefing papers.

Perhaps most tellingly, since 2001 New Zealand has established a medal for service in the Arabian Gulf. i.e. The New Zealand Service Medal (Arabian Gulf)

The Press Council also notes that many authoritative sources use Arabian Gulf and/or the Gulf.

Maps and the place names on the maps are often political constructs and it becomes impossible to delineate an objective truth. Which is accurate - Persian Gulf or Arabian Gulf? Here it depends on one's political or national or ethnic point of view.

Mr Mahdavi would have it that the *NZ Herald* should maintain the New Zealand Government's position, which is to use Persian Gulf.

That notion, that a newspaper should follow government policy, is an intriguing idea but hardly an attractive one in a free and open society. It needs to be stated simply and clearly: a New Zealand newspaper has the right to take a position directly opposed to a policy or a position of the government.

The Press Council might have some sympathy for the older term, Persian Gulf, but the waters in this region are indeed murky and the Press Council will not enter them. It is not prepared to uphold complaints against either usage, Arabian Gulf or The Gulf.

In the end, this seemed as much a dispute about sovereignty and territory as a complaint about inaccuracy.

The complaint is not upheld.

Press council members considering this complaint were Barry Paterson (Chairman), Aroha Beck, Ruth Buddicom, 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.

Comment from unsuccessful party not required in judgment report – Case 2039

The Press Council has not upheld a complaint from Christopher O'Neill about an

article in the *New Zealand Herald,* published on January 19, 2008, reporting on a High Court judgment prohibiting Mr O'Neill from issuing or continuing proceedings in the Human Rights Review Tribunal without leave of the Court.

The Press Council has read the High Court judgment, dated December 20, 2007. The report did not go behind or beyond the terms of a final judgment of the High Court and get "both sides". Newspapers are not required to "balance" an adverse court ruling by affording the unsuccessful party an opportunity to comment. The article was a fair, accurate and balanced summary of the Court's decision and the reasoning therein.

The complaint was not upheld.

Press Council members considering this complaint were Aroha Beck, Ruth Buddicom, Kate Coughlan, Penny Harding, Keith Lees, Clive Lind and Denis McLean.

Barry Paterson and John Gardner took no part in the consideration of this complaint

Courses for horses – Case 2040

The Press Council has upheld a complaint by PrimeVal NZ Ltd against *The Organic Equine* magazine over a report discussing the relative merits of joint supplements for horses.

The Complaint

PrimeVal NZ objected to an article in the March 2008 issue of *The Organic Equine*, headlined *Joint Supplements Demystified,* over its assessment of the usefulness of hydrolysed collagen on joints in horses.

Specifically, the article claimed that the evidence for the benefits of collagen on joints was "scanty" and that there were no equine studies. It also claimed that the dose for a horse would have to be as high as 40,000mg a day.

PrimeVal NZ, an importer of a collagen-based joint supplement challenged the statements, claiming plenty of research data showed the benefits of collagen supplements, and specific studies involving horses.

Director Nathalie Sperling said the article was taken from the US website MyHorse.com where it was credited to research veterinarian Dr Eleanor Kellon. She said the reprinted article was based on unfounded statements, it was damaging to the company's reputation and could have an adverse affect on product sales.

Ms Sperling also said the dose rate specified in the article was unfounded.

PrimeVal NZ asked the magazine for a full apology, with a "correct, complete and accurate explanation of the ingredient hydrolysed collagen and its proven benefits".

The Magazine's Response

The Organic Equine's director and co-editor, John Fistonich, said the magazine went to great lengths to provide accurate and useful information to readers, while commercial interests tended to offer information that supported their particular products. He said it researched stories from reputable sources specialising in horse health and nutrition.

The article in question was published after consulting a variety of research sites and publications. It said the source of the information on hydrolysed collagen was research veterinarian Dr Eleanor Kellon, from an article published in the December 2007 issue of Perfect Horse.

The magazine said it asked Ms Sperling to provide independent research that substantiated her claims, but the references she gave were unable to be verified. "As none of the evidence offered could be substantiated or even read, we did not feel the need to retract or apologise." [Some of Ms Sperling's information was in Dutch]

Mr Fistonich said it had offered to test PrimeVal's product on its own horses, but the offer had not been taken up.

He said the magazine had reported on a variety of components used in the treatment of joint conditions in horses. It had printed information that was accurate and verifiable but because it did not support PrimeVal's product, the complaint had arisen.

The magazine did not name PrimeVal nor did it imply any fault in the product.

Discussion

The Press Council considers it important that the distinction between fact, and conjecture, opinions or comment be maintained. In this case, the lines were blurred, which led to the complaint.

The Organic Equine's article was taken from a more extensive article by a research veterinarian that appeared in another magazine and website, but the magazine reproduced this article without naming its source. Because of this omission, the information expressed in the article was not seen as the view of one expert, but presented as fact by the magazine.

Prime Val NZ did not agree with the assessment of hydrolysed collagen – an ingredient of one of its joint supplement products – and took issue with the magazine over its claims.

The willingness of the parties to settle this dispute over the article was not helped by another ongoing dispute over a matter outside the jurisdiction of this Council.

A simple remedy would have been for Prime Val NZ to contact the magazine's editor, in the first instance, to challenge the view expressed about collagen in the article and to offer an alternative view. It might then have been resolved by a letter to the editor.

The Press Council did not view the article as an attack on PrimeVal's products. Neither the company, nor its products, were mentioned. For those readers who might associate PrimeVal with hydrolysed collagen, the article simply said there was not enough evidence of its effectiveness.

The complainant provided the magazine and the Press Council with details of further studies on collagen, but the Council was not in a position to conduct a literature review to evaluate what evidence there may or may not be for hydrolysed collagen and its use in horses.

Conclusion

The Press Council upheld the complaint on the grounds that the magazine did not maintain the distinction between comment and fact.

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

Mania – Case 2041

The Press Council has not upheld a complaint by Philip Wright regarding the use of the word mania on a billboard publicising the feature insert Puzzle Mania in the *New Zealand Herald* of May 19, 2008. The billboard read "Inside today Puzzle Mania".

The Complaint

Mr Wright advised he was a barrister who did a lot of work in the mental health area both in New Zealand and in the United Kingdom. He had seen first-hand the "… horrific and gut-wrenching effects caused by mania, hypermania and depression …".

He took grave exception to the *Herald*'s use of both the word and a psychiatric condition to sell newspapers. He thought the *Herald* should apologise to all mental health sufferers and consumers and be forced to make a significant donation to a trust to which he was an advisor.

The Newspaper's Response

The editor advised the newspaper based its house style on the Concise Oxford Dictionary which defined mania (in combination with another word) as denoting extreme enthusiasm or admiration, giving as an example Beatlemania.

He noted the Puzzle Mania feature in each Monday's *Herald* was for puzzle enthusiasts and the use of the word was therefore appropriate.

The Herald did not seek to belittle people's suffering.

Finding

The Press Council could not uphold this complaint. While having every sympathy for people suffering from psychiatric mania, the Council agreed with the editor that the word had a wider usage, and was used appropriately in this context.

The complaint was not upheld.

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

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

Naming of PR consultant OK but report of settlement deficient – Case 2042

Background

On Saturday, February 23, *The Dominion Post* published an article headlined "Out of Step". The article concerned the dealings of unit trusts called First Step, enterprises associated with Money Managers, a business founded and substantially owned by Doug Somers-Edgar. The report also referred to First Steps trustee, Calibre

Asset Services. The article quoted David Peach, owner of a public relations company, who the article stated represented Mr Somers-Edgar.

The article further quoted a press statement released by Mr Peach.

The report also referred to a legal action brought by Mr Somers-Edgar against a financial adviser whose website had been critical of First Step and said that the action had been discontinued.

One of the three complaints was upheld; two were not upheld.

The Complaint

In a letter to *The Dominion Post* dated March 7 the lawyers for Money Managers complained about several aspects of the article. On March 12 lawyers for the newspaper responded to the complaints, broadly rejecting them. Following this response Money Managers' lawyers lodged a complaint with the Press Council on May 1 pursuing three of their original objections to the article.

They complained on the grounds of inaccuracy in that Mr Peach did not represent Mr Somers-Edgar or Money Managers but was a spokesman for First Steps' asset manager, Matrix Funding Group Limited. It said this had been specifically pointed out to the reporter.

The complainants said it was vital for PR companies' clients to be correctly identified and that attributing statements to the PR companies rather than to the clients compromised the PR companies' independence. In this case First Step, Money Managers, Calibre and Matrix Funding Group all performed distinct roles.

The second complaint referred to the report that the legal action brought by Money Managers and Mr Somers-Edgar against a critic had been discontinued. The proceedings were discontinued only because a settlement had been reached in the action. This reference was a breach of the Council's principles on accuracy and the failure by the newspaper to correct this after it had been pointed out was a breach of the Council's principles on the publication of corrections.

The third complaint objected on the grounds of accuracy to the newspaper treating a press statement issued by Mr Peach on behalf of the asset manager of the First Step trusts as if it were a statement by Mr Peach rather than by his clients.

The complainants submitted notes taken by Mr Peach with an explanation of his conversation with the reporter. This stated he had told the reporter he did not work for Mr Somers-Edgar or Money Managers but for Matrix. The complainants also submitted an affidavit from Joseph Peart, principal lecturer in communication studies at AUT, stating his opinion that the media convention involving PR companies is that statements of the kind referred to in the article were not attributed to the PR company but to the client.

The Response

In a letter to Money Managers lawyers, dated March 12, the lawyers for *The Dominion Post* responded to the complaint that Mr Peach did not represent Mr Somers-Edgar. They pointed out that the reporter had been directed to Mr Peach by Mr Somers-Edgar and he was entitled to conclude Mr Peach represented both Mr Somers-Edgar and the companies with which he was involved.

On the matter of the discontinued legal proceedings, this was a statement of fact and they did not agree the reference to it was misleading.

Concerning the attribution of the disputed statement the reporter was entitled to say Mr Peach was the author. It was issued by Peach Communications Limited and Mr Peach's name and no other was on the document.

Further Comment

Following the lodging of the complaints with the Press Council *The Dominion Post*, in a letter dated May 27, provided additional material to the Council. It included transcripts from a recorded telephone conversation between the reporter and Mr Peach and a letter from Hugh Rennie QC who had acted for the defendant in the discontinued case instituted by Money Managers and Mr Somers-Edgar.

Mr Rennie said that after negotiations a correction was published on the defendants' website withdrawing any suggestion that Money Managers and Mr Somers-Edgar had acted in a dishonest way. Following some delay after this publication the proceedings were discontinued.

The newspaper disputed Mr Peach's account of the conversation between him and the reporter. It said Mr Somers-Edgar had identified Mr Peach as the sole spokesperson for First Step which, it said, was essentially a group of funds and companies with which Mr Somers-Edgar was involved.

Its report that the defamation case had been discontinued was correct. There was no false impression conveyed that the case had been withdrawn because Mr Somers-Edgar and Money Managers had concluded their claims were without merit.

On the attribution of a media statement to Mr Peach the newspaper contended there was nothing unusual in doing so. *The Dominion Post* and other newspapers regularly named PR people speaking on behalf of companies. The newspaper supplied the Council with several examples of this practice.

On June 18 the lawyers for the complainants responded to the newspaper's reply. They said the transcript of the conversation had been raised with Mr Peach who said it was not complete and omitted some earlier parts, including his making it clear he did not work for Mr Somers-Edgar or Money Managers Limited.

The statement from Mr Rennie was consistent with the complaint. The essence of the complaint was that it was misleading simply to state the proceedings had been discontinued when there was a settlement that had required a correction to be published. The clarification from Mr Rennie substantiated the need for *The Dominion Post* to have published its own correction.

The examples of public relations practice provided by *The Dominion Post* had correctly identified those on whose behalf the spokesmen were speaking. This had not been the case in the article that was the subject of the complaint.

In its final response to the Council on July 3 *The Dominion Post* took strong issue with the claim that vital parts of the transcript of the conversation had been omitted. It omitted only the first 30 or 60 seconds when the reporter introduced himself. The newspaper disputed that Mr Peach had stated he did not work for Mr Somers-Edgar and challenged other parts of Mr Peach's account of the conversation.

Discussion

The Council has consistently taken the view it is not in a position to rule on disputed matters of fact and that was the situation in this case in which the accounts of the conversation between the reporter and Mr Peach were at such odds.

It was, however, not disputed that Mr Somers-Edgar referred the reporter to Mr Peach to discuss the material of the article. In Mr Peach's own account of the conversations it was clear that he offered to provide background on the matters under review and "if he [the reporter] had any more detail and therefore specific questions around that detail I could get answers and come back to him". Given the close links between the companies involved it was not unreasonable for the conclusion to be drawn that Mr Peach did have some standing in these matters. The claim that he could speak only for his client, Matrix, was to draw an unrealistic separation between the bodies involved, despite their differing business functions.

The practice of naming public relations consultants is not unusual and does not compromise their independence. The question was whether readers are misled by such attribution and it was difficult to see that *The Dominion Post* readers were misled into any lack of clarity that Mr Peach's statement was issued on behalf of a client. It might have been preferable for that specific client to be identified but there is no reason to believe the reader would have been unaware he was speaking for Money Managers or an associated body.

On the matter of the discontinued defamation action there was no challenging the fact that it was discontinued. The issue was whether the reader might be reasonably expected to conclude this was because the claim had no merit. The newspaper disputes this. In the context of a critical article, however, there is an implicit assumption of fault that would suggest this was the case and the omission of the detail that there had been a correction published on the website did tend to mislead. A simple correction would have satisfied this complaint.

The Decision

The first and third complaints were not upheld. There were different accounts of whether or not Mr Peach was specific in his identification of his clients but the reader was not misled, nor were Money Managers or Calibre Asset Services connected with matters to which they had absolutely no connection. The report was neither unfair nor inaccurate on this point.

The naming of Mr Peach as the source of a media statement was neither unfair nor inaccurate.

The second complaint was upheld. The failure to point out, even briefly, the circumstances of the withdrawal of the legal action was misleading. It could, and should, have been corrected.

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

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

Intelligence of readers should not be discounted – Case 2043

Introduction

Calibre Asset Services and Money Managers complained about the accuracy and lack of fairness of the start of a page 1 article, its headline, and a pointer, published in *The Southland Times* on February 8. Calibre is the trustee of the First Step trusts, a series of trusts promoted by finance advisory company, Money Managers.

The article, headlined "Investors taking class action", began: "A Wellington barrister is preparing to sue Money Managers on behalf of investors over the liquidation of a group of funds that left 7000 investors owed $457 million". It finished with the pointer to a story about a different financial firm, reading: "Fraud inquiry possible, Page 3".

The article was a syndicated one, written as also published in *The Dominion Post*, but the headline and pointer were created by and for *The Southland Times.*

The complaints were not upheld.

The Complaints

The first complaint was that the headline "Investors taking class action" did not accurately and fairly convey the substance of the article. Because the article went on to say that any proceeding was being "considered" and "possible", the headline was misleading as to content. The distinction between "taking" and "being considered" was a serious one, the first implying sufficient substance to concerns as to warrant court proceedings. Further, the reporting of financial matters required special care, particularly where there was a potential to destabilise market conditions and shareholder interests.

The second complaint was that the pointer was inaccurate, misleading and unfair because it conveyed the meaning there may be a fraud inquiry into the same matter that is the subject of the page 1 article. In fact, the second article had nothing to do with the first. The effect was exacerbated by the fact the words were in bold print and separated from the main article.

The third complaint was that the article's first paragraph implied that, after the realisation of the assets of the funds, the investors were $457 million out of pocket. In fact the $457 million was the balance in the investment trusts at closure and this bore no relationship to any losses investors might ultimately sustain. The true position was that by the end of February, $203.5 million would have been returned to investors. Of the $457 million, the original capital invested was $330 million, with the balance being accrued interest.

The Newspaper's Response

The paper responded that the articles did not imply that proceedings were imminent. Rather, as the article expressly said, the barrister referred to as taking action was "working with" a number of law firms, had declined to give causes of action, or comment on when court papers will be filed. It added: "The only proper implication

to take from these and other comments is that [the barrister] is still considering the timing, nature and structure of any possible proceedings".

It did not agree that the linking by pointer of two articles would have given the readers the impression of a fraud inquiry into Money Managers. There was no suggestion in the Money Manager article of a fraud. "We therefore believe that your client's accusations and concerns are over-stated and do not merit a correction".

There was no implication in the article that investors had lost or would lose $457 million. Rather it was stated that, on liquidation, the group of funds left 7000 investors owed $457 million, a statement verified by a Calibre report to investors on November 30, 2007.

It could not be construed that investors would lose that amount. Further, detail of the amounts already paid out to investors ($186.5 million) and the amounts written in to the accounts ($108 million) were inconsistent with an implication of a loss of $457 million.

Further Correspondence

Southland Times editor Fred Tulett reiterated that the affected investors were clearly taking an action and that the pointer would be understood by readers as an alert to another article related to the collapse of a number of finance companies. The other complaint had been sufficiently answered.

Calibre and Money Managers reiterated that the headline conveyed the meaning that action was being taken, that the pointer implied fraud in relation to the first article, and that the article content did not meet standards of accuracy required of the current financial climate.

Discussion

Headline: The accuracy of the headline claim that investors were taking an action, hinged on a semantic understanding of the meaning of the words conveyed in the article's first paragraph: "A Wellington barrister is *preparing* to sue…" The words following did not provide a definitive answer. But the words "preparing to sue", in conjunction with comment declining to answer whether Calibre would be included in the action, gave credence to an understanding that an action was under way.

Calibre and Money Managers gave a raft of previous upheld Press Council decisions to support their case, but each example was a clear case of misrepresentation or error. This was not the situation with the article complained of.

Pointer: The words "Fraud inquiry possible" arguably conveyed a certain ambiguity. It was possible a reader might have expected a continuation of the Money Managers' story. With a story on such a serious issue, extra care should have been taken by the newspaper to avoid ambiguity. Some members considered upholding this aspect of the complaint but on balance determined not to do so.

The newspaper practice of providing pointers to other stories on a theme, is a well-entrenched one. It is even more likely that interested readers would have read on for their enlightenment and been quickly disabused of any confusion.

The first paragraph: Calibre and Money Managers' argument that the paragraph implied that investors were $457 million out of pocket fell in a similar category. While

it was possible a reader might initially have made that leap, reading on would have quickly cleared the matter up.

Calibre and Money Managers rightfully argued for particular care by journalists in reporting complex finance matters, clearly with reference to a current situation of company failures and investor uncertainty. Newspaper reporting of such complexities brings its own difficulties in simplifying for readers. But it has to be noted that in this case the intro was not inaccurate, and the reporting in no way could be categorised as sensationalist.

Conclusion

The Press Council acknowledges the need for stringent accuracy in reporting financial matters in the current climate. But it is asking too much to expect a newspaper to identify and remove every possible ambiguity contained in phrases and clauses read in isolation. The intelligence of readers should not be so readily discounted.

For the reasons above, the complaint was not 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, Alan Samson and Lynn Scott.

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

Wahine tragedy recalled – Case 2044

John Fulton, a survivor of the Wahine disaster of April 10, 1968, complained to the Press Council about inaccuracies in a graphic published in *The Press* on the 40th anniversary of that tragic event. The complaint was not upheld.

Background

The half-page graphic, under the headline "The Wahine Disaster", depicted events leading to the sinking, provided a timeline from 6.10 am to 2.30 pm on April 10, and showed photographs of survivors, helpers, and the stricken ship. At the bottom, there was a short summary of weather and other conditions leading to the tragedy.

The graphic was clearly an attempt to bring readers of today to a broad understanding of the events 40 years ago.

The Complaint

John Fulton complained to the editor that there were a number of inaccuracies in the graphic. It did not show that a massive wave hit the ship at 6.15 am compounding problems already being experienced in shocking conditions; that the ship was returning to open sea when the erroneous decision was made to reverse the ship, which led to the grounding on Pinnacle Rock; that the impact caused the starboard propeller to be shorn off; that the ship had two anchors out and was dragging its way up the harbour stern first; or that errors were made in depicting the position of key geographical features.

Mr Fulton was also critical of inaccuracies related to the survivors and those who did not survive.

In a further letter of complaint Mr Fulton listed a number of further issues with *The Press*, which concerned his perception that he was not given due attention during his attempts to correct what he considered the inaccuracies in the graphic.

He again stated that the story that the paper endorsed by publishing the graphic had inaccuracies, and that neither the editor nor his staff had taken the trouble to verify the facts of "that terrible day".

In his complaint to the Press Council, Mr Fulton reiterated statements made to the editor of *The Press:* the graphic should be retracted and a completely new graphic designed to show accurately the events of that tragic day. A full retraction should be made, with full apologies to the survivors, and relatives and friends of those who did not survive. Only by recounting events accurately would the true story be known to thousands of readers.

The Newspaper's Response

Mr Fulton had made an appointment to meet the editor of *The Press* in order to set the record straight. In the event, he met the deputy editor, Coen Lammers, and then followed this visit up with a letter in which he again outlined his concerns about the accuracy of the graphic and the need for the newspaper to make a formal apology.

Mr Lammers, in a letter of response, pointed out that the graphic on the Wahine disaster was based on official records of the disaster. He acknowledged that Mr Fulton disputed much of this information.

He stated that the points raised by Mr Fulton were not sufficient for a substantial follow-up or correction at that time.

However, he had suggested to the paper's chief reporter that Mr Fulton's account of the Wahine disaster could give an interesting slant on the story in next year's commemoration story.

Mr Lammers also acknowledged the ongoing pain and distress that the Wahine disaster had caused Mr Fulton.

To the Press Council the editor stated the graphic was well sourced from information provided by the Ministry of Culture and Heritage and Wellington libraries. They accepted there was one minor error but, in the context of the whole graphic, it was not of such magnitude as to warrant re-publication.

Conclusion

The Wahine disaster is engraved on the minds of all New Zealanders old enough to remember that terrible event. For those who were passengers or staff on the ferry, the events will never go away.

It is completely understandable that people who experienced the disaster want to ensure that the last hours of the Wahine afloat are remembered and represented accurately,

Forty years on, it is clear that there are still some tensions about what actually happened, and to summarise the events of that dreadful day in graphic form will inevitably lead to disagreement about what should and should not have been included.

The Press Council notes that a senior member of staff of *The Press* met Mr Fulton and his wife, responded in writing to his subsequent letter of complaint, and offered him the opportunity to tell his story next year.

The complaint is not upheld. Some of the inaccuracies listed by Mr Fulton were in dispute; others were not expressed strongly enough to leave readers with a distorted view of the events on April 10, 1968.

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

'Inexplicable' republication of inaccurate information – Case 2045

Peter Hausmann, Managing Director of Healthcare of New Zealand (HCNZ) and a former member of the Hawke's Bay District Health Board, complained to the New Zealand Press Council that an editorial, two articles and a correction published in *Hawke's Bay Today* in February and March 2008 were inaccurate and, together, represented unbalanced and unfair reporting.

The complaints against all four items are upheld.

Background

The Press Council noted the complaints were made against a background of what all parties agreed was a significant and highly-charged matter of public interest involving the governance and management of the district health board, the board's effectiveness, Mr Hausmann's appointment as a member of the board (from June 2005), his company's involvement with the board and claims of a conflict of interest, and other issues, including official inquiries, and the decision of the Minister of Health to replace the entire board with a commissioner on February 27, 2008.

Not unnaturally, strong views were held and expressed by those affected on a matter of intense local interest. *Hawke's Bay Today*, as the local newspaper, could have been expected to be in the thick of the considerable debate that flowed from an issue that vitally affected the region. All parties agreed the newspaper should play such a role.

The Press Council acknowledged the debate covered a vast number of aspects relating to the district health board and its activities, but the Council confined itself to the specific complaints.

The Complaints

Mr Hausmann complained that an editorial of February 21, 2008, headed *DHB Letter Just Political Posturing*, was inaccurate. The editorial was largely criticism of an ultimatum from Health Minister David Cunliffe to the board but, among other things, it said: "The most likely explanation for the standoff is, as one board member has pointed out, to publicly deflect the blame away from former Health Minister Annette King, who, against ministry advice and the board chairman's concerns, appointed Peter Hausmann to the HBDHB. A report is still awaited concerning allegations about a $50 million health contract won by Mr Hausmann's company."

Mr Hausmann said the statement implied his appointment was improper. His appointment was, in fact, made by the Minister following advice from officials that

correct protocols had been followed. The information was easily obtainable by the editor via an Official Information Act request, something he had done himself.

Further, HCNZ had not won a $50 million health contract. HCNZ had been identified through a Request For Proposal (RFP) process as the preferred provider for the development of a community services initiative, and the district health board and HCNZ were to develop the proposal further. But the district health board terminated discussions formally in a letter dated May 26, 2006, and there was no contract.

Mr Hausmann also complained of an article dated February 26, 2008, headed *DHB Goes to Court*. It largely reported how the board was taking the director-general of health to court along with a review panel "looking into its conflict-of-interest situation." The article reported: "The board became the subject of a governance review last year after it was discovered board member Peter Hausmann, a government appointee, had a hand in defining the terms of reference for a $50 million contract with his company, Healthcare of New Zealand. The contract process was terminated but another contract worth $1.1 million with Wellcare, a subsidiary of Healthcare of New Zealand, had already been signed by the board's CEO Chris Clarke without the board's knowledge."

The first sentence implied he acted unethically when in fact there was no contract. That had been explained to the editor in a letter dated February 22, well before the article was printed.

The Wellcare contract was signed between the company, the board and the Ministry of Social Development in early March 2006. By stating the contract was signed without the board's knowledge, the report left readers with the impression it was inappropriate or deceitful. In fact, the board's chief executive had the financial authority to sign because it was below a certain threshold and he was not required to put it before the board.

Mr Hausmann also said that if the reporter had undertaken proper research, the newspaper would have discovered key board members were aware of the Wellcare contract in February 2006 before it was signed.

A second article headed *HB Health Managers Slammed* published on March 3, 2008, reported criticism from Audit New Zealand and said: "Fellow board members believe Mr Hausmann was having discussions with management about the contract before attending his first board meeting. Sacked by Health Minister David Cunliffe last Wednesday, they were unaware there was a contract until one month after it had been signed. . . . Mr [Board chairman Kevin] Atkinson said . . . he was unsure how the board could be responsible for management's action around the contract when they were unaware it was happening until a month after it had been signed."

Mr Hausmann said some board members were aware of the contract, and this information was obtainable under the Official Information Act.

The newspaper's coverage in these and other articles had been based on sustained inaccurate and unbalanced reporting and had led readers to believe he had acted in an unethical and deceitful manner. The newspaper did not make a reasonable effort to check its facts before publication.

Initially, he had refused to make any public comment relating to the inquiry until after it was finished but this did not mean the newspaper could continue its inaccurate and unbalanced reporting. The facts were also available from other public sources.

Mr Hausmann said when he first complained via his lawyers on February 22, 2008, about the editorial, *Hawke's Bay Today* offered to publish a correction. The paper's lawyers offered a version, Mr Hausmann's lawyers offered a revision but suggested changes were ignored and the correction was published on March 8.

Headed "Correction", it read: "It has been drawn to our attention that an editorial in *Hawke's Bay Today* published on Thursday, February 21, and an article published on February 26, 2008, stated that a Hawke's Bay District Health Board contract was awarded to a company owned by board member and Government appointee Peter Hausmann, when in fact the contract process was terminated by the board before a tender was accepted because the board feared the process had been compromised. The editorial also reported that Mr Hausmann was appointed against ministry advice when in fact what the ministry did was express concerns. Neither of those matters affect the opinions expressed in the editorial. In stories published on February 26 and March 3, 2008, we reported that the Hawke's Bay District Health Board had been unaware of a contract with Wellcare Education, and in the latter article we quoted statements made by the former chairman of the board to that effect. We note that Mr Hausmann and Healthcare New Zealand Limited dispute this."

Mr Hausmann said the correction was still incorrect and misleading because there never was a contract process and the use of the word tender was inappropriate because it implied there was a contract. In its letter to the newspaper, the company forwarded a number of attachments including emails showing board members discussing the Wellcare contract before it was signed. Notwithstanding that evidence, the newspaper simply reported the company "disputed" what others had said and did not publish all the facts available.

The failure to report accurately breached Principle 1 relating to 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."

The failure to correct breached Principle 2 relating to 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."

Mr Hausmann also complained that the correction appeared on page 6 which was the same page as the editorial but it also involved articles and should have been given more prominence, on page 1 or 2.

The Newspaper's Response

In his response, the newspaper's editor, Louis Pierard, said Mr Hausmann's appointment to the board, the management of his potential conflicts of interest and the dispute that arose with the Minister were matters of considerable public interest and,

as the region's daily newspaper, *Hawke's Bay Today* was obliged to report on it.

Ideally, reports would have contained comment from all sides of the dispute and the newspaper sought comment from Mr Hausmann on a number of occasions. Mr Hausmann refused to comment until a review was released, which was his choice, but the newspaper could not allow this to prevent it from airing an issue of great public interest. The editor provided three examples between July 2007 and March 2008 where efforts were made to contact him for comment on stories involving him.

Occasionally, Mr Hausmann had issued press statements but on one occasion, it was not sent to Hawke's Bay Today. If Mr Hausmann wanted to ensure the newspaper's reporting contained input from him, then he should have ensured statements were sent to *Hawke's Bay Today*.

After calling Healthcare of New Zealand and leaving messages, the reporter received a call from Rory Newsam who said he was handling Mr Hausmann's publicity. Mr Newsam had said Mr Hausmann was reluctant to comment because of the inquiry but he would try to explain to him it was all right to do so without any legal ramifications.

The Editor said that Mr Hausmann had said the newspaper could have obtained the information through Official Information Act requests. Because he refused to comment, the newspaper was unaware he claimed to have such proof and could not have been expected to guess where such information might be located. The newspaper would have needed some guidance from Mr Hausmann.

Hawke's Bay Today's reports did not deliberately mislead or misinform readers, and the newspaper was entitled to adopt a position under the Press Council's Principle 7 on advocacy: "A publication is entitled to adopt a forthright stance and advocate a position on any issue."

The editor said: "Mr Hausmann's complaints about the fine details of the tendering process became increasingly petty. If he had responded to our questions, it might have ensured the arcane process of tendering might have been better understood. Certainly there was no intention to misrepresent his situation."

Dealing with the complaint about his editorial of February 21, 2008, Mr Pierard said the reference to Mr Hausmann being appointed against ministry advice came from a report in another newspaper of February 21, 2008, which quoted a board member and former clinician making the claim. He also referred to a Ministry of Health document obtained under the Official Information Act relating to Mr Hausmann's appointment to the board and potential conflicts of interest and best practice in such circumstances dated August 23, 2005.

The reference to the $50 million contract came from the same newspaper report, and Mr Pierard said it was "plainly incorrect. I raise the point not as absolution but to illustrate the fact that none is immune to error and that despite the best of intentions, errors can be perpetuated."

The editor said, in relation to the articles of February 26 and March 3, that no imputation of wrongdoing by using the phrase "had a hand in" was intended or warranted.

While Mr Hausmann insisted the board was kept in the picture about his involvement with the Wellcare contractual process, the emails provided were not communication to and from the board and mainly referred to the difficulty one board member was having in obtaining information from the chief executive.

Dealing with the correction, Mr Pierard said that rather than return calls or provide the newspaper with comment, Mr Hausmann chose to engage lawyers to threaten legal action and demand terms. This action ensured the process became protracted.

"In effect, Mr Hausmann succeeded in turning a straightforward matter into a complicated and expensive legal wrangle that has lasted for weeks. One could be forgiven for believing the intention was less a wish to set the record straight than to discourage this newspaper from publishing anything that might be critical of him and Healthcare of New Zealand Limited.

"*Hawke's Bay Today* does not resile from the obligation to set the record straight whenever we have erred. Without wishing to minimise our own errors – for which we stand accountable and which through out all of this we have had no reluctance to correct – we contend that Mr Hausmann's methods were singularly responsible for bringing about the impasse and any delay in resolution."

The newspaper considered the correction appropriate. It was not the function of a correction to go into the disputed issue in the sort of detail Mr Hausmann suggested.

When it became apparent Mr Hausmann was not happy with the form of correction, he was invited to write an alternative form of correction which would be published as a letter to the editor, but he had not taken up the opportunity. Principle 2 of the Press Council's Statement of Principles had therefore been met.

The Healthcare Response

In response to the editor, Mr Hausmann said the editor's response did not clarify when the newspaper tried to contact him in February and March and it appeared *Hawke's Bay Today* proceeded with publication on the assumption he would not comment, "leaving it at that because it was more convenient for the angle of the proposed articles."

While he had refused to comment on the early stages of an inquiry into the Hawke's Bay District Health Board in July 2007 due to confidentiality undertakings to the inquiry, he believed he was entitled to know in each circumstance more about what *Hawke's Bay Today* was planning to publish so he could choose whether the confidentiality undertakings still applied.

He had stated he had not been contacted by the newspaper in February or March and the editor's response did not dispute that. An article published on March 5 had stated he was not available but he had no recollection of being contacted.

It appeared the reporter had contacted his PR representative, Rory Newsam, of Senate Communications, about a press release sent out the night before. The statement had been sent to national networks and they knew *Hawke's Bay Today* would pick it up via the New Zealand Press Association, as was standard practice for regional newspapers.

The editor's comments about his refusing to comment were out of context be-

cause if the newspaper had contacted on the dates at issue in February and March 2008, and had presented him with written questions that he was in a position to answer without breaching his confidentiality clauses, he would have made comments or provided relevant information.

He accepted the editor was entitled to publish his editorial opinion but he took issue when it appears a reporter has not done enough (or any) research on a story and was simply relying on hearsay.

The emails relating to the Wellcare contract showed clearly that some board members were aware of the contract. Information did not need to be presented to board members at the board table to count as information presented.

The correction as published could hardly be seen as fair and balanced compared with the significance given the article of February 28 when published. Further, it claimed the matter of whether board members knew of the Wellcare contract was disputed. The company had provided facts to the newspaper and they should have been presented so readers could make up their own minds.

The editor's "disparaging" remark that he (Mr Hausmann) was less interested in setting the record straight than discouraging the newspaper was "insulting." He had to engage his lawyers to speak to the newspaper because there were significant legal issues involved, including the confidentiality undertakings given to the inquiry review panel.

The offer to write a letter was not received until April 17, long after the correction publication date of March 8. If the newspaper had listened to his concerns earlier, a more informed correction could have been printed to both parties' satisfaction. He did not believe the newspaper went to adequate lengths to ensure Principle 2 was complied with.

The Newspaper's Reply

In his response, the editor said he had little to add "other than to stress that the usual exigencies of daily newspaper production – combined with the need for accuracy and fairness – are not helped by obstructive, combative responses and an attitude that artfully presumes that if we are not omniscient, then we should be".

The reporter did not have records of when she tried to contact Mr Hausmann but she was emphatic that she tried making contact whenever the newspaper had a story that brought up new allegations around his behaviour regarding the potential contract and the one that went ahead.

Almost every report she wrote recapped what had happened in the saga and part of that would always include Mr Hausmann's involvement, which she did not contact him to verify each time. If there were an error after the first time she wrote the recap, she would have expected him to make contact. Because he did not, and continued not to, until he started issuing legal threats, she had nothing to indicate otherwise.

It was absurd to suggest the reporter went straight to Rory Newsam from Senate Communications on March 5. She was unaware Mr Hausmann had a PR firm working for him. She spoke to Mr Hausmann's PA who told her Mr Hausmann would call back. Instead, she received a call from Mr Newsam who introduced himself and said he would send the press release.

The editor said the fact that the press release was not sent to her when Mr Hausmann knew she was the reporter working on the DHB stories for the newspaper in the area in which the story was unfolding "is but one example of the obstruction to which I refer earlier. In his response Mr Newsam says the release was sent to metropolitan papers. Why, then, was it not sent to *Hawke's Bay Today* when we were closest to the story? Assuming we would pick it up off the wire is just not good enough. In fact, our news editor, who goes through the NZPA stories didn't pick it up. The fact that the reporter made the effort to hunt out the press release when she learned of its existence shows the lengths to which we went to ensure Mr Hausmann put his side of the story".

Discussion

The Press Council has always defended the right of newspapers to take a strong stand on issues (Principle 7) and to express strong opinions in editorials and comment pieces.

But the editorial must be based on fact. The editor was not able to rebut the errors contained in the editorial relating to the ministry advice on Mr Hausmann's appointment to the district health board – the Press Council noted the ministry said Mr Hausmann himself raised his potential conflict of interest - or the editorial's claim that a $50 million contract had been awarded to Mr Hausmann's company.

The article of February 26 repeated both claims, notwithstanding that the day after the editorial was published, Mr Hausmann's lawyers had written to the newspaper claiming no such contract had been entered into. On the day of publication (February 26), the newspaper's lawyers sent a letter to Mr Hausmann saying it was prepared to publish a correction on the issue. It seems inexplicable that the newspaper would wish to compound its error by running a similar report that very day.

The article of March 3 relating mainly to the report of the auditor-general contained reported statements of belief about the Wellcare contract from the board chairman. This article called for a concerted effort by the newspaper to get comment from Mr Hausmann and to record his response, even if it was no comment. The article made no such reference, and the editor provided no evidence that such an attempt was made.

Normally, a correction, given appropriate emphasis, would be the end of the matter. But it was clear in this instance the parties failed to agree on the appropriate wording and the correction as published failed to satisfy Mr Hausmann.

It does not seem reasonable that a newspaper, having erred, should have to print word for word what another party demands. But it would seem wise for a newspaper in such circumstances to take every care that all important, disputed issues are corrected, as much to the aggrieved party's wishes as possible. This did not happen in this instance.

The points of error in the correction raised by Mr Hausmann were small but valid. The editor did not help himself when he described Mr Hausmann's comments on the complexities of tendering and contracts as "petty." In fact, they were quite straightforward.

The fact that the newspaper, belatedly, was prepared to offer another correction

in the form of a letter to the editor was an acknowledgement that the first correction was inadequate.

In his dealings with *Hawke's Bay Today*, Mr Hausmann did not help himself. He was difficult to get comment from and that does not make the task of a reporter easy, particularly on such charged issues as the newspaper was reporting.

Mr Hausmann said he had his reasons for doing so, although he also wanted to be kept informed of what the newspaper was reporting. The Press Council can understand a newspaper being irked by such an approach but principles of accuracy, fairness and balance always apply and therefore reporters are obliged to strive for the other side, no matter what difficulties exist.

Further, there were other sources of information, according to information provided to the Press Council. The editor says the reporter wrote her first story on the contracting issues in July 7, 2007. According to the same information, the issues of the social services initiative and the Wellcare contract were determined in 2006. Regardless of the time the newspaper found out about the issues, there was plenty of time for Official Information Act requests or other inquiries so that readers could have been given accurate and independent sources of information on which they could draw conclusions, and the editor would have had other sources to rely on for his editorial, other than a report from another newspaper that was inaccurate.

On the question of the emails relating to Wellcare before the contract was signed, the Press Council did not wish to dwell except to say it seemed clear some board members were aware of the contract and therefore unequivocal statements that they did not know, needed to be treated with care.

Conclusions

The complaints about the editorial of February 21, the article of February 26 and the "Correction" of March 3, 2008, were upheld on the grounds of inaccuracy. The complaint about the article of March 3, 2008, was upheld on the grounds of a lack of balance and fairness.

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

Aroha Beck took no part in the consideration of this complaint

'Group of terrorists' hyperbole but OK in context
Complaint 1 – Case 2046

The Press Council has not upheld a complaint by Grahame Anderson about an article published in the *Waimea Weekly* newspaper on July 2, 2008.

Background

Grahame Anderson, one of the opponents of a plan by the Tasman District Council to contribute funds towards a performing arts centre in Richmond, complained to the Press Council that a newspaper article headlined: Centre plan was "deal of the century", described him as one of "a group of terrorists".

The article said Grace Church, builders of the centre, had withdrawn its request for funding because of "negativity" surrounding the project by a small group of ratepayers. Quoting disappointed supporters of the plan, the article said the loss of council involvement was "a lost opportunity and a railroading of the issue by 'a group of terrorists'" that had set Richmond back in its hopes for a quality performing arts centre.

The Complaint

Mr Anderson said the newspaper had "trebly" identified him among a "group of terrorists" because he was a founding member of the Richmond Community Forum – a group that had questioned the proposal, he had voted to seek a deferral of funding at a Forum meeting, and was the author of several letters to the editor asking questions of the council.

He wrote to the newspaper's editor, seeking a front-page withdrawal of the remark and an apology to him and to everyone to whom the remark had been directed.

He said the refusal of the editor to withdraw the remark and apologise left him with an implied reputation as a so-called terrorist on public record and could cause difficulties for him in his professional visits overseas.

The Newspaper's Response

This was one of two complaints about the same article from people who claimed they had been labelled as terrorists. The newspaper's editor provided one response to cover both complaints.

The editor said the newspaper did not print Mr Anderson's name in association with the terrorist comment, nor did it hint that he or the other complainant were involved at all. Mr Anderson and the other complainant named themselves in letters to the editor objecting to the article.

He said the terrorist comment was made after a meeting of local citizens on both sides of the argument by a person "heavily involved in the situation and a person of very high standing".

The editor said Grace Church had withdrawn its request for council funding because of "intense negativity and intimidation". The "terrorist" comment accurately described the frustration of one-half of those at the meeting.

He said both sides of the argument were given an opportunity to comment before the article went to print, with only one person from the group of opponents willing to go on the record.

Response

In response to the editor, Mr Anderson disputed the account of the public meeting. He said at the only public meeting to be held on the matter there had been a unanimous show of hands to request the Tasman District Council to defer funding.

Discussion

This was a local issue in which feelings ran high. The Tasman District Council's plan to provide a church with ratepayer money towards the building of a performing arts centre generated enough heat to cause the church to withdraw its application for funds.

It's the job of a local newspaper to report issues of this kind, and central to this story was why the church pulled out of the funding arrangement. It was legitimate for the newspaper to report the reaction of the losers – in their words. The "group of terrorists" comment was attributed to unnamed disappointed supporters of the funding idea.

The article did not name any of so-called "group of terrorists", but it was accepted that people following the issue in newspaper reports or letters to the editor columns might have been able to suggest names of group members.

Nevertheless, the "group of terrorists" comment was hyperbole. It was strong language but consistent with the tone of other exchanges in this argument. The context was a row over local body funding; no-one reading the article was encouraged to interpret the comment in any other light. The first paragraph of the story not only contained the contentious statement, it provides the context – "a group of terrorists has set Richmond back in its hopes for a performing arts centre".

The Council did not accept that the use of the phrase "group of terrorists" in the article would jeopardise overseas travel.

Conclusion

The Press Council believes it is duty of newspapers to encourage debate and recognises that freedom of speech can be raw. Among the Council's guiding principles, there is none more important than freedom of expression. It did not uphold the complaint.

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

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

'Group of terrorists' hyperbole but OK in context
Complaint 2 – Case 2047

The Press Council has not upheld a complaint by Penny Griffith about an article published in the *Waimea Weekly* newspaper on July 2, 2008.

Background

Penny Griffith, an opponent of a plan by the Tasman District Council to contribute funds towards a performing arts centre in Richmond, complained to the Press Council that a newspaper article headlined: Centre plan was "deal of the century", described her as one of "a group of terrorists".

The article said Grace Church, builders of the centre, had withdrawn its request for funding because of "negativity" surrounding the project by a small group of ratepayers.

Quoting disappointed supporters of the plan, the article said the loss of council involvement was "a lost opportunity and a railroading of the issue by 'a group of terrorists'" that had set Richmond back in its hopes for a quality performing arts centre.

The Complaint

Ms Griffith said the article contravened the Press Council's Principle 6, requiring newspapers to make a proper distinction between reporting facts, opinions and comment.

She said the article was critical of people who had spoken out through letters and at meetings against the funding proposal. Many of the quotations in the article were unattributed.

One comment, attributed to Mayor Richard Kempthorne, referred to a group of "roughly six people" who had "continually written letters to the *Nelson Mail* newspaper and questioned the spending at every opportunity, including at the Richmond Community Forum and Council meetings". By implication, these were the people who had caused the church to withdraw its funding request.

Ms Griffith said an unattributed quote described those responsible for "railroading" the donation as "a group of terrorists".

She said it was inappropriate for a community newspaper to publish demeaning remarks about people exercising their democratic right to debate an issue.

She objected to the newspaper referring to any and all of those who spoke out as "terrorists". In the heightened international security following the September 11, 2001 attack on the United States, such accusations could create unnecessary difficulties for people.

Ms Griffith said she could easily be identified as one of the main letter writers, speakers and formal submitters against the proposed funding. Use of the word "terrorist" to describe her was 'irresponsible, inappropriate, demeaning and potentially damaging to my security status and ability to travel freely".

In a letter to the newspaper, she requested a withdrawal of the comment and a front-page apology. Her letter was published as a letter to the editor, without comment on July 16, 2008. In view of the editor's comment in response to a letter from another complainant on July 9 that there would be no apology, she concluded that her own request had not been satisfied.

The Newspaper's Response

This was one of two complaints about the same article from people who claimed they had been labelled as terrorists. The newspaper's editor provided one response to cover both complaints.

The editor said the newspaper did not print Ms Grifitth's name in association with the terrorist comment, nor did it hint that she or the other complainant were involved at all. Ms Griffith and the other complainant named themselves in letters to the editor objecting to the article.

He said the terrorist comment was made after a meeting of local citizens on both sides of the argument by a person "heavily involved in the situation and a person of very high standing".

The editor said Grace Church had withdrawn its request for council funding because of "intense negativity and intimidation". The "terrorist" comment accurately described the frustration of one-half of those at the meeting.

Both sides of the argument had been given an opportunity to comment before the article went to print, with only one person from the group of opponents willing to go on the record.

Discussion

This was a local issue that had provoked strong feelings and strong language on both sides. Both sides agreed that negative comments about the Tasman District Council's plan to contribute funds to the building of the performing arts centre caused the church to withdraw its application for funds.

A local newspaper has a duty to report issues of this kind, and central to this story was why the church pulled out of the funding arrangement. It was legitimate for the newspaper to report the reaction of the losers – in their words. The "group of terrorists" comment was attributed to unnamed disappointed supporters of the funding idea.

The article did not name any of so-called "group of terrorists", but it was accepted that people following the issue in newspaper reports or letters to the editor columns might have been able to suggest names of group members. Ms Griffith said in response to the newspaper's claim that she had identified herself, that she had been alerted to the article by several people who had associated her with the "terrorist" label.

Nevertheless, the "group of terrorists" comment was hyperbole. It was strong language but consistent with the tone of other exchanges in this argument. The context was a row over local body funding; no-one reading the article was encouraged to interpret the comment in any other light. The first paragraph of the story not only contained the contentious statement, it provided the context – "a group of terrorists has set Richmond back in its hopes for a performing arts centre".

The Council did not accept that the use of the phrase "group of terrorists" would jeopardise overseas travel.

Conclusion

The Press Council believes it is duty of newspapers to encourage debate and recognises that freedom of speech can be raw. Among the Council's guiding principles, there is none more important than freedom of expression. It did not uphold the complaint.

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

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

Council split on privacy complaint – Case 2048

Mr and Mrs Graeme Hart, through their lawyer, complained to the Press Council that an article in the *Herald on Sunday* reporting on renovations to their home, and more particularly the photographs accompanying that article, breached their privacy.

A 10-member meeting of the Press Council, in the absence of one member, divided equally between those for upholding and those for not upholding the complaint.

The Chairman exercised his casting vote to not uphold the complaint.

Background

Mr and Mrs Hart lodged an application with the Auckland City Council for consent to make alterations to their home. The application was accompanied by floor plans, which were described as being extremely precise.

The *Herald on Sunday* obtained the makeover plans from the Auckland City Council (any member of the public can do this). The newspaper attempted to speak to Mr Hart about the renovations. He declined to do so. However, a business associate contacted the newspaper on Mr Hart's behalf, asking the editor not to publish the floor plans because the degree of detail disclosed in those plans raised security issues. The editor agreed that the extent of the renovations could be reported without publishing the actual plans. However, he did ask to speak to Mr Hart about his security concerns. That request was declined.

The story was published on February 24, 2008. The front page featured a picture of the house with the headline: "Our richest man's swanky renovations: EXTREME MAKEOVER OF NZ'S MOST EXPENSIVE HOME". The story, which appeared on page 8 with the headline "$20m mansion's makeover", covered the estimated value of the property and the nature, scale and probable cost of the proposed renovations. The story was dominated by four aerial photographs showing the house from various angles, under the sub-headline, "Refurbishing New Zealand's Most Expensive Home". Two of the photographs were overlaid with text boxes, containing brief descriptions of different aspects of the planned renovations, with arrows pointing to relevant areas of the house.

Complaint

Mrs Hart telephoned the editor on February 26 to complain about the publication of the location of the renovations. On February 27 a lawyer, acting on behalf of Mr and Mrs Hart, wrote a letter to the editor complaining that the story and, in particular the photographs, were a breach of privacy. The letter said that the article provided a "detailed identification of the interior layout of the home, including spaces that would not normally be known to anyone who had not been invited to enter the house". It claimed there was no public interest in the renovations. Particular umbrage was taken with a text box arrow indicating the location of a reading room, and a new bedroom for grandchildren.

The letter also complained that the photographs appeared to have been obtained by subterfuge.

Dissatisfied with the editor's response, the Harts then complained to the Press Council on grounds of breach of privacy (Principle 3). Principles relating to the interests of children and young people (Principle 5) and subterfuge (Principle 9) were also raised in support of the privacy complaint.

Further correspondence submitted that the Harts were entitled to a "zone of privacy" with respect to their personal and family life and maintained there was no public interest to justify the article.

The Hart's complaint was that the article, in the way that it combined that infor-

mation with photographs of the house and the text box arrows indicating where and how it would be renovated, was an invasion of their right to solitude and seclusion within their own home.

The Newspaper's Response

The editor denied any breach of privacy or subterfuge. The newspaper's position was that Mr Hart was said to be New Zealand's richest man, is a public figure, that his home was noteworthy because of its value and that the scale and cost of the renovations were newsworthy. The planned renovations to Mr Hart's home were expected to cost more than $1 million, which is three times the price of the average New Zealand dwelling. Newspapers all over the world published photographs of the homes of people in the public eye.

In this case, the photographs were from the sister publication, the *New Zealand Herald's* archives. And because they did not zoom in on the premises, it was not possible to see inside the house. The newspaper had not "spied upon the Harts". Further, the photographs did not show the relationship of the house to public roads and the address was not reported. The editor also pointed out that the arrow to the planned grandchildren's room had pointed to the second floor roof in a generic way and did not report the details of precise location.

The editor also pointed out that no one had raised privacy concerns prior to publication but he had modified the form in which the newspaper published the information provided in the consent application in direct response to concerns raised. The floor plans had not been published for reasons of security, and instead, arrows had been used to draw attention to the various parts of the home where the renovations were to take place. The editor would have given Mr Hart further opportunity to comment and, if necessary, make adjustments to the article prior to publication, but Mr Hart declined the offer to speak to him.

The Not Uphold Decision

The Statement of Principles is not a rigid code. As the preamble says:

> 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 broad principle relating to privacy (principle 3) is expressed in these terms:

> **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 enquiries are being undertaken, careful attention is to be given to their sensibilities.

The two situations specifically noted – criminal offending and trauma – illustrate the importance of context. The question of whether the *Herald on Sunday* article breached the Harts' "privacy of person, space or personal information" was a question of fact; there is no presumption of a "zone of privacy".

Nor could the privacy principle be looked at in isolation. Those members wishing to not uphold the complaint took the view that freedom of expression must prevail unless a limitation on that freedom is demonstrably justified. This approach recognises that freedom of expression is the most important principle. It is also consistent with the New Zealand Bill of Rights Act, which affirms that fundamental right to freedom of expression – including the right to impart information through publication of a newspaper. The first question was therefore whether the complainants could establish grounds to restrict publication.

The Harts claimed breach of privacy. But everything in the article, including the photographs and information imparted by way of text boxes and arrows pointing to parts of the house, was publicly available. The photographs were not taken especially for the story; they were archived aerial shots that did not attempt to zoom in on the private interior spaces of the house or the people who lived there. The interior of the house was not visible in the photographs. There might have been one or possibly even two people visible in the grounds but they were details so small and out of focus that it was not possible to identify anyone. No private fact was exposed in the publication of the article.

There was no subterfuge.

Principle 5 (children and young people) did not assist the Harts. The only reference to the grandchildren, so central to the Harts' concerns, was in a text box summary. No children were identified in the story (in contrast to Case 2019) and the Press Council was given no detailed evidence as to how their interests bore on the complaint. For example, there was no reference to the number of grandchildren, their names and respective ages, the timing and frequency of visits.

The editorial decision to refrain from publishing the detailed floor plans and instead summarise the renovations by way of text boxes and arrows pointing to approximate locations, provided sufficient recognition and protection of the Harts' interests, whether they be classified as security issues or a desire for privacy. Grounds to limit the newspaper's right to publish were not established.

In light of our finding that the Harts did not establishe a privacy interest, we did not need to balance privacy and public interest in this case. However, we note that the general law relating to privacy is in a state of flux and important issues such as the nature and limits of "public interest", particularly as it relates to "celebrity journal-

ism", are yet to be settled. The Press Council is charged with *promoting* freedom of expression and, in our opinion, it should be slow to give ground to privacy or any other development that would inevitably see freedom of expression diminished; it certainly should not be in the vanguard of change.

Press Council members who voted to not uphold this complaint were Ruth Buddicom, Keith Lees, Penny Harding, Aroha Beck and Alan Samson.

The Uphold Decision

This case raised a key issue inherent in the Press Council's Principle 3: what is properly a matter of the public interest as against the right of privacy? Principle 3 states:

> 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.

Mr Hart is a wealthy man. Like any other citizen, however, when he proposed to alter his house, the plans were submitted to the local authority for approval. Those members of the Press Council who wished to uphold this complaint did not consider that either of these factors justified intrusion into the Harts' private space. Building plans put before the local authority are certainly not classified documents. They are open to scrutiny for technical reasons and to serve the interest of openness in government. While technically such details are matters of the public record, it does not automatically follow that a person meeting the requirements of building laws and bylaws should have to face wide public exposure of those details elsewhere. Public interest principles for such publication must be met. Further, details in such public registers are not usually available on a free-for-all basis. Special effort, and payment of a fee, might be needed for members of the public to access them.

Nor does a person's wealth in any way mean that rights to privacy have been forfeited. It was contended by the newspaper that Mr Hart had talked in public about his business affairs and Mrs Hart had been photographed at social functions. The inference presumably was that they had thereby courted publicity and could not claim a right of privacy. But this would mean that there could be virtually no boundaries around private space. Everyone appears in public and can be photographed in public. The point in this case was that it is widely recognised that Mr Hart does not give interviews or otherwise publicise his personal and family life and the same goes for Mrs Hart.

Equally the obligation to respect privacy does not depend on whether or not a complainant has specifically raised that issue. An obligation to respect privacy is just that.

The Press Council has previously ruled that a New Zealander's home, like an Englishman's, is his castle. That case (no.929) was to do with the publication, without notification to the owners, of interior photographs taken during a tour of homes opened to the public for charity purposes. The photographs were taken openly during the

course of the tour; the act of publication, however, was an embarrassment to the charity concerned as well as a plain infringement of the right to privacy inside a home.

In this case the photographs were apparently taken from a distance. But the availability of modern technology did not in itself justify the intrusion into the private space that makes possible. Although no significant details of the interior were on display the newspaper chose to show the house from the air and from all sides. Two photographs were overlaid with arrows, which unquestionably open a window on the private lives of Mr and Mrs Hart – to do with how they will entertain and where their grandchildren will sleep. The justification was that there would be public interest in renovations on the scale proposed. But if so the editor should surely have made the effort to get photographs that actually demonstrated the work being done – trucks, cranes, scaffolding. Then the pictures might have had relevance to the story. Instead the editor drew from the archives of a sister newspaper photographs which gave no lead as to when and why they had been taken.

In case 929, the Press Council noted that

> "Privacy issues must be balanced against the public interest. There is however an important distinction to be made between what is interesting to the public and what is in the public interest. No doubt many members of the public are interested in other peoples' houses but that is not to say that it is in the public interest to publish information which the owners would rather not be published. It was thoughtless to impinge in this way on the private realm of individuals …."

Was there a public interest in renovations of the Hart's house such as to justify overriding the family's right to privacy? Those who would uphold this complaint said "no". They noted that the Australian Press Council had recently determined that for a matter to be of public interest it must involve a matter capable of affecting the people at large, so that they might be legitimately interested in or concerned about, what is going on, or what may happen to others. This case did not fit that definition.

There is widespread concern now about invasion of privacy and about the use of the "public interest" as justification. Public interest issues are not about what rich people propose to do to their houses unless they affect other people. That did not apply in this case. What might be of general or even undue interest to some members of the public is not a justification in itself for intrusion into the private realm.

The privacy questions in this case are bound up with the global onset of celebrity journalism. This is now a fact of everyday life. The growing trend in some sections of the media to cater to the often prurient public interest in the lives of the rich and famous, has unquestionably pushed the boundaries of what was in earlier generations accepted as the right of individuals to privacy and seclusion in their own space. But again there is a distinction to be made between those who court publicity and those who shun it. Mr and Mrs Hart are plainly protective of their private lives – as is their right.

The fact that the family in question is wealthy cannot be used to justify a different, and in this case lesser, privacy entitlement. That is discriminatory and opens the

way for further invasion of the zone of privacy of other citizens who stand out from the norm.

The Harts also raised security issues and the associated matter of care and consideration of the interests of children or young people and subterfuge. Clearly they were upset that one of the arrows used to overlay the photographs points to the general area of the house to be occupied by grandchildren. It was not clear why the *Herald on Sunday* should have taken this liberty. That information could certainly be regarded as prejudicial to the interest of children and their security. It was accepted that the editor tried to make contact with Mr Hart and after discussions with an associate attempted to mitigate the security issues by declining to publish the floor plans. But the arrows were still intrusive. There was no case to answer on subterfuge.

The central issue here was to determine the balance between the right to privacy and the public's right to know. Questions to do with security and consideration for children were also to be considered. It was the view of the following members of the Press Council that no public interest was served by the publication and treatment of these photographs. They represented an unacceptable intrusion into the private space of Mr and Mrs Hart.

Council members who voted to uphold the complaint were Barry Paterson, Lynn Scott, Kate Coughlan, Clive Lind and Denis McLean.

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

Doctors' pay comparison 'apples and oranges' – Case 2049

Dr Christopher Jones complained to the Press Council that an article, published in *The New Zealand Herald* on May 3, 2008, was inaccurate, misleading, and unfair. The complaint is not upheld.

Background

The article was published on May 3, 2008, four days before junior doctors were scheduled to begin a second round of strikes over a pay dispute.

Appearing on page A4, under the headline "Junior doctors have head start", the article included a stand-first, a bullet-pointed "summary of an ongoing strike" in bold typeface, centred above the main body of the story, and a graphic down the right-hand side.

The stand-first said "They begin work on double the pay of other grads but have bigger debt and longer hours." The summary included two bullet points summarising the respective positions of each party to the dispute:

- Junior doctors want a 30-per cent base-salary increase in their pay over three years. Add other increases in the salary package and their combined claim will lift their pay by 40 per cent over three years – or 13.3 per cent a year.
- DHBs have offered them an overall increase of 4.25 per cent a year. Alternatively, DHBs offered to pay junior doctors an up-front sum of 4.25

> percent to avoid further strikes, followed by an independent commission sponsored by the Ministry of Health to establish terms of reference both the DHBs and the doctors can agree to.

The graphic had a subheadline "Just what the doctors ordered" and a descriptor:

> How junior doctors' pay stacks up against 14 other NZ occupations. Study length, average student loan and approximate starting salary, 2008."

It compared the years of training, level of student debt and "starting pay" across 15 different professions that require tertiary training. The professions were sorted by salary and, at a starting pay of $88,000, doctors top the list. The next closest contenders were dentists at a starting pay of $78,000. Lawyers came in last at a starting pay of $30,000.

At an average of $75,000, doctors also had the highest average student loan by a considerable margin; apart from dentists at $60,000 of debt, vets at $50,000, academic at $43,000 and optometrist at $40,000, the other 10 listed professions had average debts of $30,000 or less. Nurses had the lowest average debt at $18,000.

Doctors required six years of tertiary training; the only listed profession to exceed that requirement was an academic with a PhD, which required eight years of tertiary training and had a starting pay of $64,000. Nurses required the least amount of training, at three years, and had a starting pay of $40,000.

The story itself began with the statement that "The thousands of junior doctors striking this Tuesday over their pay dispute earn more than double that of starting lawyers, scientists, accountants and architects, a *Weekend Herald* investigation has discovered." It went on to say that doctors had the biggest student loans and worked longer hours than most graduates. The 'investigation' is reported to be based on "estimates from various industry sources and university figures".

A letter from Dr Jones disputing the accuracy of the doctors' starting pay was published in *The New Zealand Herald* on Wednesday, May 5, under the subheading "Get the figures right."

On May 8 the deputy editor formally replied to Dr Jones' letter advising that the figure of $88,000 had been supplied by the DHBNZ and was based on "a review of national salary data for first-year doctors". He noted that Dr Jones' letter had been published on May 5 but maintained that $88,000 was "the most accurate figure available". The deputy editor defended the article as

> … a fair attempt to put the issue in perspective. It stressed that some of the figures were approximate and also that doctors trained for longer, had larger student debts and worked longer hours than most graduates.

Complaint to the Press Council

Not satisfied with the complaint, on May 16, 2008 Dr Jones complained to the Press Council on grounds that it was inaccurate, misleading and unfair in breach of principle 1 (accuracy).

Dr Jones referred to the Multi-Employer Collective Agreement (MECA) between the Resident Doctors' Association (RDA) and DHBNZ. The salary rates set out in the MECA were roughly $47,000-$88,000, calculated according to average weekly hours worked. In order to get a base salary of approximately $88,000, a first year doctor would need to work in excess of 65 hours a week over the whole of the year. Dr Jones argued that that would be the exception rather than the rule; the vast majority of first year doctors had an annual starting salary of $60-69,000 (which would reflect an annual work average of between 50 and 65 hours a week). On that basis, Dr Jones argued that the reported approximate "starting pay" of $88,000 was both inaccurate and misleading.

Dr Jones also argued that, given that DHBNZ was involved in contract negotiations, the newspaper ought to have checked the figures with RDA as the other party to the dispute to ensure balanced reporting. Alternatively, the reporter could have asked both the DHBNZ and RDA how many hours the average first year doctor worked and then calculated for himself the approximate starting salary using the rates set down in MECA.

The Newspaper's Response

In response, the deputy editor of the *Herald* said that the salary rates Dr Jones referred to were merely "base rates" and that the MECA included "numerous other elements of remuneration that junior doctors earn on top of those basic scales." He insisted that the newspaper did check its figures and that $88,000 was "the most accurate figure available".

The deputy editor argued that RDA had its own reasons for playing down the amount that young doctors earned. However, in publishing Dr Jones' letter to the editor, the newspaper had allowed him to challenge the accuracy of the figure reported.

Further Correspondence

In further correspondence, Dr Jones challenged the newspaper's claim to have checked its figures, noting that the newspaper had failed to provide any explanation as to how the DHBNZ had calculated the figure of $88,000 and why that should be regarded as "the most accurate figure available". He argued that in choosing to use the DHBNZ figure incorporating "numerous other elements" of first year doctors' remuneration in addition to salary, the newspaper had inflated the doctors' salary and thereby prevented any accurate comparison with the other professions.

In response, the deputy editor provided a document prepared by DHBNZ, setting out the basis on which first year doctors' approximate starting pay was reported as $88,000. That document reproduced the same MECA base salary rate table that Dr Jones had put before the Press Council, and quite expressly recorded that the average first year doctor earned an annual base salary of $70,138, which fell into the salary band for working an average of 55-59.9 hours a week, albeit noting that there were mechanisms that could inflate the pay scale above the actual hours worked. Additional remuneration payments, accounting for an average 21.6% of total earnings, included such things as public holiday payments, and various forms of overtime or

penal rates. Taking the average salary, that 21.6% was calculated as $15,150, making a subtotal of $85,288. To that was added an estimated average superannuation of $2,473, making a total of $87,761 taxable income. The document also noted that additional employment costs not amounting to remuneration included such things as professional expenses (practising certificates and membership fees), indemnity insurance, expense claims and recruitment, retention and relocation expenses.

The deputy editor argued that the comparative analysis across the professions was based on taxable income, not base salaries. For example, the $35,000 starting pay reported for journalists included $3000 of extras such as overtime and shift allowances. He also asserted that junior lawyers were paid a flat salary with no allowances for overtime despite being expected to work doctor-like hours at times. The only basis the deputy editor gave for that assertion, first put forward in the letter of 8 May 2008, was that he asked counsel retained by the *Herald*. The newspaper had not provided any other examples or evidence of the way in which the starting pay attributed to each profession was calculated.

Decision

Principle 1 provides that newspapers 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 was founded on the bold claim that doctors "begin work on double the pay of other grads". Reference to an investigation "based on estimates from various industry sources and university figures" and the sophisticated graphic suggested a degree of statistical reliability. However, the complaint to Dr Jones' complaint revealed some serious flaws in the statistical base.

The DHBNZ breakdown of first year doctors' remuneration made it very clear that the average salary was approximately $70,000 a year. The newspaper baldly claimed that all the "starting pay" figures used were calculated as taxable income. That was not the ordinary way in which the term "starting pay" would be used and the article did not indicate that the term was being used in a specialised way. Nor did the deputy editor's discussion of the way in which two of the other "starting pay" figures were ascertained instil confidence that the newspaper took care to ensure that like really was compared to like. It was also imprudent to rely solely on figures provided by one side of a dispute without first putting those figures to the other side for comment; statistics are rarely clear cut.

The story was published in the midst of stalled pay talks, when feelings were running high. The overall impression given by the story, particularly by the headlines and graphics, was that the doctors were being unreasonable. But the salary figure was either inaccurate (not the average base salary) or misleading (comparing apples and oranges) and, because of that, the story was unfair.

However, the prompt publication of Dr Jones' letter, under a subheadline that clearly signalled that the statistics were in dispute and provided a broader picture, was sufficient to correct that unfairness and, therefore, the complaint was not upheld.

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

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

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

Newspapers encouraged to present divergent views – Case 2050

The Press Council has not upheld a complaint by New Tang Dynasty Culture and Art Exchange Centre Inc ("New Tang") about articles published in *The New Zealand Herald* newspaper on April 7 and 15 respectively.

Background

New Tang, the promoter of a Chinese performing arts programme, complained to the Press Council that a newspaper article headlined "VIPs again steering clear of Falun Gong-linked show" published on April 7, 2008 breached principle 1 (accuracy, fairness and balance) and principle 2 (corrections) of the Statement of Principles.

Further, New Tang complained that the article headlined "Green MP supports show with links to Falun Gong" published in April 15 similarly breached these principles.

The Complaint

New Tang's complaints (in summary form and in relation to both articles) were as follows:-

> It was inaccurate to state that the performing arts programme had been banned in Denmark and Malaysia;
>
> The claim that "not a single politician turned up" to the 2007 performance was inaccurate;
>
> The reported comments on behalf of one local body politician had been reported inaccurately;
>
> The overall tone of the article of April 7 was critical and negative so as to result in it lacking balance and being unfair; and
>
> The newspaper failed to correct "errors" and failed to offer an apology in circumstances where New Tang believed it appropriate for the newspaper to do so.

The Newspaper's Response

The editor accepted that there were two inaccuracies in the April 7 article. It was incorrect to report no politicians had turned up the previous year and it was incorrect to report that the programme had been "banned" when it had only been cancelled.

Subsequent to the publication of the first article and prior to publication of the second article, the editor said the newspaper extended an invitation to New Tang to meet the reporter so New Tang could have input into a proposed follow-up article (which was the one published on April 15, 2008). This invitation was to enable New

Tang to further address the concerns it had already raised with the newspaper.

The editor said New Tang did not avail itself of that opportunity but instead forwarded an open letter, which was of such length and content as to make it unsuitable for publication. Additionally, the editor said there was a threat of legal action against the newspaper. In these circumstances the editor did not feel it was appropriate to continue to seek communication with New Tang.

Despite this background, the newspaper published the further article on April 15 in which it endeavoured to address New Tang's concerns to the extent that these were accepted as valid by the editor. One specific matter remained unaddressed in the follow up article, namely, the alleged "misreporting" of the comments on behalf of the North Shore mayor about which there remained a factual dispute as to what had been said.

The editor did not accept that the articles lacked fairness and/or balance either when viewed separately or when viewed collectively (and in light of the invitation extended to New Tang). He did not consider an apology was required. He said the (accepted) inaccuracies were corrected.

Discussion

Given the acknowledgement by the newspaper of the inaccuracies in the earlier article, the Council has to consider whether the inaccuracies were such as to amount to breaches of Principle 1, and if they were (either separately or cumulatively), whether the subsequent article amounted to a sufficient publication to address these inaccuracies so as to rectify the initial breach/es. In considering that aspect, the Council took account of the elapse of eight days between the two publications.

The first article made some strong assertions regarding non-attendance by various dignitaries and the reputed reasons for non-attendance. It also reported strong statements made by a spokesman for New Tang that people were "…blindly bowing to the pressures of the … Communist Party …".

The second article referred to a Green Party MP who would be attending the performance and made specific reference to the fact he was attending so as to demonstrate his support for those afflicted by human rights violations in China.

The second article addressed New Tang's expressed concerns and recorded that no private meetings were being held with VIPs, that a number of guests had already accepted their invitations, that the performance programme was not a Falun Gong event, and that the performance programme was not just a "concert". This article also made it clear that the performance programme had not been banned in either Malaysia or Denmark.

New Tang presented a great deal of supplementary information to the Press Council about matters that were not directly germane to its determination. The Council is confined to adjudicating on ethical matters, namely, whether a newspaper has breached any of the principle/s contained in the Statement of Principles. It is not an arbiter of disputed facts and, where these remain, cannot, and does not proceed to make any determination upon them. Specifically here, it did not make any finding as to which of the versions regarding statements made for the North Shore mayor should be preferred.

Similarly, it was not for the Council to consider any wider questions surrounding the nature of the performance or the political context in which it have might existed. To the extent that the material submitted related to these questions, it was set to one side.

The Council found the first article was inaccurate in its reporting that the performance had been banned in Denmark and Malaysia and that no politicians had turned up to the performance in 2007. The newspaper breached Principle 1 in these regards. However, it also found that these inaccuracies were rectified in the subsequent article.

While the initial inaccuracies were regrettable, the Council was satisfied that the corrections by the newspaper were sufficient.

It also found that the inaccuracies in the first article were not such as to make an apology appropriate given the corrections that had occurred. In reaching that conclusion the Council took account of the somewhat hostile tenor of the communications between New Tang and the newspaper in the period between publication of the first and second articles. While there was some delay between the two articles, it was evident from papers submitted that the parties were involved in dialogue during that time and this was directed towards addressing the concerns raised. Accordingly, although there was a time delay prior to correction, the Council found this was not unacceptable on the facts.

In relation to the claim by New Tang that the articles were unbalanced and unfair because of an alleged negative tone, the Council also did not uphold this complaint. It found that each article separately satisfied the need for balance and was fair. The Council found that view strengthened when considering the articles cumulatively.

Conclusion

The essence of freedom of the press demands that the press is free to report views that sometimes cause argument or even offence to those who hold contrary views. The Council is determined to uphold that right. It encourages New Zealand newspapers to continue to strive to present divergent views. It recognises that this sometimes results in residual and inevitable tensions.

The complaint was not upheld.

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

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

Crank or visionary? – Case 2051

Introduction

Canvas Magazine in its edition of June 21, 2008 ran a cover story entitled *Thinking outside the Square*. On its cover it referred to the story as follows:

> "What's the big idea?
>
> "Radical thinkers who don't care if you call them cranks."

The article referred to three radical thinkers, one of whom was Ken Ring de-

scribed as "the alternative weather man and global warming sceptic". Mr Ring complained that the story breached five of the NZ Press Council's principles, namely accuracy (Principle 1), corrections (Principle 2), privacy (Principle 3), comment and fact (Principle 6), and advocacy (Principle 7).

In his correspondence, Mr Ring sought an apology for issues of double standard, for bias due to personality, for misquote of website, for pestering about his financial details, for compromising his safety with regards to security issues, for outright deceit in making up things he didn't say, for lack of balance and for incompetence and inadequacy in research.

The complaint is not upheld.

The Article

The stand-first to the article read:

> Sarah Lang meets three New Zealanders with radical theories or beliefs. Will they be dismissed as cranks and forgotten, or could they one day be viewed as visionary?

The introductory paragraphs referred to people with radical ideas on the edge of society. It noted that countless cranks had been denounced only to be proven right in time. It noted that not everyone with a radical idea was vindicated as a visionary and that some would always be seen as cranks.

It then referred to three persons with radical theories, one of whom was Mr Ring.

The Complaint

In his letter of complaint to the magazine, Mr Ring noted that a visionary is apparently someone worthy while the crank is not. He alleged that the article made it clear that the other two subjects were visionaries in the eyes of the reporter while he was a crank. Here the Press Council summarises the complaint and the responses under the various principles relied upon.

Comment and Fact

Mr Ring complained that he was the only one of the three interviewed who was treated with negativity. He gave four examples:

> There was an inference that if a business were booming, it must be both slick and some set up. This arose from the paragraph that started:
>
> > This is a booming business not an eccentric sideline: a slick set up includes …
>
> It was only the journalist's opinion that he was problematic and not necessarily a fact. This arose from a quotation from Mr Ring where he said:
>
> > "They come up to me and say 'everybody knows the moon created the weather, where's the problem?"
> >
> > Because there is one.

He objected to the comment "a little rank" where after commenting on a successful prediction made by Mr Ring, the story said:

> Isn't it a little rank to send a warning message in retrospect to score blows against your detractors?

The reference to "in a long monologue, Ring blusters about …" suggests that he is bad tempered, which suggests that he is a crank as the preliminary comments suggested that a crank was often bad tempered.

The magazine in response claimed that none of the three subjects was classified as either crank or visionary. The story was about presenting their theories/beliefs for readers to learn more about them and form their own opinion on those theories/beliefs. In respect of the four examples given by Mr Ring, its position was that:

> The reference to a booming business and a slick set up was referring to the fact that the business employed quite a few staff including marketing and business consultants, in case anyone thought it was a one-person business.
>
> The reference referred to did not say that Mr Ring was problematic. It was merely saying that there was a problem because many people strongly disagreed with his views.
>
> The reference to being "a little rank" was a question not a statement. It was a question that the journalist was entitled to ask.
>
> The reference to "blusters" was an explanation of the manner in which the journalist thought Mr Ring was speaking. It was used within its meaning of "protest and rants".

Canvas is a magazine that is entitled to give its opinions and make comment providing it does soon the basis of correct facts. In the Council's view it did not infringe the Council's principle that requires publications, as far as possible, to make proper distinctions between reporting of facts and conjecture, passing of opinion and comment.

The booming business and slick set up comment did not in the Council's view carry the inference that the business was "both slick and some set up". The article described the business as having six employees including web designer, sales executive, business consultant and marketing manager. "Slick" has the dictionary meaning of skilful, efficient, as well as less favourable meanings.

The reference to "where's the problem?" was supported by facts in the article. It referred to the many supporters and customers that Mr Ring has, but also to his detractors. Such a position was inevitable in cases where a person espoused non-conventional theories. There was no breach of principle.

The term "little rank" was in a question for the reader to consider. It was based on a statement of fact. It did carry an implication of censure but journalists are entitled to express their views providing the facts are clearly stated. There appeared to be no dispute as to the fact upon which the question was posed.

Nor did the Council believe that the word "blusters" infringed the principle. It conveyed the journalist's opinion of the manner in which Mr Ring responded. That journalist might have formed an opinion that might not have been shared by others but she was entitled to express her opinion on the manner in which Mr Ring responded.

Corrections

The complaint was that Mr Ring's website address was wrongly stated as it appeared as "predict-weather.com". The hyphen was included because the word was split at the end of a line.

The magazine apologised to Mr Ring for the introduction of the hyphen, which was not picked up in editing. It was corrected.

The Council determined that there had been no breach of the corrections principle in the circumstances of this case.

Privacy

Three complaints were made in respect of the privacy principle, namely:

The journalist requested on more than one occasion details of Mr Ring's income;

The second sentence of the portion on Mr Ring read:

> As I pull up outside his ramshackle Titirangi home, he is watching me on a hidden security camera.

Objection was taken to the word "ramshackle" as this added weight to the fact that he was a crank. It was more likely that a crank rather than a visionary lived in a ramshackle house.

Arising from the sentence referred to in the previous subparagraph, Mr Ring claimed that what he does for his security had now been made public as the story described the security system in ways that inferred that he was paranoid.

The magazine's response to three complaints was:

The journalist admitted asking about his income on more than one occasion when it came up during the interview. At one stage he had shown her a private contract from Channel 7 including a confidential salary amount that he had asked her not to mention.

The magazine stood by its description of "ramshackle" as the term was used in its dictionary meaning of "likely to fall apart because of shoddy construction or upkeep".

The reference to security had been inserted by way of mentioning that Mr Ring was very safety conscious. The magazine did not believe it breached the privacy principle because readers would not gain any knowledge from the story about his address. The fact was that he did have a security system and was watching the journalist on it as she arrived.

The Council found no breach of its privacy principle. There was no reference in the article itself to income and the questioning, while perhaps being offensive to Mr Ring, was not a breach of privacy. The description of the house was as the journalist saw it and although Mr Ring strenuously denied that the description was adequate, it could not be said to be a breach of privacy.

Finally, the Council did not believe that the reference to the hidden security camera was a breach of privacy. Although it accepted that Mr Ring's address could be readily ascertained, it did not consider that the reference was a breach of privacy that exposed his security. If anything, it was likely to deter breaches of his security.

Accuracy

Four examples were given of an alleged breach of the accuracy principle. Under this principle a publication is to be guided at all times by accuracy, fairness and balance. The four examples were:

> The article reported Mr Ring to be "scornful of forecasters for ignoring the moon as a long range tool".
>
> The article stated:
>
> > Long-term comparisons show little co-relation between his predictions and out-of-the-ordinary weather … Mr Ring noted the many people who pay for his forecasts.
>
> The article quoted at length two people who had constructed websites criticising Mr Ring's views without mentioning counter-articles to those that attack him.
>
> The last paragraph of the article wasn't true. It claimed that he was incorrect when he said that Galileo, Copernicus, Nostradamus and Newton were forecasters and astrologers.

The complaint to the four issues was:

> The journalist believed that he was scornful of other forecasters who did not accept his long-range system. During the interview he did say that the other forecasters "don't want to lose face, the farmers are already saying Niwa stands for No Idea What's Ahead".
>
> In referring to long-term comparisons the journalist was referring to a study by a meteorologist described in an article in the *New Zealand Geographic* in 2006, which rated Mr Ring's success rate. The results were not favourable. She had also relied upon examples by three other critics of Mr Ring.
>
> The article did not quote at length two people who had constructed websites against him; it merely mentioned that those websites existed.
>
> The comment in the last paragraph was based on the opinion of Dr Campion, a world authority on the history of astrology and was quoted as such.

The Council did not find a breach of its accuracy principle in that it is obvious that the "scornful of forecasters" reference was a comment by the journalist based on comments made by Mr Ring. There was not extensive quoting from the two websites, although there was a reasonably extensive quote from Bill Keir, which was not complimentary to Mr Ring. However, the Council accepted that overall the article was balanced.

Balance does not have to be achieved by providing an equal amount of space for the two contrary views.

The article did contain many comments favourable to Mr Ring and his forecasting. It noted that his annual *Predict Weather Almanac* issues among the top 10 New Zealand non-fiction sellers. There was a reference to his demand as a speaker for many organisations. The article was balanced.

The Council accepted that the reference "long term comparisons" could have been supplemented by reference to the source of the information upon which the comment was made. However, in its view this was not sufficient to uphold the complaint.

The final-paragraph criticism was based on different views held by Mr Ring and Dr Campion. The article made it clear that it was Dr Campion's view and as such, accuracy was not infringed.

Advocacy

The Council did not interpret the article this way. When the article was read as a whole, including the pieces on the other two persons, the Council did not detect that the magazine sought to establish that Mr Ring was a crank. As noted there were comments supportive of Mr Ring. Nor did the Council accept that the article suggested Mr Ring was a crank. It referred to a person who had been successful but was controversial. In the Council's view there was no breach of the advocacy principle.

Conclusion

For the above reasons the complaint was not upheld.

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

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

Job Search Allowance and the single earner – Case 2052

Fast track complaint

The New Zealand Press Council has not upheld a complaint against the *New Zealand Herald* for its coverage of the Labour Party's Job Search Allowance policy to help families affected by redundancy.

The complaint was dealt with under the Press Council's fast-track procedure for dealing with complaints arising out of the general election. A decision of the Press

Council weeks after an election is of little use to a complainant. The complaint met the criteria that it required prompt and timely adjudication.

The Complaint

Jenny Kirk complained to the Press Council that a story and headline in the *New Zealand Herald* of October 31, 2008, was inaccurate and misleading in both its headlines and facts.

Ms Kirk said the headlines over the article about Labour's just-announced Job Search Allowance were incorrect. They said: PM puts working couples first; and $50m safety net excludes single people and workers with a stay-at-home partner. Ms Kirk said the package was for all working people, not just working couples.

The first paragraph read: "Labour's hard-times allowance would effectively give a working couple $2000 if one of them is made redundant – but single workers and couples with a non-working partner would get nothing new."

Ms Kirk said the proposed redundancy legislation, job allowances for retraining for workers made redundant and the Job Search Allowances were all new, and they were for all workers.

Detailing how the allowance would be paid to the partner who lost a job, whatever the income of the other working partner, the article went on to say it would not be "entirely universal," as it would be abated against the income of the "qualifying partner" on income earned over $80 a week.

Ms Kirk said the *Herald*'s reporting "very cleverly obscured and misrepresented the proper meaning of the announced policy."

She quoted from the official documentation accompanying the announcement, which said requirements for the allowance would be the same as for the unemployment benefit with the exception that the income of the redundant person's spouse or partner would not affect their entitlement.

As with the unemployment benefit, the allowance would be abated if "the person's personal income" reached a threshold of currently $80 a week, including interest on savings.

Ms Kirk said the policy indicated "that a person who is in a relationship where both partners work will not have their partner's employment income taken into account" when receiving the allowance but other income would be.

In an email of complaint to the editor of the *Herald*, Ms Kirk said a fact sheet that would have been available to *Herald* reporters showed that single and married people, solo parents and couples with children were all included.

Ms Kirk was not satisfied with the response of the editor of the *Herald*, Tim Murphy, who refused to accept the Herald was mistaken.

He referred Ms Kirk to a blog of that day from the *Herald*'s political editor, Audrey Young, for further explanation. Ms Kirk complained to the Press Council.

The Newspaper's Response

In his more formal response to the Council dated November 3, Mr Murphy said the *Herald*'s article was correct. Ms Kirk had compared a discrepancy between the

Herald article and the policy releases and assumed the newspaper was wrong.

The fact sheet Ms Kirk referred to was misleading in that it referred to net and gross figures for every category of worker, giving the impression that the figures were the amounts all workers would get for the allowance.

But the allowance was available for 13 weeks only to workers made redundant with a spouse working and was at the same rate as the unemployment benefit. The Prime Minister's office had confirmed that the allowance was for two-income families only. On the basis of the table in the fact sheet, it was not hard to see why Ms Kirk was misled.

Contrary to what Ms Kirk said, at no time had the *Herald* said the allowance would be income-tested against the income of a working spouse.

Mr Murphy said the *Herald'*s Press Gallery staff had complained loudly to the Prime Minister's office about the "misleading nature of the material that was handed out."

"Far from being worthy of a complaint to the Press Council, the *Herald* coverage of the Job Search Allowance was an excellent example of reporters doing their job properly – not accepting material presented by politicians at face value, and digging further for the facts for our readers," Mr Murphy said.

Discussion

The complaint arose against a background of the election campaign and political parties striving to present policies in the wake of financial turmoil around the world. In such circumstances, political parties seek to maximise the impact of their initiatives.

Newspapers have a duty not to accept political statements or releases at face value, and the *Herald* acted correctly in subjecting the Job Search Allowance to scrutiny.

It was entitled to reach the conclusions it did when reporting the initiative, even though it might not have been what the Labour Party would have wished. Without a doubt, the policy was aimed at families on two incomes. Why the press releases showed figures for single workers or solo parents who would not be eligible was something of a mystery.

A press release accompanying the material itself acknowledged, for example, that when a worker in a one-income family became redundant, social security assistance was already available. The new policy applied where "there is another earner in the family."

Both the heading and the article were therefore accurate reflections of what the policy really meant. The use of the term "qualifying partner" by the *Herald* within the article appeared to have caused some confusion, and might have misled Ms Kirk, but in the context of the article as a whole, the Press Council believed the overall meaning was clear.

Conclusion

The complaint was not upheld.

Note to readers: Election policy grid provides severely limited information – Case 2053

Fast track complaint

The New Zealand Press Council has not upheld a complaint by Helen Kelly, President of the New Zealand Council of Trade Unions, against the *New Zealand Herald* for details it published about party policies and KiwiSaver in an election guide.

The complaint was dealt with under the Press Council's fast-track procedure for dealing with complaints arising out of the general election. A decision of the Press Council weeks after an election is of little use to a complainant. The complaint met the criteria that it required prompt and timely adjudication.

The Complaint

Ms Kelly complained that on Saturday, November 1, 2008, the *NZ Herald* published some misleading information when it provided readers with a table summary of the policies of several political parties. The comparison was part of a special *Vote 08* election guide of some 24 tabloid pages.

One of the policy areas covered was KiwiSaver. Ms Kelly said that KiwiSaver was a major point of policy difference between the two major parties and this difference was of great interest to the 800,000 people who had already joined the scheme. She provided for the Press Council a CTU PowerPoint, which showed the impact of the policies of both National and Labour on savings.

The items complained of were two parts of a grid over two tabloid pages created by the *Herald,* giving brief details of 12 policy areas, across eight political parties.

Of Labour's KiwiSaver policy, the details published were: "Introduced KiwiSaver scheme to encourage saving with automatic enrolment when you start a new job, voluntary opt-out, savings locked in until age 65 unless withdrawn for first house. Employees can save at 4 or 8% of gross income, others (e.g. self-employed, children) can save at any rate agreed with their scheme providers."

Of National's policy details published were: "Keep KiwiSaver with automatic enrolment, voluntary opt-out and lock-in until age 65 except to buy first house. Employees can save at 2, 4 or 8% of gross income, others can save at any rate agreed with their scheme providers."

Ms Kelly said that in fact, National would cut employer contributions from 4% to 2% and limit the employee tax credit (the government contribution) also to 2% to a maximum of $1040 per year (from the current 4% up to a maximum of $1040 per year) - significantly reducing potential savings totals for KiwiSavers.

She said the *Herald*'s details implied that National would simply provide another saving option (a 2% option).

Ms Kelly, as required under Press Council rules, took her complaint initially to the *Herald*.

The newspaper's deputy editor, David Hastings, replied that having reviewed the text in light of the complaint, he believed the summary was fair because the comparisons between National and Labour were made on exactly the same terms. The Na-

tional Party summary did not drill down into the detail about employer contributions and tax because the Labour summary didn't. To include those details with the National policy would have meant adding to the Labour summary as the basic expression of the KiwiSaver scheme.

Mr Hastings said: "Not only was there insufficient space to do this but I don't think it was necessary. Most readers would understand that the spread on policies was not meant to give the full details but rather tight summaries to make comparison easier."

Ms Kelly was not satisfied because she believed the *Herald*, having set the terms of the comparison, made it look as though there are no differences between the two parties on KiwiSaver and had provided information that was misleading.

The Newspaper's Response

In his response to the Press Council, Mr Hastings said the *Herald*'s policy table in the election supplement did not make it appear there was no difference between National and Labour policies on KiwiSaver. The table had highlighted an important basic difference, one which had been widely cited and quoted.

It was true that it also mentioned how the policies were similar and the *Herald* made no apologies for that. For the sake of balance, it was just as important to remind readers of what was the same as what was different.

Ms Kelly had mentioned a number of points of difference she believed should have been included but there was insufficient space in the table to include that kind of detail.

However, most of the points she mentioned were summarised in the words of Michael Cullen and Bill English in a panel accompanying a more detailed article on KiwiSaver on page 7 of the same Vote08 supplement. That version was much fairer than either Ms Kelly's note or her CTU information because it was balanced and allowed for differing interpretations of what the policies meant.

The deputy editor said the implications of the KiwiSaver policy were complex and disputed, and the *Herald* had mentioned them in numerous stories over the past three weeks. "A survey of those stories should make it abundantly clear that it was not possible to encompass all the nuances to everyone's complete satisfaction."

Ms Kelly's prescription in her emails and the CTU information were no help. The deputy editor said it would not pass the journalistic test of balance given that it took no account of the similarities between the two policies or the different ways that people might be affected.

No reasonable person would expect every last detail of any given policy to appear in the table. In this case, although the comparison drawn between the Labour and National KiwiSaver policies was necessarily brief, it was nonetheless fair and accurate.

Moreover, it was supported on Page 7 with a further panel explaining the more complex (and disputed) differences in the words of the party spokesmen for the policies. In short, *Vote08* was accurate, fair and balanced.

Mr Hastings also provided for the Press Council several recent articles from the *Her-*

ald in which the impact of National's policies on KiwiSaver were more fully explained.

Discussion

Graphic grids containing brief snippets of information about complex issues are often fraught for newspapers. This instance was no exception. Inevitably, in editing down policies to a few sentences, some details have to be omitted.

The *Herald* decided to focus on two aspects – parties' policies about KiwiSaver and employee contribution rates. (In that, it restricted the information to key points it believed relevant for the purpose of its information guide.) It was entitled to make such a judgment.

Ms Kelly's point that National would cut employer contributions from 4% to 2% and limit the employee tax credit (the government contribution) also to 2% to a maximum of $1040 per year and that this difference with Labour Party policy was important to voters was a valid one.

However, the deputy editor rightly pointed out that the article on page 7 did state National's policy on employer contributions, although not in the direct terms that Ms Kelly and the CTU stated.

As well, recent articles in the *Herald* made abundantly clear the differences between the two parties on this particular point.

The question for the Press Council was whether the detail provided in the grid met the test of accuracy, fairness and balance, and whether it was misleading because of what had been omitted.

In as far as the grid detail went, it met the criteria of accuracy, fairness and balance because all parties were treated the same.

Had the detail in the grid been the only information about KiwiSaver published in the supplement, the Council might have upheld the complaint. However there was additional information, including argument from both Michael Cullen and Bill English on the percentage contribution difference, in the article about KiwiSaver on page 7 of the same supplement. The Council also took into account that the Herald had previously published a considerable amount about the detail of KiwiSaver and, in particular, National's clearly stated intention to make a significant change to the savings scheme.

It would not be fair to uphold the complaint given this overall context. However, the *Herald* would have been wise to state on its double-page spread that the table provided severely edited information and referred readers to other pages within the supplement or even to party websites for greater detail.

Conclusion

The complaint was not upheld.

Reporter identification lapse – Cases 2054 and 2055

The Press Council has found *The Timaru Herald* in breach of privacy when a reporter gained access to a house without identifying herself and without the consent of the home-owner.

Background

The complaint arises from the circumstances in which, on July 15, 2008, a reporter for *The Timaru Herald* entered the home of Mrs H C Veitch. The reporter was seeking comment from Mrs Veitch, the grandmother of the broadcaster Tony Veitch, who was then the subject of intense media interest. The reporter entered in the company of two visitors paying a brief call on Mrs Veitch and did not identify herself as a journalist until after the visitors had gone. Mrs Veitch declined to comment on her grandson's affairs and the reporter left.

The following day Mr Hay, who is not connected to the Veitch family, saw the editor of the newspaper to complain about what he saw as an unwarranted invasion of privacy. The editor said that he would write to Mrs Veitch and did so. Mr Hay was not satisfied with the response by letter alone, or with its wording, and pursued the matter with the Press Council.

Complaint

Mr Hay complained to the Council on July 18 and a similar complaint on the grounds of invasion of privacy was received from Rob Veitch, Mrs Veitch's son, on July 31. These are third-party complaints but the Council was sanctioned to hear them by Mrs Veitch in a letter dated August 5, in which she said she was "traumatised and physically shaken" by the incident.

The Response

In a letter to the Press Council of August 14 the editor of *The Timaru Herald* said that the Tony Veitch story was of huge public interest. On July 15, having been made aware that Tony Veitch's grandmother lived in the town, the reporter contacted the chief reporter and was instructed to call on her to seek comment. The editor said the reporter had parked her car, which was clearly marked as a *Herald* vehicle, outside the two houses in which Veitch family members lived.

She knocked on the back door and receiving no reply went to the front where she encountered two women in the drive. The visitors took the reporter with them as they went to the back door, knocked, called out and entered. After a short while they left. The reporter stayed and identified herself and expressed sympathy for the difficult time the family was experiencing. Mrs Veitch said she had nothing to add to the story and the reporter left after giving Mrs Veitch a hug.

The editor said that the following day he received a visit from Mr Hay and he then consulted the reporter. As a result of this he sent a hand-written letter to Mrs Veitch, in which he apologised for any distress caused.

The editor said the Veitch story was dominating the news and possible family comment was of public interest. It was normal journalistic practice to go "cold calling" seeking quotes. The reporter was not in any way covert and at the first reasonable opportunity identified herself. She immediately accepted Mrs Veitch's decision not to comment and offered comfort, which was accepted.

Further comment

Mr Hay responded to the Council on August 29. He said the *Herald* car was not

parked outside the houses but further up the street, said that Mrs Veitch was upset at the reporter's version of events and enclosed a statement from Mrs Veitch, made before a Justice of the Peace. In this Mrs Veitch said the reporter entered her home uninvited and made no move to introduce herself until after Mrs Veitch's relations left. Mrs Veitch had assumed she was a caregiver she had been expecting to call. She was distressed to learn she was a reporter, the meeting was not as friendly as the editor suggested and she was thankful to see the reporter leave "even if it took a hug".

In a final submission to the council, dated September 12, the editor insisted there was no deception. Mrs Veitch's visitors motioned the reporter to follow them in. She did not want to interrupt them and as soon as they were leaving she identified herself. Her recollection of the meeting differed from that of Mrs Veitch and she felt they left on good terms.

The editor said the only reason the reporter entered the house was because she was beckoned in by the visitors. He accepted Mrs Veitch had been upset, which was why he had apologised by letter as soon as possible.

Discussion

Although there are differences in some of the detail and in interpretations of the events it is clear that the reporter did gain entry to Mrs Veitch's home without identifying herself. It is a matter of speculation as to how events would have proceeded without the co-incidence of the arrival of the visitors but there is no evidence of any positive intent to deceive. It is also agreed that the reporter made no attempts to press Mrs Veitch once it had been made clear she did not wish to comment.

Nevertheless a woman of advanced years, with only the most peripheral connection with a news story, was placed in a position in which she had to deal with a journalist being in her own home. A suggestion made by the editor that they could not have known that Mrs Veitch was elderly is undone by simple arithmetic.

There are circumstances in which public interest might make it legitimate for a reporter to place themselves in a position in which a prospective interview subject is obliged to deal with them. It is difficult to see that there is any such pressing public interest in this case. When told by the reporter that Mrs Veitch lived in the area the newspaper should have considered more carefully the appropriate nature of any approach it expected the reporter to make.

The editor's apology, although brief, was prompt and clearly recognised the distress caused.

The Decision

The complaint was upheld. No material was published as a result of this encounter and the circumstances were not easy for the reporter. But the obligation in this case was compelling for the reporter to clearly establish who she was before entering Mrs Veitch's home and breaching her privacy.

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

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

Management interference allegation – Case 2056

Allan Golden complained about a report published on the stuff.co.nz website on July 28, 2008. The report concerned a dispute between Auckland International Airport and the Canadian Pension Plan Investment Board over reimbursement of expenses incurred in a takeover offer for the airport.

The complaint is not upheld.

The Complaint

Mr Golden first complained to the Fairfax Media Group (the owner of the stuff site) pointing out that the article omitted the information that the disputed expenses were largely fees paid to two companies.

In his view this aspect was important but had been "deliberately withheld" in order to conceal "windfalls" to the companies.

He alleged that the reason not to disclose this information was that someone in a senior management position within the Fairfax company had a close relationship with the firms.

After receiving a prompt reply from the group online editor for Fairfax NZ, which rebutted his allegations and explained that the story had been published "in its entirety" as supplied by NZPA, Mr Golden made a formal complaint to the Press Council.

The basis for his complaint was still "misleading or misinforming by omission" (Principle 1) but now Mr Golden suggested that the omission was stuff.co.nz's not following through with updated information once the names of the companies receiving the disputed fees became known. Mr Golden maintained his view that the reason for the lack of follow up was the personal wish of senior management within the Fairfax Group that this information be not published.

The Website's Response

The group online editor replied to the formal complaint to the Press Council by reiterating that there had been no such "omission" of detail in the initial story – the press release to NZX, on which the NZPA report was based, had been timed for the NZ stock market opening, and that had been during the night in Canada and comment from CPPIB had been unavailable.

The editor also pointed to other websites that had run similar stories without including the detail about the two companies that had been paid incentive fees.

The accusation that someone in senior management had exerted any influence on the reporting of this matter was firmly rejected.

Further Exchanges

Mr Golden repeated his argument – that stuff.co.nz had a clear obligation to follow up the initial report as soon as detail about the disputed incentive fees became available.

He added that the *NZ Herald* had published an update on its website and that both *The Dominion Post* and *The Press* had published the names of the companies involved when they provided further background to the dispute.

He again claimed that the reason for such lack of rigour in not following up this story, on the part of stuff.co.nz, was direct or indirect pressure exerted on the Fairfax journalists by senior management.

The Fairfax online editor countered that there was no such journalistic obligation to "update as new information comes to hand". Here, the original report had been both fair and balanced and there was no need to provide another side to the story.

In fact, there was no "other side" as additional information only provided more detail, not another aspect of the story as a whole. The fresh detail was considered to be not newsworthy enough for a repeat.

She pointed out that Mr Golden argued editorial influence by senior management yet *The Dominion Post* and *The Press*, two daily newspapers that are part of the Fairfax group, later published the detail that Mr Golden saw as crucial. His argument that Fairfax journalists were under unfair pressure not to publish this information could not be sustained.

Discussion and Decision

In many instances there is an obligation to run updates as additional material becomes available. Such new information often gives a fresh viewpoint, delineates another aspect to a story, provides a vital counterbalance to an original report.

The Press Council has often noted that balance (and fairness, too) is frequently gained through such follow-up articles, even at some time after the first report.

However, that was not the case here.

In this example, new material merely expanded on a matter of detail. New information that came to hand did not change or counterbalance the meaning or the tenor of the original story.

Mr Golden might have seen this information as crucial, but the stuff website editor did not see it as newsworthy enough to merit publication, especially given that it would have been necessary to repeat at least some of the first report, if only as background.

The Council accepted that this was reasonable and understandable editorial practice and Mr Golden's complaint that readers were misled or misinformed by omission was not upheld.

The Press Council also considered that his allegations of editorial interference lack substance.

Here, the online editor's point was telling. Apparently, according to the complainant, journalists working for the Fairfax-owned stuff website were pressured not to publish information, yet *The Press* and *The Dominion Post*, two of Fairfax's leading papers later published this information (i.e. the names of the two companies that received incentive payments).

Further, at one point in his complaint, Mr Golden insinuated that NZPA was also not independent from Fairfax and might also have been pressured (along with stuff.co.nz journalists) to omit this material. For example, he said his suspicions were raised by NZPA and Fairfax both having Boulcott Street addresses. He wondered if they might be in the same office.

Fairfax NZ does own shares in NZPA, along with many New Zealand newspaper and media companies, but NZPA is managed independently and is responsible for and employs its own staff. NZPA is located in a different building from that of Fairfax NZ.

The complainant's various allegations about editorial interference were rejected.

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

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

'Anti-Israel bias' not proven – Case 2057

Introduction

Kiwis for Balanced Reporting on the Mideast complained that the *Otago Daily Times*, in reporting events involving Israel, failed Press Council standards of accuracy, fairness and balance. KBRM, according to its website, represents a group of "Kiwis and Kiwi friends" set up to redress "anti-Israel bias". Its "mission" is to rate newspapers' balance; to inform editors of the "missing side" of stories; to notify violations of standards; and to appeal "egregious cases to authorities such as the New Zealand Press Council".

The complaints, running over several pages, alleged of the *ODT*: bias in editorials and opinion pieces; disparate space and treatment given to anti-Israeli sides in letters to the editor; and unequal coverage in news' stories. All the news stories cited were sourced through international wire agencies, five via Thomson Reuters and a sixth via the Associated Press.

The complaints were not upheld.

The Complaints

KBRM chairman Rodney Brooks said a pattern was clear in the *ODT* of giving greater exposure to negative news and opinion about Israel, and less to negative news and opinion about Palestinians.

Editorial: Mr Brooks said a May 22 editorial about President Bush's recent push for peace unfairly emphasised Israel's settlement policies and cutting off of fuel as obstacles to peace, while only calling on Arabs to move past old resentments – "a ridiculous euphemism for trying to destroy Israel". A sentence, "While Israel applies a stranglehold on Gaza … Hamas retaliates with arbitrary and deadly rocket attacks…" failed to convey Hamas's intention to destroy Israel, or that Israel's actions against Gaza were designed to thwart such attacks.

A photograph of an Israeli tank accompanying a June 30 opinion piece, co-written by Mr Brooks, "reinforced the image of Israel as aggressor".

Letters: He said two letters attacking Israel (July 5 and July 7) were allowed to run substantially over newspaper word-limits, while four pro-Israel letters (May 29, June 23, July 10, and July 16), were either abridged or had important words deleted. One of these (July 23) came with an editor's rebuttal that "missed the

point" and contained an inaccuracy – that Israel had "seized" the West Bank.

News: The complaint identified six news items (June 16, June 17, July 31, July 1, July 4, and July 24). The first three, comprising criticism of Israel's resettlement practices, were given prominence; the rest, reporting Palestinian attacks, were given limited exposure, and key details of Palestinian brutalities omitted.

The complaint said: "the difference in space, headlines, placement and even font between reports of Israel building houses and descriptions of Palestinian attacks that killed and wounded people is striking". In a letter to editor Murray Kirkness, Mr Brooks added the paper could improve its balance by using AP instead of Thomson Reuters, "which is blatantly pro-Palestinian in its reporting".

The Newspaper's Response

Mr Kirkness rebutted the assertion the newspaper had violated principles of fairness, balance or accuracy. "[The assertion] implies I have a personal agenda to present news provided by our international services in a deliberately misleading manner for my own agenda. I reject that assertion absolutely."

The *ODT* published news from the Middle East as it happened. "It does not and could not conduct a day-to-day tally of items or paragraphs based on subjective opinion about what is supposedly supportive of one 'side' and negative to another."

The *ODT* received many more letters than it had space for. With guidelines clearly set out on the letters' page, the paper made it clear that decisions about selection and length rested with the editor.

Mr Brooks had been given "more than a fair go" with regards to publication of his letters and his opinion piece, though he had complained about the photograph attached to the latter. "I would suggest Mr Brooks' perceptions that the *ODT* has violated principles of fairness, accuracy and balance with regards to Israel are based on his world view, rather than on mine."

Discussion

Editorial: An editorial is – and is widely understood to be – an opinion of the newspaper. Although subject to basic rules of accuracy, it has leeway to take strong stances – even sides – on issues of public interest. In an editorial on President Bush's recent push for peace, arguing that, as a first step, Israel should desist from its settlement policies and step back from a stranglehold on Gaza, was a valid view for a newspaper to assert. Omitting a list of action to be taken by the other side did not constitute lack of balance in this context.

The picture of an Israeli tank that accompanied an opinion piece supportive of Israel was effectively neutral. Depending on personal stance, it could be seen as supporting either side.

Letters: The Press Council has consistently ruled that the publication and abridgement of letters is the prerogative of editors. On this, it should be noted that the two "anti-Israel" letters cited by Mr Brooks were responses to the substantial column space given him and co-author David Zwartz. The suggestion key words were deliberately omitted from pro-Israel letters – presumably as indication of newspaper bias - was countered by the newspaper as being routine editing. A newspaper needs to be

careful in its abridging, that the substance and accuracy of a letter is not lost. But in the letters cited, it was not evident that meaning had been compromised.

The editor's rebuttal to KBRM's June 23 letter, written in response to its criticism of the paper, was something he was entitled to do. Saying the land referred to was part of the West Bank "seized" by the Israeli army was a valid editorial judgment.

News: The *ODT*, like every other New Zealand paper, relies for its overseas news on material sent by agencies, with Thomson Reuters perhaps the most common conduit. The suggestion that Thomson Reuters was deliberately biased was beyond the scope of this council to measure. No evidence of bias lay before it.

Mr Kirkness was undoubtedly correct, however, in his observation that his paper's overseas copy was chosen in response to events that happened on a given day, without thought given to balance "tallies". It would be hard for his paper to function otherwise.

Conclusion

Covering overseas conflicts poses big difficulties for New Zealand's relatively small news media. It is understandable that a local newspaper should rely for its cover on respected news agencies such as Thomson Reuters.

In regards to editorials, the *ODT* has the right to take a stance on any controversial issue it wishes: there was no indication here of inaccuracy. Similarly, in regards to letters to the editor, while the newspaper should be enjoined to be alert to the potential effect of abridgements on meaning, no unfairness or lack of balance was here ascertained.

For the reasons given above, the complaints were not upheld.

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

Where did the sand come from? – Case 2058

A complaint to the New Zealand Press Council by Darryl Dawson about inaccuracies in an article in the community newspaper, the *Eastern Bay News*, on the removal and stockpiling of sand from a spit by a Whakatane local authority, has not been upheld.

The Complaint

On September 18, 2008, the *Eastern Bay News* published an article about the removal of sand from a spit to an area known as the Bennett Block where it would be stockpiled before being used to replenish Ohope Beach. Some 3100 tonnes had been removed.

The article said that one-third of that total had come from under the mean high water spring, which meant the council had to pay royalties of $1.70 a cubic metre. The Whakatane District Council's chief executive was quoted as saying the council was unaware of that requirement but it had "sorted it out" and paid the bill.

The chief executive was also quoted as saying some 203 tonnes of sand had been

sold but this would not meet moving costs or royalties. The council was not in the business of selling sand and there was no more for sale.

Stockpiling the sand had nothing to do with a Marina Society or a marina proposal, for which the council and the society were seeking to agree on a memorandum of understanding.

On September 29, Mr Dawson wrote to the chief reporter of *The Daily Post*, Rotorua, which oversees publication of the *News,* complaining about inaccuracies. He said the sand was not stored on Bennett Block, it was at an area known as 100-acre Block.

The council chief executive said the bill for royalties had been paid but when he checked with Environment Bay of Plenty, it had not been paid.

Two-thirds of the stockpile had come from mean high water spring, not one-third, and it was also incorrect to say the council was not in the business of selling sand, as another council officer had told him in a letter that it was.

The sand and the marina proposal were also not "completely different issues" as the chief executive had said because the council had a consent to dump sand on the proposed marina site and was applying for a new 35-year consent to dump sand there, Mr Dawson said.

On October 9, the *Eastern Bay News*, under the heading "Clarification," corrected the name of the area where the sand was being deposited. It also reported that while the original article said the royalty money had been paid, at the time it had only been approved for payment. Environment Bay of Plenty subsequently confirmed payment had been made.

Not satisfied, Mr Dawson complained to the Press Council.

The Newspaper's Response

The Daily Post's editor, Scott Inglis, said the paper was incorrect in reporting where the sand was stockpiled, and had simply quoted what the council chief executive had said about the payment of royalties. Both of those points had been addressed in the clarification.

It was also incorrect to say one-third of the sand came from under the mean high water spring. This was accidentally omitted from the clarification, for which the editor said the paper apologised. If Mr Dawson wished, the paper would run a correction.

Mr Dawson's point of complaint about the council selling sand was out of context. The chief executive was saying no more of the stockpiled sand would be sold and that selling sand was not a core business of the council.

The complaint about the marina proposal and the sand being "completely different issues" related to the chief executive's interpretation of the facts, and the newspaper accepted what was said in good faith.

In his response, Mr Dawson said he would like the *Eastern Bay News* to correct reference to the proportion of sand taken from under the mean high water spring. He was unhappy about the royalty payment clarification and he believed the heading should have read Correction, not Clarification.

Discussion

By correcting the errors about the position of the stockpile and when the royalty payments were made, the Press Council found the newspaper had met its obligations about accuracy.

The accidental omission of a correction about how much sand had come from under the mean high water spring was unfortunate, but its offer to run a correction if Mr Dawson wished was proper. In such circumstances, it would be unfair to uphold on that point alone.

The council's policy on selling sand and whether the marina proposal and the sand removal are "completely different issues" were opinions from a senior council officer and the newspaper was justified in quoting her.

Mr Dawson's point about the use of the word Clarification in the heading and that the word, Correction, was more suitable for the article of October 9 was reasonable. The article was indeed a correction but while the heading was not as clear as Mr Dawson would wish, the newspaper had met its obligations to address the minor inaccuracies in its original report.

Conclusion

The complaint was not upheld.

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

Birds of a feather – Case 2059

Peter Waring complained to the Press Council about an alteration to a short letter he submitted to *The Dominion Post* in the week before the recent NZ General Election. The complaint is not upheld.

The Complaint

On Monday, November 3 *The Dominion Post* published a front-page lead article regarding a relationship between the Vela family and Hon Peter Dunne. Mr Waring advised the Press Council that he felt so strongly about the inadvisability of John Key associating himself with Mr Dunne (who had apparently been offered a cabinet post after the election) that he wrote a short letter to *The Dominion Post*.

His letter noted that Mr Key and Mr Dunne were "flocking together" to indicate that he thought their association was unwisely close or that they were inclined to similar behaviour.

When the letter was published on November 5, the words "flocking together" had been replaced by "meeting".

Mr Waring's complaint was that this replacement considerably altered the tone of his letter and its meaning.

The Newspaper's Reponse

The newspaper's initial response was that the term "flocking together" was grammatically inaccurate as only two people were involved.

Mr Waring's response was that the term "birds of a feather flock together" often referred to only two such creatures.

The editor, in his response to the Press Council, stated that he did not believe that the substitution materially altered the meaning of the letter, and that the editing saved Mr Waring from the embarrassment of having a grammatically incorrect letter published.

Final Comment

Mr Waring used his right to respond to the editor by continuing to point out that he believed the substitution had substantially altered the meaning of his letter.

It was also clear that the editor believes that the substitution was justified to bring the letter into grammatical correctness.

Discussion and Finding

The newspaper did publish Mr Waring's letter in a timely fashion, and (as published) it did raise the association between Mr Dunne and the Vela family.

It is the newspaper's right to change Letters to the Editor to meet their standards, and the Press Council accepts that in this case the substitution was made on grammatical grounds. The Council notes, however, that grammatical inaccuracies can sometimes emphasise the point being made, as the letter writer might have intended here.

The Press Council understood the point that Mr Waring made that the emphasis in his letter had been changed; however, the meaning was not materially altered.

The complaint is not upheld.

Press Council members considering this complaint were Barry Paterson (Chairman), Aroha Beck, Ruth Buddicom, Kate Coughlan, John Gardner, 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 magazine 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 2008 (Audited)

2007		*2008*
	INCOME	
2,700	Union	2,700
170,000	NPA Contribution	195,0000
4,997	NZ Community Newspapers	4,905
9,225	Magazine Contribution	8,594
1,507	Interest Received	1,410
188,4292	**Total Income**	**212,609**
	EXPENDITURE	
281	ACC Levy	324
907	Accounting Fees	907
401	Advertising and Promotion	1,229
1,536	Auditor	709
45	Bank Charges	53
512	Cleaning	697
1,430	Computer Expenses	2,240
1,903	Depreciation	1,251
3,737	General Expenses & Subscriptions	6,726
2,400	Insurance	2,405
550	Internet Expenses	308
2,640	Postage and Couriers	2,479
2,166	Power and Telephone	2,490
8,887	Printing and Stationery	8,603
2,411	Reception	2,600
14,836	Rent and Carparking	14,400
122,929	Salaries - Board Fees	133,964
13,138	Travel and Accommodation	17,091
180,709	**Total Expenses**	**198,476**
7,720	Income over Expenditure	14,133
26,551	Plus Equity at beginning of year	33,693
(578)	Prior Period Adjustment	-
33,693	**Equity as at end of year**	**47,826**

Statement of financial position

As at 31 December 2008 (Audited)

2007		*2008*
	Represented by:	
	ASSETS	
6,612	BNZ Current Account	3,700
24,323	BNZ Call Account	53,787
2,531	Accruals and Receivables	108
1,431	Computer hardware(less depreciation)	925
6,525	Fit out (less depreciation)	5,781
-	Non-deductible expenses	-
41,422	**Total Assets**	**64,301**
	LESS LIABILITIES	
4,633	Creditors and Provisions	5,887
3,096	GST	8,396
-	PAYE Payable	2,192
7,729	**Total Liabilities**	**16,475**
	EQUITY	
25,973	Accumulated funds	33,693
7,720	Income over expenditure	14,133
33,693	**Total**	**47,826**

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 2008 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 2008 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 2008 and financial performance for the year ended on that date.

My audit was completed on 19 March 2009 and my unqualified opinion is expressed as at that date.

Walter Brock, CA (Retired)
Wellington

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