

# NEW ZEALAND PRESS COUNCIL

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NEW ZEALAND  
**PRESS  
COUNCIL**

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## Chairman's Foreword

A total of 60 complaints came before the Council during the year, a slight drop on 65 considered the previous year. The number of complaints considered in the last two years is approximately the same as the total considered in the three previous years. Of the 60 complaints, 18 were upheld, either in full or in part. Seven decisions were majority decisions (four upholding and three not upholding).

The Council declined to determine one of the complaints because the complainant refused to provide details of anything else but his name. He would not give an address, because he said he was homeless and lived in a car, and that the car was unregistered. The Council was and is still prepared to consider complaints from this complainant if he provides some evidence of his identity.

There were two events during the year which may lead to an alteration in the mode of operation of the Council. First, was the passing of the Criminal Procedure Act 2011. Members of the media receive certain privileges in the court and in some circumstances may remain during a hearing, even though the public is excluded. The Act defined a member of the media who may not be excluded when the public is excluded. The definition requires that the person be there for the purpose of reporting on the proceedings and, in addition, must be either subject

to or employed by an organisation that is subject to a code of ethics and the complaints procedure of either the Broadcasting Standards Authority or this Council. The Council is currently addressing with its stakeholders the issue of allowing website members to become members of the Council.

Secondly, in December, the Law Commission published its Issues Paper 27 on "The News Media Meets 'New Media'". The Commission was asked by the Government to conduct a review and two of the matters reviewed are of particular importance to the Council, namely the definition of "news media" for the purposes of the law, and whether, and to what extent, the jurisdiction of the Press Council should be extended to cover currently unregulated news media and, if so, what legislative changes would be required to achieve this end. Professor John Burrows, the lead Commissioner on the Paper, and his senior researchers Cate Brett and Rachel Hayward, attended a Council meeting in September to explain the Commission's role. This meeting preceded the Issues Paper.

The Paper refers to the problems of media convergence, the unregulated state of the web new news media and the rapid development and changes in the media caused by technology. The Commission's draft recommendation is that there be one self-regulatory body responsible for



**New Zealand Press Council 2011:** From left Pip Bruce Ferguson (Hamilton), Barry Paterson Chairman (Auckland), Keith Lees (Christchurch), Penny Harding (Wellington), Mary Major Executive Director, John Roughan (Auckland), Lynn Scott (Wellington), Clive Lind (Wellington), Sandy Gill (Lower Hutt), Stephen Stewart (Wellington) and Kate Coughlan (Auckland). Absent: Chris Darlow (Auckland)

Barry Paterson, formerly a judge of the High Court, is the independent chairman. The members representing the public are Dr Bruce Ferguson, Mr Darlow, Mrs Gill, Mr Lees and Ms Scott. Mr Lind and Mr Roughan represent the Newspaper Publishers' Association. Ms Coughlan represents the Magazine Publishers' Association. Ms Harding and Mr Stewart are the appointees of the media division of the New Zealand Engineering, Printing and Manufacturing Union (EPMU) representing working journalists.

both print and broadcast news media. It is recommending a body with some similarities to the Press Council as its recommendation is that the body should be completely free of any possible government interference. It is to be a self-regulatory body but funded both by the industry and the government. The body would have greater powers than those currently held by the Council. The Law Commission proposes to have its report to the Government by the end of 2012. The Council will be making submissions on this report.

One of the factors behind the Law Commission report is the development of web-based news sites. The internet and electronic communications have somewhat altered the landscape. The Council has during the year considered a case of comments by a blogger on a website. It sees these as being analogous to letters to the editor and applies similar rules (Case 2224). The views of the blogger are usually not those of the editor of the website.

The electronic media is figuring more often in complaints to the Council. In Complaint 2173, the complainant and his wife were distraught at the publication of their wedding photograph in newspapers, with an article detailing an assault on the complainant. The complainant did not think that the photograph was available on Facebook but, in fact, the newspapers had sourced the photograph from the Facebook page of a close relative of the complainant. The Council's view was that the internet is a public place and publication of a photograph on an open page can be sourced by the news media. It did, however, express the view that a newspaper using a photograph from Facebook would be wise to make some effort to obtain permission particularly if the photograph is of a sensitive subject. There may also be copyright implications.

In another complaint, it was necessary to consider the online treatment of developing stories and, in particular, the disappearance of the original item as the story develops. It was a case of adjudicating on a constantly evolving and impermanent "new media". The Council noted that one of the advantages of online copy was that alterations, updates, corrections can be easily made. However, this sometimes means that the original article in respect of which the complaint is made is no longer available. This creates difficulties and a potential complainant would be wise to take a copy of the original article if it is likely to be subject to a complaint (Case 2189).

Another complainant was concerned that he could not see the story complained about because it remained on the newspaper's website behind a pay wall. The complaint highlighted a problem for people who are the subject of a story they can not see in full without paying a subscription to an online newspaper site. In its decision, the Council strongly urged editors of online sites to make the full text available on request at no charge to those who are subject to the story (Case 2207).

Finally, on the issue of new means of communication, there was a complaint against the "Text Us" section of the newspaper. While the complaint was not upheld, the Council expressed concern about publishing texts from anonymous sources. The very nature of texting seems to encourage an instant, forceful, almost throwaway response, rather than the more considered approach of composing a

letter to the editor. This may well be exacerbated when the texter does not have to back up his comments with his or her identity.

Complaints against "gossip" magazines come before the Council from time to time. In Case 2190, the Council noted that gossip by its very nature has a much lower threshold of credibility and, providing articles are noted as such, the Council recognizes that strictly applying its principles to such articles is difficult when details are often speculative and conditional.

There was the usual number of complaints under the Council's principle of accuracy, fairness and balance. There were also complaints about the manner of correcting articles. If a newspaper having erred, publishes an appropriate correction, the Council will not normally uphold a complaint against the original error (Case 2171). However, it will uphold such a complaint if the original error was sufficiently serious that the correction does not expunge the harm done. In one case the Council determined that the correction was barely adequate (Case 2194). In another, it considered whether the publication of a letter to an editor could amount to a correction (Case 2184).

There was also a complaint against a cartoon where the Council confirmed that cartoonists are expressing their opinions and aim to provoke comment. Satire or black humour is a legitimate part of that. The Council confirmed a cartoon did not necessarily depict the newspaper's view (Case 2187).

In another case, issues of naming the source of a story and use of confidential information arose (Case 2205). The Council noted that a newspaper is not required to state the source of its news and that although the information in this case was confidential the newspaper was entitled to publish the information in breach of confidence as it was about a matter of legitimate public concern.

Headlines are another source of complaints. Although it is necessary to consider the difficulties of abbreviating the substance of the article into a headline, it is still necessary to accurately and fairly convey the substance or a key element of the report that the headline is designed to cover. In Case 2220, a complaint was upheld under this principle.

The cases in this report indicate the variety of matters on which complaints are made to the Council.

The only lunch guests were Professor Burrows and Messes Brett and Hayward, after they had addressed the Council on the proposed paper.

The work of the Council continues to grow with consequential effects on the work of the Executive Director, Mary Major. She resolves many of the complaints before they come to the Council. The Council is indebted to the efficient and friendly way in which she undertakes her tasks. That the Council operates efficiently in the circumstances is due to her sterling efforts.

Once again, I express my thanks and appreciation to the members of the Council for their support and considered contributions during the year.

**Barry Paterson**  
Chairman

# In Memoriam

## Denis Bazeley Gordon McLean

18 August 1930 – 30 March 2011

Denis McLean, much loved and respected public member of the Press Council (1999 – 2008), died suddenly at his home in Wellington in March.

Denis was a significant contributor to the Press Council through his thorough preparedness for meetings, his thoughtful and perceptive consideration of complaints and his close attention to different perspectives. The breadth of his understanding of New Zealand culture and his international perspective, from his many years as a diplomat, were also valued. Denis appreciated well the friction between freedom of the press and the rights and privacy of the individual.

Denis was always prepared to take on additional work for the Council, addressing various visitors on freedom of the press and freedom of expression, undertaking interviews and attending Select Committees.

Council members also appreciated his kindness, wit and humour and looked forward to hearing how the latest book was going, or about progress on *Te Araroa – The Long Pathway*.

Writing to the McLean family at the time of his death the Council said “Our hearts are heavy, but we are also full of thanks that we have known this wonderful man.”

We extend to his wife Anne, and to his family, our sympathy and deepest respect.

# Sanctions

The only sanction currently available to the Press Council is to require the publication to publish the adjudication giving it fair prominence. If the decision is lengthy, the Council may provide a shortened version for this purpose. If a complaint is not upheld, the publication has the discretion whether to publish or not.

It is sometimes said that the lack of the ability to impose other sanctions reduces the effectiveness of an adverse decision against a publication. The Council believes that this view diminishes the effect of the sanction. In their review of the New Zealand Press Council in November 2007, Sir Ian Barker and Professor Lewis Evans noted:

*“Most of the industry people to whom we spoke and who made submissions claimed that an adverse finding against a publication by the Press Council was very embarrassing for both the editor and the journalist concerned. It is seen as showing a lack of professionalism and could be viewed pejoratively by proprietors, competitors and peers.”*

The Barker/Evans Report also noted that at times the publication of an adverse finding may be worse medicine for the complainant than the original act complained about. This may particularly be so in a privacy case and so can lead to a necessarily imprecise adjudication being provided to publish, though generally in such cases the Council anonymises the complainant. So, the Report acknowledged, there cannot be a mechanical publication sanction for all situations. The Report also suggested that the Council should have power to censure.

The position of sanctions in Australia was considered by The Honourable R Finkelstein QC in his “Report of the Independent Inquiry Into The Media and Media Regulation” published in February 2012. His recommendations are that if a complaint is upheld, the remedies should include:

- (a) to require publication of a correction;
- (b) to require withdrawal of a particular article from continued publication (via the internet or otherwise);
- (c) to require a media outlet to publish a reply by a complainant or other relevant person;

- (d) to require publication of the decision or determination;
- (e) to direct when and where publication should appear.

The Law Commission in its recent Issues Paper 27 entitled “The News Media Meets ‘New Media’” also commented on sanctions. Its recommendation of a new regulator to regulate broadcasting, the print media and the internet suggests that the sanctions should include the power to require publication of an apology, correction or retraction, as well as the granting of a right of reply to an aggrieved person. It considered that if there is to be a power to grant compensation the amount awarded should be set at a relatively modest maximum.

However it also found monetary penalties as being problematic. It considered that unless they were significant they might have little impact on a large media corporation and conversely have a disproportionately adverse effect on smaller organisations. They might create more ill will than they are worth. They would raise issues of legal representation and engender an undesirable adversarial approach. It did not favour this sanction but considered that there may be cases when costs should be awarded.

The Council is of the view that neither compensation nor monetary penalties should form part of the Council sanctions. The reasons for this view are similar to those stated by the Law Commission.

The Council does however consider that the time is appropriate to consider whether it should have the power to order the sanctions suggested by the Finkelstein Report which are similar to those suggested by the Law Commission. It proposes to discuss with the industry the powers to order publication of a correction; to require withdrawal of a particular article from publication, including on the internet; to order an apology; to order a retraction; and to discuss whether there should not be power to order a grant of a right of reply in particular circumstances.

It also proposes to discuss with the industry the right to bolster the power which it now has to order publication of an adjudication. This power would include the placement of the adjudication and in respect of lengthy adjudications, the publication of a summary adjudication provided by the Council.

# The Comfort of a Copy of the Newspaper

Not surprisingly, the year was dominated by media coverage of the brutal Christchurch earthquake of February 22. Throughout, the performance of the local daily newspaper, *The Press*, was remarkable.

Despite a “munted” building, destroyed offices, one staff member killed and four others badly injured, despite a lack of power across half the city, despite chaotic communication and transport systems, despite a roading network clogged by mounds of liquefaction and sliced apart by cracks, despite reporters who were fearful for their own homes and families, somehow *The Press* both produced and distributed a newspaper the very next morning. It was an extraordinary feat.

In those early days, post-quake, many Christchurch residents had no access to television or computer (and some even had to scratch around for older, battery-powered radios) and relied on the daily newspaper delivery for desperately needed information about their devastated city. For many, the morning’s routine delivery of *The Press* brought not only news, it brought a small measure of comfort.

Of course, other media and other newspapers provided impressive coverage of the earthquake and its immediate aftermath to the rest of New Zealand but *The Press* newspaper is the local recorder of the city’s life and history and it continued to record, photograph, comment and criticise and hold to account, as the focus shifted gradually from rescue to the restoration of services and then to reconstruction.

Several issues relating to press and media coverage of public tragedy were pushed into sharp focus by *The Press*’s recording of events and by its ongoing efforts to maintain scrutiny for the public of the various authorities engaged in the renewal.

For example, the immediate detailing of the destruction included the publication of raw and powerful photographs of people who were injured or grieving or traumatised and this concerned some readers. And yet, history shows that these are the very images that will later be treasured for revealing the sheer impact of the event on people’s lives. Then *The Press* (with other media) was criticized for concentrating on the ruined CBD and the no-go red zone and ignoring the less dramatic but no less important stories of battered residents in the battered eastern suburbs, still reeling from constant after shocks in cracked houses without power and flush toilets.

Should the newspaper have reported the predictions of the “Moon Man”, Ken Ring, who predicted another destructive earthquake would hammer Christchurch in March? Tens of thousands of the city’s residents were reported as leaving the city for the weekend of the supposed date. Later, the New Zealand Sceptics Society awarded the

country’s collected news media its “Bent Spoon” Award for giving credence to the Moon Man by publishing his prediction.

To what extent should the newspaper have reported the more scientific evidence that further powerful aftershocks, to a magnitude of over 6.0, were highly probable within the year following the February 22 quake? Too much emphasis and the risk for creating widespread fear or even panic is clear: on the other hand, ignoring that data might mean that lives could be lost through failing to take adequate precautions, for example, in already damaged buildings.

At what point do constant reminders of the damage, via a stream of personal stories of loss and grief or daily photographs of more condemned buildings, turn from a log or record of the disaster to a wearying and depressing catalogue, one of little value to wearied and depressed readers? To what extent does a newspaper such as *The Press* have a responsibility to balance its coverage and publish positive reports of renewal and hope, even when such stories might be rare?

The tension between *The Press* and the various authorities tasked with organising and co-ordinating the reconstruction, such as the EQC, CERA and the Christchurch City Council and its staff, was probably inevitable. The role of a newspaper is to promote openness and free access to information but often the initial response from authority is to deny access to information that it thinks should not be revealed.

An example was the decision to ban all accredited media from the red zone right from the day after the February earthquake. Later in the year, “*Beyond the Cordon*,” a collection of photographs by the police photographic section, was published. *Press* photographer Dean Kozanic raised the question, “why was it not the media taking the images presented?” and stressed that local newspaper photographers were perfectly willing to don the hard hat and the high-viz vest in order to record the scene, recording as representatives of the people, not representatives of “authority”.

It must have been a long and challenging year for the journalists and editorial staff at *The Press*, operating out of Portacoms and working cheek by jowl, and no doubt suffering from their own worries and a sense of dislocation along with the rest of Christchurch. All year they must have grappled with such important but subtle balances – providing hope yet recording tragedy, challenging authorities while acknowledging the enormity of their task, accepting that people should have privacy at moments of grief or suffering while valuing the public’s right to be informed, not only about buildings and roads and power supply, but also about the emotional and physical damage on people.

## Complaints from afar

The New Zealand Press Council's rules on complaints against newspapers, magazines and periodicals in New Zealand (including their websites) are deliberately uncomplicated. If the appropriate steps are taken, including first complaining to the editor, the Council will accept the complaint which will proceed to adjudication in due course unless there is a prospect of successful mediation. The Council can decline a complaint if the publication has limited readership or "the circumstances make the complaint inappropriate for resolution by the Council." But this rarely occurs.

A decade ago, this all seemed straightforward enough. Newspapers or magazines usually had geographical or special-interest boundaries. But the advent of the worldwide web and the development of mobile devices has changed that, and online is now an active part of most publications' platforms of dissemination.

So what if somebody living far beyond New Zealand's shores should take offence at an article published online by an organisation signed up to the Council's protocols? Should the Press Council consider complaints from outside New Zealand?

That consideration has arisen recently in the case (No 2230) of two American citizens who took umbrage at a light-hearted column by Rosemary McLeod, published in the *Dominion Post* and the *Press*, but read online via the newspapers' sections on the Fairfax Media website, Stuff. The column, headlined *Short can be troublesome or seriously dangerous*, discussed small dogs and made comparisons with short men.

The Council did not uphold the complaint but it did raise the issue of why complaints from non-New Zealanders should be considered at all, particularly when there was no direct connection between the complainants and the subject matter, apart from the belief of the complainants that the column encouraged prejudice against short men.

In the past, the Council has not put boundaries around complaints. That is one of the reasons why the Council's Statement of Principles are deliberately broad. Complainants should not have to "tick boxes" to have a complaint considered. Facts can be established but matters such as fairness and balance have different meanings in different contexts.

Nevertheless, the Press Council may have to take such a step if overseas complaints based on internet articles become more common. According to the present rules, the Council has to consider all complaints from identified individuals or organisations, except in rare circumstances, but it is possible that an overseas vested interest could bombard the Council with numerous complaints about publications with which it disagrees. The Council has already had some experience of this with a New Zealand organisation.

In such circumstances, some boundaries would be sensible. The most logical step would be to consider complaints from overseas only if complainants can show they have a direct relationship with the subject matter, that is, it affects them and their reputations personally.

In other words, it cannot be a third-person complaint, or a group purporting to speak on behalf of others.

A short person in a far-off country would have some difficulty showing a light-hearted column was capable of bringing them into disfavour in their own communities.

Such a boundary could not apply, however, to a New Zealander living overseas with links to New Zealand. Nor could it apply to citizens living in an overseas country specifically mentioned in articles published in New Zealand and to which they have taken offence.

That may give some comfort to Jennifer Aniston and other stars should they become concerned about what is said of them in New Zealand's gossip magazines.



# Behind the Scenes at the Press Council

**N**ot all complaints that come to the Press Council end up being formally adjudicated by the Press Council. Some are withdrawn, some are mediated (a process recommended as an option by the 2007 Ian Barker / Lewis Evans review of the Press Council) and some are resolved by the newspaper, magazine or website.

Some examples of complaints that did not go to formal adjudication in 2011 follow:

In March the Council received eight complaints from friends of a couple whose toddler had died in tragic circumstances. The complaints detailed the anguish the parents experienced over the death which was exacerbated by the repeated contact from a reporter, and the newspaper's determination to publish the story despite the parents' pleadings to the editor.

The editor, fielding 50 complaints, did not resile from the publication. He noted that much of the information included in the report was already in the public domain in the death notice, and that there was a public interest/safety warning in the reportage.

The complaints were all third party and, in the end, the parents did not give their consent to the complaints proceeding, as was their right.

A few months later a coroner moved quickly to suppress the name of a family involved in a very similar tragedy. The event was still reported, but without the names.

Every day newspapers publish stories of tragedy; every day there are family members grieving in some part of the country. The contrasting feature of the two stories above is that in the latter the story went ahead, the public interest aspect was served, but the privacy of the family at a time of extreme grief was respected.

For the other family their situation was, regrettably, made much worse by the actions of the newspaper.

Two other complaints, that did not proceed, related to stories and photos of fatal road crashes.

In one case family members realised their family member had been killed because they recognised the car in a photo posted online. This was posted before they had been informed officially.

In the second a family member said "I was a pall-bearer and the next thing I knew my photo was online." He also complained about the extensive and repetitive coverage of the injuries suffered by the family in the crash and the explicit nature of the comments from some of the by-standers.

The Council would urge editors to remember that such tragedies are more than news stories. These are people suffering grief and trauma and who are deserving of special consideration when they are at their most vulnerable.

Another complaint related to coverage of the Christchurch earthquake at the time when the names of the dead were starting to be released. One story, on a website that does not come within the jurisdiction of the Press Council, simply listed the names of some of the

dead. The complainant said such publication was so cold-hearted, showing no consideration to the families of those named.

The executive director contacted the editor of the website, who realised that it was a very early version of the story that had accidentally remained online when the story had been reworked to give a fuller, more respectful, account of those who had died. This story was deleted within hours of the complaint being made to the Press Council.

A woman complained about an article published in two small provincial newspapers. The story followed a Court of Appeal finding relating to her historic rape case. The case had the automatic suppression given to victims of sexual offences, so the victim was not named, but there was considerable detail about the offence. The complainant questioned why there needed to be so much detail in the report, so long after the event; since the hearing had been heard in a closed court she had assumed there would be no coverage; said she felt re-victimised by the coverage; and the impact on her family had been immense, with her elderly parents finding out for the first time just what she had experienced. She asked for an apology and for the editors "think very carefully before subjecting other victims to this type of reporting".

With the agreement of the complainant, the Press Council contacted both editors. Both sent letters of acknowledgement and apology. It was useful for them to understand the impact that publishing a seemingly standard story can have on an individual involved. The distress caused was completely inadvertent and the editors regretted it.

This comment in the Press Council's Annual Report is part of the settlement reached with the complainant, so that other editors may also be aware of the unintended consequences of publishing such material.

A volunteer structural engineer complained about the noise made by photographers' cameras during the two minute silence at a ceremony marking the end of the first week since the devastating February 22 Christchurch earthquake. He commented on "the lack of common decency and respect in their failure to observe the two minute silence".

The executive director sought advice from a chief photographer and the complaint was discussed, informally and with some interest, by the Press Council.

The complainant was advised:

*I discussed the matter with the chief photographer at one of the bigger national dailies, who advised that even with digital cameras of the sort they use, they are not able to "turn off" the shutter sound, as you can with the simple point and snap cameras that I might use. If they are taking photos in Court they take soundproof covers for their cameras, but they were unlikely to have them with them on the day. He will draw your concerns to the attention of others in the profession.*

*In general the consensus of the Press Council was that the greater good was served by having the photographers take the photos - it was history in the making and the greater public was being served by having access to the photos that resulted.*

*Those Council members who have worked with photographers (the industry members) noted that they had generally found photographers to be very sensitive to such situations. In this case the problem was probably exacerbated by the numbers of photographers attending - many more than would usually be present.*

*It was also noted that not only were photographers usually aware of the sensitivities, but in this case many of the photographers were locals, who had suffered the effects of the earthquake themselves. You probably know that the offices of The Press were badly hit with one staff member dying, several injured and the premises ruined.*

*The photographers would have intended no disrespect, and some would have been putting their own grief aside to record the moment for history.*

The complainant, while not agreeing with the consensus view expressed was satisfied the Council had taken reasonable steps to address the issue.

The Parole Board complained about an inaccurate

headline "Killer to walk free." In fact at the time of publication the Parole Board had not considered the man's case, and he was subsequently denied parole. Initially the magazine published a letter to the editor from Hon Justice Frater, Deputy Chairperson of the NZ Parole Board, pointing out the error. Then on receipt of the complaint from the Press Council the editor published an apology admitting the error and apologising unreservedly. This settled the complaint.

A Marlborough couple complained about inaccuracies in coverage relating to their business relationship with Alan Hubbard, and about being the regular go-to people for commentary on the Hubbard and South Canterbury Finance saga.

The editor acknowledged there were some matters that needed to be addressed, and they had been. He also said that the couple had always provided comment when asked, but the newspaper would now honour their request not to be contacted.

The Press Council values the readiness of editors to engage in the informal resolution of such complaints. It is good for both the industry and the Press Council if, with a bit of give and take on both sides, complaints can be resolved quickly and informally.

# The Press Council Year – other activities

Press Council Chairman, Barry Paterson, spent the Spring term at Wolfson College, Cambridge University, England, where he researched the tort of privacy and the tension between privacy and freedom of expression. It was a topic that became increasingly relevant and interesting while he was there, with considerable commentary on injunctions and so-called super-injunctions.

Since 1998 the UK has been required to have full regard to decisions of the European Court. Both the UK and EC have held that Freedom of Expression and Privacy are equal rights.

UK courts consider that an individual's sexual life is a private concern, whether it involves affairs, prostitution or unusual activities. However the internet is being used to subvert this; and even two members of Parliament had used parliamentary privilege to "out" the affair of a footballer.

While in the UK Mr Paterson also met with staff from the Press Complaints Commission.

In May the Press Council was somewhat surprised to find itself included in a review of State Sector Agencies the goal being, apparently, greater collaboration between the Broadcasting Standards Authority, the Advertising Standards Authority and the Press Council. The announcement was followed by two workshops organised by the Ministry of Culture and Heritage. The Press Council received an assurance from the Minister of Culture and Heritage and Attorney General, Chris Finlayson, that the Government was not considering statutory regulation of the print media.

Concurrent with this review, and in response to a request from the Minister of Justice, the Law Commission was working on its issues paper on gaps in media regulation.

Mid-year the *News of the World* phone-hacking scandal broke and the Leveson Inquiry was set up to examine, among other things, media regulation. Quite how a Press Council, with no powers of subpoena, examination, investigation or statutory authority to call witnesses, was expected to stop illegal phone-hacking and underhand payments to certain police officers, has not been explained. Press Councils, which operate effectively in over 80 countries, can deal with lapses in ethical behaviour, but cannot be expected to regulate illegal activity. The Council

watched as tales of an unholy triumvirate of politicians, police and media high-fliers emerged.

In August the council's executive director, Mary Major, attended a Human Rights Commission Diversity Forum in Hamilton. She spoke to representatives from various ethnic groups and support agencies about the work of the Press Council. She also introduced them to the generic website [www.complaintline.org.nz](http://www.complaintline.org.nz) set up by the Disputes Investigation Group, of which the Press Council is a member.

In October the Council organised a fast-track committee to enable quick turn-around of any complaints relating to the General Election coverage. In the event no complaints were received, though Council members viewed with interest the unfolding of the "teapot" saga, in which the Prime Minister lodged a complaint with police over the recording of a conversation between John Banks and himself in a café while on the election trail. The photographer who had the recording had given it to a Sunday paper, which chose not to reveal the contents of the tape. The investigation saw the police execute a search warrant on the newspaper offices, though the newspaper handed over the material, and no "search" was required.

In March 2012 the police advised they would lay no charges against the photographer, who had maintained all along the recording was inadvertent. Of particular concern to the Council was the statement by the police that the photographer had behaved "unlawfully".

It is not for the police to determine what is unlawful – that responsibility lies with the Courts. There are defences available to the photographer, which have not been tested in Court, and it is the Council's view that the police should not have made that statement.

In December the Law Commission released the issues paper *News Media Meets New Media*, which recommends the formation of one media regulation body, combining the Press Council and the Broadcasting Standards Authority. The Commission broadly endorses the procedures of the Press Council and the proposed new body has many of the features of the current Press Council, including that it should be free of the influence of both government and industry.

# Decisions 2011

<i>Complaint name</i>	<i>Publication</i>	<i>Adjudication</i>	<i>Date</i>	<i>Case No</i>
De Wet Blaauw	<i>Eastern Courier</i>	Not Upheld	February	2169
Andy Boreham	<i>Waikato Times</i>	Not upheld by majority	February	2170
Pat Cartwright & Bev Jenkins	<i>Timaru Herald</i>	Not Upheld	February	2171
Don Hedges	<i>Northern Advocate</i>	Not Upheld	February	2172
Aparangi Hemara	<i>Herald on Sunday</i>	Not Upheld	February	2173
Allan Hubbard	<i>The Press</i>	Upheld	February	2174
Craig McConnell	<i>Timaru Herald</i>	Upheld by majority	February	2175
Bruce Roscoe	<i>NZPA</i>	Not Upheld	February	2176
Barnaby Shiels-Reddin	<i>Stuff</i>	Not upheld	February	2177
Peter Thomas	<i>NZ Herald</i>	Not Upheld	February	2178
Dale Williams	<i>Waikato Times</i>	Not Upheld	February	2179
Jose & Linda Armstrong	<i>Wanganui Chronicle</i>	Not Upheld	March	2180
Pat Norris	<i>Nelson Mail</i>	Not Upheld	March	2181
Complainant	<i>Northern Advocate</i>	Upheld by majority	March	2182
Katie Tucholski	<i>Otago Daily Times</i>	Not Upheld	March	2183
Martin Warriner	<i>Kapiti Observer</i>	Not Upheld	March	2184
Allan Golden	<i>The Dominion Post</i>	Not Upheld	May	2185
Hon Murray McCully	<i>Sunday Star-Times</i>	Upheld	May	2186
Malcolm Pease	<i>Taranaki Daily News</i>	Not Upheld	May	2187
John Bates	<i>Sunday Star-Times</i>	Upheld by majority	July	2188
Martyn Bradbury	<i>Stuff</i>	Not Upheld	July	2189
Church of Scientology NZ	<i>New Idea</i>	Not Upheld	July	2190
Church of Scientology NZ	<i>NZ Woman's Weekly</i>	Not Upheld	July	2191
Dave Henderson	<i>The Press</i>	Not Upheld by majority	July	2192
Paul Kearns	<i>Greymouth Star</i>	Not Upheld	July	2193
Labour Party	<i>Herald on Sunday</i>	Not Upheld	July	2194
John Tannahill	<i>Sunday Star-Times</i>	Not Upheld	July	2195
Marcus Wilkins	<i>NZ Kiwifruit Journal</i>	Upheld by majority	July	2196
Delaware Bay Residents Assoc	<i>Nelson Mail</i>	Upheld	July	2197
Martin Devlin	<i>NZ Herald</i>	Upheld	August	2198
Matthew Harris	<i>Waikato Times</i>	Not Upheld	August	2199
Complainant	<i>NZ Herald</i>	Not Upheld	August	2200
INTANZ	<i>Consumer</i>	Not Upheld	August	2201
Sheralee Webster	<i>Hokitika Guardian</i>	Upheld	August	2202
Tim Manu	<i>KapiMana News</i>	Not Upheld	August	2203
James Morris	<i>NBR</i>	Upheld	August	2204
Complainant	<i>Sunday Star-Times</i>	Not Upheld	August	2205
Sarah Taylor	<i>Hawke's Bay Today</i>	Not Upheld	August	2206
Duncan Wilson & Suzanne Paul	<i>NBR</i>	Not Upheld	August	2207
Andi Brotherston	<i>Herald on Sunday</i>	Upheld	September	2208
Childrens' Commissioner	<i>North &amp; South</i>	Not Upheld	September	2209
Federated Farmers Sth Canterbury	<i>Straight Furrow</i>	Part Upheld	September	2210
Norman Hopkins	<i>The Dominion Post</i>	Not Upheld	September	2211
NZQA	<i>North &amp; South</i>	Upheld	September	2212
PPTA	<i>North &amp; South</i>	Upheld	September	2213
Andy Boreham	<i>Stuff</i>	Upheld	October	2214
Ron Campbell	<i>Whakatane Beacon</i>	Part Upheld	October	2215
Jo Lin Chia	<i>Herald on Sunday</i>	Not Upheld	October	2216
Thomas Everth	<i>Peninsula Press</i>	Not Upheld	October	2217
James Gardiner	<i>Manawatu Standard</i>	Not Upheld	October	2218
Chris Jellie	<i>Nelson Mail</i>	Not Upheld	October	2219
Tony Martin	<i>Southland Times</i>	Part Upheld	October	2220
Brian Steel	<i>NZ Herald</i>	Not Upheld	October	2221
Michael & Carolyn Wright	<i>Waimea Weekly</i>	Part Upheld	October	2222

Neil Sinclair	<i>South Waikato Times</i>	Not Upheld	December	2223
Andrea Bubendorfer	<i>Stuff</i>	Not Upheld	December	2224
Paul Carruthers	<i>The Press</i>	Not Upheld	December	2225
Anne-Maree McDougall	<i>New Zealand Herald</i>	Not Upheld	December	2226
Rob Paterson	<i>Bay of Plenty Times</i>	Not Upheld by majority	December	2227
Complainant	<i>NBR &amp; ODT</i>	Complaint rejected	December	2228

## An Analysis

Of the 60 complaints that went to adjudication in 2011 10 were upheld in full; four were upheld by a majority; four were part upheld; 38 were not upheld; three were not upheld by a majority and one complaint was rejected by the Council.

Twenty nine complaints were against daily newspapers; eight were against community newspapers; eight were against magazines; eight against Sunday newspapers; four against Stuff; two against *National Business Review* and one against NZPA.

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. In 2011 there were 21 occasions where a member declared an interest and left the room while the complaint was considered.

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 or written up as a dissenting opinion (Cases 2170, 2175, 2182, 2188, 2192, 2196 and 2227)

## The Statistics

Year ending 31 December	2008	2009	2010	2011
<b>Decisions issued</b>	<b>43</b>	<b>44</b>	<b>65</b>	<b>60</b>
Upheld	11	7	20	10
Upheld with dissent		1	3	4
Part upheld	2	3	2	4
Part upheld with dissent			1	
Not upheld with dissent	1	2	1	3
Complaint declined				1
Not upheld with dissent on casting vote of Chairman	1			
Not upheld	28	31	38	38
<b>Not adjudicated</b>	<b>31</b>	<b>33</b>	<b>84</b>	<b>71</b>
Mediated/resolved	3	7	10	8
Withdrawn	4	3	9	12
Withdrawn at late stage	1		2	1
Not followed through	3	9	26	22
Out of time	3	1	2	2
Not accepted	8	3	14	5
Outside jurisdiction		1	6	6
In action at end of year	9	9	15	15
<b>Total complaints</b>	<b>74</b>	<b>77</b>	<b>149</b>	<b>131</b>

# Adjudications 2011

## CASE NO: 2169 – DE WET BLAAUW AGAINST EASTERN COURIER

The Press Council has not upheld a complaint by De Wet Blaauw against the *Eastern Courier* newspaper.

### Background

On November 12, 2010 the *Eastern Courier* published an article discussing action taken by Howick College to combat allegations of bullying at the College. The article cited principal Iva Ropati as stating that in a recent case of a student being sent back to South Africa because of claims that she was being bullied at the College, they had taken the allegations seriously but ‘found no evidence of bullying’.

There had been articles relating to the alleged bullying published previously in the *New Zealand Herald* covering the allegations and indicating that Mr Blaauw was disappointed in a meeting he had had with the school, which, in his opinion, dealt with the matter as an isolated incident whereas Mr Blaauw thought there was a more widespread problem.

These articles were not, however, specifically referred to in the *Courier* report, which merely mentioned ‘media reports’ that the college ‘has a problem’.

The day the article was published, Mr Blaauw wrote to Melanie Verran of Suburban Newspapers Ltd (SNL) complaining about the article which he claimed was biased, and took only the school’s point of view into consideration. A ‘Big Stand’ anti-bullying group featured in the *Courier* article was news to Mr Blaauw despite his having complained to the school about bullying of their daughter.

Ms Verran forwarded the email to Janet Taylor, editor of the *Eastern Courier*, who replied on 15 November that the article had set out to determine the school’s response to bullying rather than to focus on ‘stories that had been in other media’.

Ms Taylor indicated in her reply that she did understand Mr Blaauw’s concerns about bullying, from personal experience, and she resolved the situation satisfactorily by locating the child elsewhere. She hoped that ‘it all works out’ for Mr Blaauw’s family also.

A further series of emails between Ms Taylor and Mr Blaauw failed to resolve his concerns and Mr Blaauw claimed that the paper’s article was ‘sensationalist’; that his daughter had been targeted on Facebook; and that ‘it seems that you want to cause hurt and humiliation’ because his two sons were being targeted in another school now.

Ms Taylor responded promptly to this further complaint, explaining that the paper was focusing on the school’s handling of allegations of bullying; that the story was not sensationalist; and that neither the principal nor the paper had suggested that Mr Blaauw’s daughter was lying. He was invited to write a letter to the editor if he wished.

### The Complaint

Mr Blaauw was dissatisfied with Ms Taylor’s response and lodged a complaint with the Press Council on December 10. In the complaint he stated that the article suggested his daughter was ‘fabricating the incidents’; was biased towards the school, and that none of the parents whose children were allegedly being bullied had been approached in the writing of the article.

His complaint alleged that principles of accuracy, fairness and balance; privacy; children and young people; confidentiality; and conflicts of interest had been breached.

### The Newspaper’s Response

A full response was received from Ms Taylor, outlining the various steps through which the process had gone, and providing supplementary articles on the issue by other media. Ms Taylor reiterated that the article was focused on the school, not on previous allegations. ‘We decided to do a story so that the families...would know the school’s position’.

The paper had chosen not to name the student because the effect on her was ‘paramount throughout the newsgathering process.’

Queries raised by Mr Blaauw about the accuracy of reporting of the principal’s comments were rebutted, with a formal letter from the principal being submitted to back this claim. The editor had also listened to the reporter’s recording and shared her confidence that her article was accurate.

### The Complainant’s Response

In his final response, Mr Blaauw reiterated that he believed that the article had presented only the school’s view and that it had not mentioned a number of parents who had complained about bullying. He stated that despite his daughter’s name not being used, local people would still know who was being referred to in relation to the bullying complaint, and maintained that ‘the article clearly insinuated that my daughter fabricated the facts’.

### Discussion

It is clear from both Mr Blaauw’s correspondence and Ms Taylor’s reply that having a child being bullied is a very upsetting experience.

However, the paper acted appropriately in seeking to present the school’s responses to allegations of bullying. Its featuring of the Big Stand committee, a student-led initiative to raise awareness of bullying and how it might be challenged, was a positive step.

The article did not, as Mr Blaauw alleged, suggest that his daughter had been lying; rather Mr Ropati’s comment indicates that insufficient evidence was found to take further action in her specific situation. This is borne out in Mr Blaauw’s final response when he quoted Mr Ropati’s comment that ‘I did not deny that something happened to their daughter but did not accept that we have a culture of bullying.’

A newspaper has a responsibility to its own community to ensure that, when emotional issues such as bullying are raised, albeit by other media, information on a school's response to such allegations is made known widely.

### Conclusion

The Press Council did not find that the article breached any of its principles. However it is not always wise to rely on readers having read other media for the full story. The article could have explored parents' complaints of bullying and provided additional comment from the college's community.

However, the newspaper chose to develop the angle of what the school had done in response to the claims of bullying, and that is their right.

The complaint is therefore not upheld.

Press Council members considering this complaint were Barry Paterson (Chairman), Pip Bruce Ferguson, Kate Coughlan, Chris Darlow, Penny Harding, Keith Lees, John Roughan, Lynn Scott and Stephen Stewart.

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

## CASE NO: 2170 – ANDY BOREHAM AGAINST WAIKATO TIMES

Andy Boreham accuses *Waikato Times* of failing to comply with Principles 1 (Accuracy, Fairness and Balance) and 5 (headlines and captions) of the Press Council Statement of Principles in reporting matters arising from the death of Catherine McGregor in April 2010.

The complaint is not upheld 7:3, in a split decision of the Council.

### Background

On December 4, 2010 *Waikato Times* ran a story headed "Woman's death linked to party pills". The story reported on a coronial hearing as to the causes of Ms McGregor's death. The opening paragraph read "She took up to four pills, had a seizure and never came to: a Hamilton woman's death in April has raised new concerns over party pills". The story went on to describe events leading to Ms McGregor's death and testimony from a neurosurgeon, a police officer and associates of the deceased given at the coronial hearing. The story concluded with observations made by the Coroner when adjourning the hearing.

The coroner reportedly raised the issue as to whether party pills "were safe", this being a matter of public interest.

### The Complaint

Mr Boreham claims the *Waikato Times* headline was misleading in that it inferred legal party pills led to Ms McGregor's death when there has been no finding to this effect.

Mr Boreham says that as the evidence presented to the coroner indicated Ms McGregor had also consumed alcohol and cannabis on the day she died, as well as testing positive for amphetamine, it was wrong for the newspaper

to lead its story with the suggestion that "legal" party pills were the cause of death.

Mr Boreham refers to the evidence of the neurosurgeon, Dr Balakrishnan, who concluded Ms McGregor's fatal brain haemorrhage was "most probably" drug induced, although he could not rule out that the haemorrhage could have been caused by a brain abnormality.

Mr Boreham's point is that Ms McGregor could have died through any number of reasons, reasons still to be determined.

Mr Boreham claims the headline is "scaremongering", "sensationalist" and misleading. Mr Boreham is concerned the article could cause "undue stress and panic" for legal party pill users.

### The Response

*Waikato Times* responds by denying the headline is misleading. The newspaper says the heading is "... factually correct in that the death was linked to party pills – in a temporal sense – because Catherine McGregor died shortly after taking party pills. That's the link". *Waikato Times* says neither the heading nor the story states that Ms McGregor's death was caused by her consuming party pills. The story referred to the coronial hearing being adjourned while further investigations were carried out.

The newspaper claims considerable public interest in issues around party pills.

### The Decision

The Council has carefully considered the *Waikato Times* article. Mr Boreham's complaint is directed at the headline not the article itself. The majority of the Press Council does not agree with Mr Boreham.

The issue revolves around the word "linked". The word "link" in this context basically means "implicated in".

The Council regards the article itself to be balanced and fair. It reported a judicial enquiry. It referred to uncontested evidence that the deceased not only consumed alcohol and cannabis but she also took party pills on the day she died. The article made it clear the hearing was being adjourned pending further investigation into the possible cause of the amphetamine's presence.

It was appropriate for the headline to refer to a link between party pills and Ms McGregor's death in the light of the Coroner's refusal to suppress the deceased's name and his statement that the question as to whether party pills are safe is of public interest. In these circumstances the majority of the Council did not accept the headline was inaccurate, misleading or that it failed to fairly convey the substance of the report.

A majority of seven members of the Press Council voted to not uphold the complaint.

A minority of three members of the Council would have upheld the complaint. The minority view is that "linked" as used in the heading conveys the meaning of "caused". As such it does not fairly convey a key element of the story, namely that the cause of death has not been established.

Press Council members not upholding the complaint were Kate Coughlan, Pip Bruce Ferguson, Keith Lees, Chris Darlow, Penny Harding, John Roughan and Lynn Scott.



Press Council members who dissented from this decision were Barry Paterson, Stephen Stewart and Sandy Gill.

## **CASE NO: 2171 – PAT CARTWRIGHT AND BEV JENKINS AGAINST THE TIMARU HERALD**

Bev Jenkins and Pat Cartwright complained that Mrs Cartwright's house was pictured on the front page of *The Timaru Herald* and wrongly reported to be owned by Allan Hubbard whose properties, the story said, might be sold by statutory managers following the collapse of his company, South Canterbury Finance.

The newspaper admitted the error and published a correction on its front page the following day.

The complainants were not satisfied because they had asked for the photograph of the house to be republished with the correction.

They also complained that the newspaper used information from an official property information agency, Quotable Value, without QV's consent.

The complaint is not upheld.

### **Complaint**

Bev Jenkins says her mother was distressed to pick up her morning paper on September 3, 2010, and see a colour photograph of her home under a headline, "Hubbard's properties may be sold".

She says Mrs Cartwright owns the home freehold under a family trust. Mr Hubbard is the trustee, a role he previously shared with Mrs Cartwright's late husband. Ms Jenkins says Mr Hubbard has never had a financial interest in the property.

Mr Hubbard is listed as the owner of the property on the QV website but the complainants argue the newspaper needed QV's consent to use information from the site.

They cite a copyright note on the website that states information is for "your own lawful internal use and you agree not to further disseminate the information supplied and in particular, not to publish it by written, broadcasting, videotex, electronically on computer encoded mediums or by other means, without the written consent of Property IQ."

### **The Newspaper's Response**

The deputy editor of *The Timaru Herald* said it had taken pictures of a number of properties listed on the QV website in the name of Mr Hubbard or his wife. Mrs Cartwright's house was chosen at random to illustrate the story.

He points out that the address was not published and since the house was in a rural area he believes it would not have been recognised by the vast majority of his readers.

After Mrs Cartwright's son pointed out the error, the deputy editor agreed to publish a correction on the front page the next day.

He said it was not normal practice to republish the picture in this situation and he could see no reason to do so. Those who had recognised the house the previous day

would connect it with the correction. For those unfamiliar with the house, its picture would serve no purpose.

Though the published correction was headed "clarification" it was in a front page column headed in red and distinguished by a coloured background.

He and the editor considered the complainants' request for a second correction containing the photograph, and decided they had done enough.

On the question of permission to use QV information, the deputy editor said newspapers are actively encouraged to carry QV data on property sales and the like. Written permission for any other use of its information had never been required as far as he was aware.

### **The Decision**

The Council can readily understand Mrs Cartwright's distress at seeing her home wrongly presented as a Hubbard property facing a possible forced sale.

But the newspaper promptly admitted its mistake on its front page the next day.

The admission should have been entitled "correction" and some Council members felt it should have included the photograph since it was the visual impact of this that was likely to have attracted attention to the erroneous potential sale of the property.

However, no other property had been pictured with the story and it is not normal practice to republish the offending picture in these circumstances.

It would have been useful in the Council's view if the correction had explained that the error arose because the property is held by a family trust but listed in Mr Hubbard's name as sole trustee.

That information could have alerted readers to the possibility that the original story might have been based on a misunderstanding about many of the properties Mr Hubbard appeared to own.

On the question of the newspaper's use of QV information, the editor has supplied a letter he received from Property IQ in which its research director explains that the error on its website arose from the title held by Land Information NZ, which showed Allan Hubbard as sole trustee rather than one of two.

The letter confirms the agency's assertion of copyright and its requirement for written permission. It says, "While we usually grant this permission, we usually discourage media organisations from using our website to publish information about individuals or individual properties."

In this case, it says, "We would also have pointed out that the appearance of Allan Hubbard's name on the title does not signify ownership, but more likely that he was a trustee."

Be that as it may, the Council accepts that the newspaper was unaware of QV's terms and conditions of use, and unaware of the possibility that listed owners might be trustees with no beneficial claim on the property.

The Council is concerned that these things may not be well enough known in the media and hopes this complaint will draw it to editors' attention.

In this case the newspaper appears to have acted in good faith throughout.

The complaint is not upheld.

Press Council members considering this complaint

were Barry Paterson (Chairman), Pip Bruce Ferguson, Kate Coughlan, Chris Darlow, Sandy Gill, Penny Harding, Keith Lees, John Roughan, Lynn Scott and Stephen Stewart.

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

## **CASE NO: 2172 – DON HEDGES AGAINST THE NORTHERN ADVOCATE**

Don Hedges complained to the New Zealand Press Council about a series of articles published in *The Northern Advocate* in the run up to the Whangarei District Council mayoral elections held late last year (2010).

The complaint is not upheld.

### **Background**

Mr Hedges is a colourful and well-known Whangarei character who became one of 10 contenders for the Whangarei mayoralty.

The mayoral campaign hotted up considerably when a prominent Whangarei businessman, Morris Cutford, supported by other Whangarei businessmen, put his candidacy forward with a strong thrust against the incumbent, who was standing for re-election. This was front page news on 24 June.

On September 18 Mr Hedges hit the front page. Under the headline “Would-be mayor’s knife charge quashed” the *Advocate* reported that 24 years after he had been convicted for a knife attack, Mr Hedges had his conviction quashed on a technicality. Mr Hedges said he planned to apply for compensation because he had served time.

The story was accompanied by a picture of a jubilant Mr Hedges wearing torn clothes, and with a wide smile on his face.

On September 22 the paper ran a further story showing the 10 mayoral contenders and listing their convictions. Mr Hedges’ long list of criminal convictions was given prominence. The pictures of the other nine mayoral candidates were passport-style. The photograph of Mr Hedges was the one used on September 18.

The paper published a letter from Mr Hedges in the “Letters to the Editor” section on 2 October. In this, he set out some of his views as candidate. The September 18 photograph accompanied the letter.

### **The Complaint**

Mr Hedges wrote a letter of complaint to the editor on October 9 and again on October 13. The first letter provided the editor with his thoughts about the justice system in particular. The second letter was in particular a complaint about the listing of Mr Hedges’ convictions, and about the continued use of an inappropriate photograph.

The editor gave Mr Hedges advice about how to proceed with a complaint to the Press Council.

The complaint alleged that the press coverage was unbalanced, that the coverage given to Mr Cutford’s candidacy failed to highlight that candidate’s lack of knowledge of the workings of the Whangarei District

Council, that the publication of his (Mr Hedges’) criminal record during a critical time in the mayoral campaign was unfair, and that other candidates had not submitted a true account of their trouble with the law.

### **The Editor’s Response**

The editor strongly rebutted the accusation of bias or unfairness. The paper had been at pains to offer all candidates the chance to state their views in a weekly column throughout the campaign period.

Mr Cutford was widely regarded by the community as a serious contender who came out of the left field with powerful backing from local business people.

The photograph of Mr Hedges supporting the story about the quashing of his criminal conviction was one that the paper had had for some time. It fitted the celebratory tone of the story.

He added that the allegation that the paper was biased towards Mr Cutford had no substance. Indeed the newspaper had printed a page one story of a behind-the-scenes bid by Mr Cutford’s supporters to get the minor candidates to stand down. This was hardly complimentary to Mr Cutford.

The complaint about the candidates’ criminal convictions story should be viewed in the light of the information provided by the candidates, all of whom were asked the same questions; the editor noted that Mr Hedges has a lengthy “rap sheet”.

In essence, the paper has not shown bias. It published Mr Hedges’ letter to the editor, and offered the opportunity to write a further letter to the editor voicing his complaint against the paper. He did not do so.

### **Conclusion**

The complaint is not upheld. In a many sided mayoral contest, a newspaper cannot give all candidates equal coverage. Within a short time, certain candidates emerge as strong contenders, and it is those candidates and the issues surrounding their candidacy, who receive more coverage.

Mr Hedges is clearly a well-known and colourful Whangarei candidate. The news of the quashing of his criminal conviction for a serious crime coming in the middle of an election campaign was not the best timing for him. However, that story was newsworthy and had clear public interest.

Mr Hedges may not like the photograph, but the paper is not in breach of the Press Council’s principles in using it.

The complaint is not upheld.

Press Council members considering this complaint were Barry Paterson (Chairman), Pip Bruce Ferguson, Kate Coughlan, Chris Darlow, Sandy Gill, Penny Harding, Keith Lees, John Roughan, Lynn Scott and Stephen Stewart.

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

## CASE NO: 2173 – APARANGI HEMARA AGAINST HERALD ON SUNDAY

### Introduction

The Press Council has not upheld a complaint by Aparangi Hemara against the *Herald on Sunday* and *nzherald.co.nz* about a news story concerning the aftermath of a physical attack on Mr Hemara and the publication of a photograph of him with his bride on their wedding day.

### The Article and Photograph

On November 28, 2010 the *Herald on Sunday* and the *nzherald.co.nz* published an article titled *Street thugs shred Api's rugby hopes*, concerning a violent attack in Scotland on a former top Maori rugby player. Aparangi Hemara and his fiancée were set upon and beaten as they caught a bus home following their engagement celebration. The trial and conviction (in Scotland) of Mr Hemara's attackers was widely reported by the British press and provided the impetus for and content of the *Herald on Sunday* and *nzherald.co.nz* news story. The story included direct quotations from Mr Hemara about the impact of the attack as well as unattributed comment that the attack caused the delay of his wedding, the loss of one eye and wrecked his hopes of a professional rugby career.

Accompanying the story, and with the caption "*Hemara's delayed wedding. Photo/Supplied*" was a photograph of the couple on their wedding day.

### The Complaint

Mr Hemara and his wife were very distressed by the story and particularly distraught at the publication of their wedding photograph. Mr Hemara describes the assault as leading to a year and a half of hell which he and his wife found hard to deal with. The British press coverage caused added pressure and the publication of the *Herald on Sunday* story caused such an upset he was initially unable to put his feelings into words.

He felt that the circumstances should entitle him and his wife to privacy rather than having to endure the terrible experience of having their situation "splashed" through the papers. Mr Hemara said that the choice of informing his family and friends about what had happened to them had been effectively taken away from him as their story was made 'public property' by the news story.

The use of the wedding photograph caused particular hurt. "Of all the photos you could take from someone, they took the one that meant the most, the most personal. That day was ours and now that's been robbed from us."

Their original wedding day had to be cancelled because of the attack. In the aftermath of the attack, anticipation of their forthcoming wedding got them through 'each day of hell!'

"We have had so much taken from us, I wish I could express how it felt to see someone had taken our day away as well."

In addition to the hurt caused by the publication Mr Hemara raised the issue of copyright ownership of the photograph initially stating it was owned by their professional wedding photographer and subsequent stating

he and his wife had purchased copyright and were the lawful owners.

The use of the word "Supplied" with photograph was also misleading and amplified their hurt as it implied the couple had given the photograph to the press when they had not even given it to their close family.

### The Response

In its response the newspaper acknowledged Mr Hemara's grievance and explained that the story was "pieced together" from various UK press reports. The editor said his staff made extensive but unsuccessful efforts to find Mr Hemara and only succeeded in finding the Facebook page of Mr Hemara's mother. The editor stated that the newspaper "contacted her directly". However, the newspaper did not elaborate on the nature of this "contact" and Mr Hemara later denied that his mother had ever been contacted by the newspaper. This point was not answered by the newspaper.

Initially the newspaper claimed the wedding photograph was sourced from Mr Hemara's Facebook page. Subsequently, the newspaper claimed to have sourced the photograph via a comment posted by Mr Hemara's mother on her Facebook page regarding the wedding. "His mother's Facebook profile, which was open to all users, carried a comment on her son's wedding. By clicking on that comment, it brought the photo up."

The newspaper argued that if Mr Hemara, or his mother, did not want any access to the photographs they should have adjusted the available privacy setting options accordingly.

Regarding the issue of copyright, in its initial response the newspaper did acknowledge potential breach of copyright with the use of the photograph and offered to pay \$NZ150. This offer was not repeated in their final response nor did Mr Hemara respond to it.

### Discussion

The violent attack and its aftermath have caused major trauma to this couple both physically and mentally. The stress of the subsequent court case, notwithstanding the convictions of two of their assailants, was not alleviated by media attention. In fact the opposite was the case with press coverage exacerbating their distress.

It is a sad feature of violent events that victims sometimes feel twice violated; the second time by the media. But this does not mean that the reporting of violence against private citizens should be prohibited. In this situation, because of the victim's profile as a highly regarded sportsman, there was added media interest in his plight and in the trial of his assailants. While the Press Council sympathises with this couple it does not find there was a breach of Press Council Principles in the newspaper's decision to report events.

The complainant argues that he was not contacted prior to publication. It is the case that had the newspaper been successful in contacting him, and had he withheld comment, the newspaper would have most likely proceeded to publish the article anyway. The majority of the information was already in the public domain.

His original case that the article contained errors was not elaborated on nor substantiated in his subsequent complaint.

On the subject of the photograph, and its source, the issues are more complex. Mr Hemara argues that he owns the copyright to the photographs. Copyright law protects ownership on the internet, including Facebook, in the same way as it does in print publications. This was acknowledged by the newspaper in the offer of \$NZ150 for breach. Copyright issues are legal matters and as such do not fall within the jurisdiction of the Press Council.

However, Facebook is not a private space but a public sphere and the Press Council has cause, yet again, to remind users that despite the best intents of individuals, it is not easy not always possible to protect privacy or enforce copyright issues.

The Press Council has previously indicated that it expects news organisations considering publishing images garnered from Facebook, to take reasonable steps to obtain permission.

In Case 2166 (*Gen O'Halloran Against New Zealand Herald*) the Press Council stated:

*The internet is a public place. Publication of a photograph on an open page therefore indicates to the news media that there is an implied use for news purposes. Despite that, the Council believes that a newspaper using a picture from Facebook would be wise to make some effort to obtain permission, particularly if it is a picture of a sensitive subject, and to give credit where it is due and to avoid a claim of breach of copyright.*

As the newspaper has not breached the Council's Principles the complaint is not upheld.

Press Council members considering this complaint were Barry Paterson (Chairman), Pip Bruce Ferguson, Kate Coughlan, Chris Darlow, Sandy Gill, Penny Harding, Keith Lees, John Roughan, Lynn Scott and Stephen Stewart.

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

## **CASE NO: 2174 – ALLAN HUBBARD AGAINST THE PRESS**

Allan Hubbard complains, through his solicitor, that an article in *The Press* on December 9, 2010 was inaccurate, unfair and unbalanced. The complaint is upheld

### **The Article**

The front-page article was under the bold headline '*Arrest today in Ponzi-Type Fraud*'. A photograph of Mr Hubbard was displayed prominently below the headline with a caption clearly identifying him. The article noted that the business person facing arrest remained a mystery; the SFO was not ruling out South Canterbury businessman Allan Hubbard, but Hubbard said he thought it was unlikely; referred to the SFO investigation into Mr and Mrs Hubbard and their investment companies and a number of charitable trusts; quoted the Chief Executive of the SFO as saying he would like to have the Hubbard investigation wrapped up by Christmas; quoted Hubbard who said that he had been given no indication that charges would be laid; and said that when the Chief Executive was asked if he could rule out Hubbard, he replied "no comment".

The following day on page 3 *The Press* under the heading *Life Savings Lost By Terminally Ill Investors in Ponzi 'Fraud'* noted that an Auckland couple had been arrested in an alleged \$15 million Ponzi type fraud scheme and gave details of them.

### **The Complaint**

The basis of the complaint is that Mr Hubbard "strongly considers that readers would draw an inference that he was due to be arrested for a Ponzi-type fraud". It notes that at no stage has there been an allegation that Mr Hubbard was involved in a Ponzi-type fraud. Nor was there any possibility that the SFO was going to arrest him for a Ponzi-type fraud. It claims that the publication was irresponsible and breached the Council's guidelines in respect of an accurate fair and balanced publication.

### **The Newspaper's Response**

*The Press's* position is that the article on the front page on December 9, when read as a complete package, did not have the meaning alleged by Mr Hubbard. It quoted Mr Hubbard at length stating that he did not believe he was facing imminent arrest.

The editor notes that *The Press* could be found to have committed an inadvertent design error that led to the impression gained by Mr Hubbard; and that such "an error would be unfortunate especially since the night editor endeavoured to achieve the exact opposite." It was the belief of the night editor that readers would take at face value Mr Hubbard's quote that he did not think he was the person who would be arrested. The editor said that "essentially the aim was to give readers a range of possibilities, when people might have assumed it was Mr Hubbard had we not included the quotes". The statement that the SFO refused to rule out Mr Hubbard was thus balanced by Mr Hubbard's own comments.

The editor expresses concern at the manner in which the complaint had been pursued. He was unaware of Mr Hubbard's concerns when the follow up article, which appeared the next day, was written. He alleges that it was a bit disingenuous to complain about the paper's behaviour when it had not properly been notified of an issue, nor then given further opportunity to discuss whether a further clarification was necessary.

### **Discussion**

While it is correct that there was some balance in the article, the issue is one of perception. The Council's view is that many readers would have formed the view that Mr Hubbard was the person to be arrested. The emphasis in the article was on Mr Hubbard, and his photo would lead readers to believe that Mr Hubbard was the person being referred to. Many readers would have believed that *The Press* knew who the person about to be arrested was. In the circumstances this was unfair to Mr Hubbard and carried an inference which was incorrect.

While it is not necessary to comment on the allegation of a disingenuous complaint, the Council does not see that this was the case. Mr Hubbard's solicitor sent an email to *The Press* on the date of publication. The email was addressed to the PA of the chief reporter. It was not seen by

the editor before the follow-up article on the following day was written. However it is not accepted that Mr Hubbard can be said to be disingenuous in the circumstances. The damage was done when the article of December 9 was published.

### Decision

The Council upholds the complaint on the grounds that the article, together with the photograph, conveyed an inaccurate inference and was unfair to Mr Hubbard.

Press Council members considering this complaint were Barry Paterson (Chairman), Pip Bruce Ferguson, Kate Coughlan, Chris Darlow, Sandy Gill, Penny Harding, Keith Lees, John Roughan, Lynn Scott and Stephen Stewart.

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

## CASE NO: 2175 – CRAIG MCCONNELL AGAINST THE TIMARU HERALD

In a split 6:4 decision, the Press Council upholds a complaint by Craig McConnell against *The Timaru Herald* over a report claiming he had convictions for rape and car theft.

### Background

On November 30, 2010 *The Timaru Herald* published a report about an unsolved murder in Queensland 27 years ago. As part of the report, they interviewed the dead woman's parents and a man now living in Timaru, Craig McConnell, who had been tried and acquitted of her murder.

The article included details of Mr McConnell's past criminal convictions, including two convictions for murder as well as convictions for rape, armed robbery and car theft.

Mr McConnell states that he does not have convictions for rape and car theft and this is confirmed by his lawyer.

Prior to publication, on November 25, Mr McConnell's lawyer had notified *The Timaru Herald* by letter that they should not rely upon a column appearing in Queensland media as being a well-informed and reliable source of information.

### The Complaint

Mr McConnell's lawyer complained to the newspaper that the story accused his client of being a convicted rapist and car thief and this was factually inaccurate. He also objected to being asked by the newspaper to confirm that his client did not have those convictions, saying it was up to the newspaper to check facts before publication.

The newspaper published a retraction on December 3, saying it had been unable to substantiate the allegations that Mr McConnell had convictions for rape and car theft. The newspaper apologised to Mr McConnell for publishing those allegations.

Mr McConnell's lawyer also complained that the newspaper had failed to provide balance in the article by not quoting fully remarks made to McConnell in an

email by a police officer saying he had been surprised that McConnell had been committed for trial. That would have made readers aware that the police officer thought the case against his client had been weak.

### The Newspaper's Response

*Timaru Herald* editor David King disputed that the article wasn't fair or balanced. He accepted that the newspaper had been wrong in its claim that Mr McConnell had convictions for rape and car theft. He said once they were challenged on this, the newspaper investigated and corrected the mistake as soon as possible.

Mr King said that, aside from that mistake, the article was fair and balanced and put Mr McConnell's side of the story "which was, effectively, that the police had done a shoddy job".

### Discussion

Unsolved murder cases will always be of interest to people and the media. In its report of this cold case, *The Timaru Herald* did provide fair coverage of the views of the man acquitted of the murder along with those of the murdered woman's family and the police.

The Press Council does not accept that editing the quote from the police officer affected the balance of the article. It was already clear from the report that the police handling of the case was being called into question.

Where *The Timaru Herald* was irresponsible, was in stating that Mr McConnell was a convicted rapist and car thief. This was incorrect.

When the newspaper realised its mistake, it published a retraction and apology within a matter of days. The retraction itself is not at issue, only that it was necessary in the first place.

*The Timaru Herald* had been warned prior to publication that any information used from Queensland media needed to be checked for accuracy before being published in the local newspaper. Given this clear warning the newspaper should have carefully checked the accuracy of information used in the article. It did not do this.

Despite the later retraction and apology, the information in the article was already in the public domain and the impact on Mr McConnell had already commenced. It is also likely that not every person who had read the original article would read the subsequent retraction and apology.

While the timely retraction and apology by *The Timaru Herald* would usually be remedy enough, given the pre-publication warning by Mr McConnell's lawyer, and given the seriousness of the published information and impact on Mr McConnell, it is not enough in this instance.

If a newspaper intends to publish information regarding a person's criminal convictions, they have a responsibility to ensure that it is accurate. It would be unrealistic to say that a person known to have been convicted of rape would not be viewed as a possible future risk in the eyes of the general public.

In this case *The Timaru Herald* had advance warning that there were serious inaccuracies in information published elsewhere, but did not verify the facts.

The majority of the Press Council upholds this complaint.

Four members of the Press Council would not have upheld the complaint. The minority thought that since the lawyer was aware of inaccuracies in the Gold Coast Bulletin report he should have been more specific in his letter to the editor. That may have saved the newspaper and his client from exposure to it.

Many editors receive correspondence from lawyers, which they understand to be an attempt to dissuade the newspaper from publishing material about their client. This overture would have seemed no different.

The article contained incorrect information but in the minority view the correction, published promptly, remedied this.

Press Council members upholding the complaint were Barry Paterson, Pip Bruce Ferguson, Chris Darlow, Sandy Gill, Keith Lees and Lynn Scott

Press Council members not upholding the complaint were Kate Coughlan, Penny Harding, John Roughan and Stephen Stewart.

## **CASE NO: 2176 – BRUCE ROSCOE AGAINST NZPA**

### **Introduction**

Bruce Roscoe's complaint relates to an article published by the New Zealand Press Association (NZPA), Thursday November 18, 2010. Mr Roscoe believes a comment in the article is racist.

Mr Roscoe's complaint is not upheld.

### **Background**

The article contains the comment "New Zealand's cricketers may have to call on pest control to rid them of an unwanted irritant they have inadvertently stumbled over in India".

The article commented on the cricketing prowess of Harbhajan Singh and his impact on the test series between New Zealand and India.

All comments regarding Mr Singh were of a positive and complimentary nature.

### **Complaint**

Mr Roscoe believes that the comment in the article relating to pest control is "racially offensive".

Mr Roscoe goes on to say that "Pest control clearly first implies an eradication of vermin or rodents". He goes on to state that "I believe that an NZPA journalist or editor has consciously applied this term to the Indian cricketer in question".

Mr Roscoe states that "I do not believe that NZPA would ever liken white European cricketers to vermin or rodents".

In a further letter dated January 18, 2011, Mr Roscoe states that "At issue is use of the term [pest control], which is pernicious and racially baiting. It badly jarred as soon as I read it. I envisaged schoolroom taunts against south Asians – 'Well call in pest control for you!' 'Well he looks like a rat' 'Well that's what the newspaper said'."

Mr Roscoe went on to state that "One has only to google the term to see the first several hundred references are to the extermination of vermin and rodents and insects that are injurious to human health or the environment" and provided sample copies of his google search.

Specifically, Mr Roscoe states "The description in my view breaches principles of fairness and balance and discrimination and diversity. It creates a precedent in or reinforces a standard of what is permissible".

### **Response from the NZPA**

In reply the editor stated that "In its use of "pest control", NZPA did not liken Indian cricketer Harbhajan Singh to "vermin or rodents", or call on him to be eradicated, as suggested by Bruce Roscoe".

The editor went on to state "By definition the Oxford Dictionary describes a pest as "a troublesome person" who annoys continually with "requests or questions", in this sense by batting and bowling well".

He goes on to state that "The point the author was trying to make was Harbhajan's unexpected good form with the bat was a constant thorn in the side of the New Zealand cricket team, whose job would be easier without him".

He goes further to state that "A full reading of the story reveals the exact opposite meaning to the one Mr Roscoe took, painting a very positive picture of Harbhajan, and admiring his cricketing feats".

The editor goes on to say that the story is about a cricket player who is much admired and there was no intention to liken him to vermin in a "racially offensive" fashion.

The editor provided a selection of examples where the term "pest" has been used in sports journalism in what he describes as a term of endearment and/or admiration.

### **Discussion and conclusion**

Mr Roscoe and the editor both provided examples that they believed supported their case.

It is clear to anyone reading the article that it is both positive and complimentary to the Indian cricketer Harbhajan Singh and is in no way derogatory or insulting. The article outlines Mr Singh's prowess as a cricketer. The words "vermin or rodent" do not feature in the article and the article clearly uses the word "pest" as pertaining to Mr Singh's successful impact in the arena of cricket.

The complaint is not upheld.

Press Council members considering this complaint were Barry Paterson (Chairman), Pip Bruce Ferguson, Kate Coughlan, Chris Darlow, Sandy Gill, Penny Harding, Keith Lees, John Roughan, Lynn Scott and Stephen Stewart.

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

## CASE NO: 2177 – BARNABY SHIELS-REDDIN AGAINST STUFF

Barnaby Shiels-Reddin complained about the headline to a story posted on the Fairfax website, *Stuff*. His complaint is not upheld.

### Background

On November 22, the website posted a story, received via the Reuters news agency, about the rescue of 29 Chinese coal miners.

The report was headed *Trapped 29 rescued from coal mine – in China*.

At the time, 29 miners were missing after an explosion in the Pike River mine on the West Coast and many readers would have been anxious to hear how rescue attempts there were faring.

The report about the rescue in China ran directly beneath the lead story on the unfolding Pike River drama.

### The Complaint

Mr Shiels-Reddin explained that he subscribed to an RSS feed from the *Stuff* website.

This particular one line feed disturbed him because he felt it was designed simply to attract attention and to drive traffic to the *Stuff* website.

Given that so many New Zealanders were waiting and desperately hoping for a positive outcome for the 29 miners in the Pike River mine, he thought *Stuff*'s headline was "sensationalist" as well as offensive.

He had no complaint with the report itself, he was concerned only about the RSS feed headline/subject line.

### The Response

The Fairfax manager of the website, Sinead Boucher, stressed that the headline was not intended to offend, only to summarise that a parallel drama was taking place in China, with the same number of coal miners.

She also pointed out that the word China in the headline made it clear that the report was not about Pike River. The headline made a link between the two stories but also explained that the rescue was taking place in a different country.

### Decision

The Press Council notes the complainant's suggestion that the feed could have been "Chinese miners rescued" with no mention of the number 29 that he found so offensive.

However, given these two parallel stories, in close proximity in time as well as on the homepage, it was reasonable and justifiable to make a clear link between the two situations in the feedline – while also noting that the event was in another country.

Further, there is no doubt that the headline accurately and fairly conveyed the substance of the report.

The complaint is not upheld

Press Council members considering this complaint were Barry Paterson (Chairman), Pip Bruce Ferguson, Kate Coughlan, Chris Darlow, Sandy Gill, Penny Harding, Keith Lees, John Roughan, Lynn Scott and Stephen Stewart.

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

## CASE NO: 2178 – PETER THOMAS AGAINST NEW ZEALAND HERALD

Peter Thomas complained about a column by Brian Gaynor published by the *New Zealand Herald* in its business section on August 7, 2010, claiming that it breached Press Council principles relating to lack of accuracy, fairness and balance. He also suggested that it misled or misinformed readers by commission and omission.

His complaint is not upheld.

### Background

Mr Gaynor commented on the possible consequences of a District Court decision dismissing all charges brought by the Ministry of Economic Development against five directors of Feltex Carpets Limited.

The charges were that the directors had failed to disclose a breach of a loan agreement (a debt facility provided by the ANZ Bank); and that this loan had been classified as a "non-current" liability when it should have been "current".

Mr Gaynor outlined the judgment while also linking the dismissal of the charges to the on-going debate about corporate responsibility in New Zealand and the difficulty in establishing who was responsible when there were problems and deficiencies in financial reporting.

Although pointing out that the directors had been found not guilty, he also raised the question of whether the directors had an obligation (an ethical or moral obligation rather than a legal one) to keep investors better informed.

He also referred critically to the Initial Public Offering of Feltex.

The complainant, Peter Thomas, was one of the Feltex directors and was also the Managing Director and CEO of the company between November, 2004 and September, 2006, when receivers were appointed.

The article was headlined "Feltex ruling revives familiar debate" and was further introduced by "Lack of corporate responsibility means the buck is passed around and around".

It was accompanied by a photograph of the five directors.

### The Complaint

A complaint was made to the *New Zealand Herald* but when APN New Zealand Ltd, on behalf of the newspaper and Mr Gaynor, rejected the complaint and declined to provide the requested redress, formal complaint was made to the Press Council.

The complaint was made in a lengthy submission from Mr Thomas's lawyer.

First, he argued that the article in question was a business news item rather than an opinion piece (where the writer might have greater freedom to comment from his own perspective).

For example, it did not appear in the editorial or opinion and review pages. There was no by-line to indicate it was opinion. Moreover, the report was highlighted on the front page of the business section, in a side bar under the specific heading "News". ie the reference was to "a news item, not an opinion piece".

Secondly, Mr Gaynor's notion – that no specific group had accepted responsibility for the collapse of Feltex because of the blurred lines of corporate responsibility in New Zealand – implied the fault for its failure lay with someone or some group, rather than factors such as market forces or changes in economic circumstances. ie it implied that the directors were to blame.

The complainant suggested that the comment, "The Feltex IPO . . . was clearly an exercise of dressing up mutton to look like lamb" implied something misleading or deceptive or improper on the part of the Directors with regard to the IPO.

Further, "Even though investors were crying out for greater transparency the Feltex directors chose not to disclose that the company was in breach of a bank covenant and had major bank loans which were "current" in the interim report released in February 2006" also implied a conscious decision by the directors to 'hide' the true state of the loans

The complainant took exception to Mr Gaynor's comment that "This (ie greater disclosure to investors) is something they could have, and should have, done . . . as most investors, with the exception of the Feltex directors, realised that the company had serious problems." The complainant said this was inaccurate as well as unfair and unbalanced.

These comments ignored the clearly stated conclusions of both the Securities Commission and Her Honour Judge Doogue.

The Securities Commission had found that the Feltex Prospectus based its projections on reasonable assumptions and "did not breach securities law and was not misleading in any material particulars".

Further, while financial reporting standards had indeed been breached in assessing a major bank loan as "non-current" instead of "current", the Court concluded that the directors were not to blame. They were able to rely on professional advice, but that advice purchased from the auditors, Ernst and Young, was faulty. This was apparent in the Court's judgment -- "the Ernst and Young assessment report was completely wrong". (Judge Doogue)

Judge Doogue had "completely and unequivocally exonerated the Directors of the charges and of any wrongdoing with regard to Feltex". She had even stressed that "these directors are all honest men and they had conducted themselves at all times with unimpeachable integrity".

The submission argued that because the article omitted such findings it was inaccurate and unbalanced, it misled or misinformed readers, and above all, it was unfair to the directors.

In short, the exoneration of the complainant by Judge Doogue had been undermined by unfair reporting.

### The Newspaper's Response

The editor of the *New Zealand Herald*, Tim Murphy, firmly rejected the complaint.

He stressed that the piece was clearly a column and therefore opinion – it was typeset in a manner common to all columns (different from news articles), and it was presented with a colour (purple) common to all columns,

the material was not current and spanned a considerable period, and finally, the words, style and content made it clear it was opinion and not news.

Mr Gaynor was expressing his personal view that the directors of Feltex could have gone beyond what was merely permissible in law in regard to a breach of the banking covenants and the company's "current" debt and reported the company's financial position with greater transparency.

Mr Gaynor had not suggested anywhere in his column that these alleged breaches (referred by the Ministry of Economic Development to the courts) had been in any way the cause of Feltex's demise.

As far as the comment about the IPO being "mutton dressed as lamb" and the complaint that this was a criticism of the Prospectus, the phrase had been misunderstood. The phrase did not communicate falsity and deliberate deception, rather that something old was being presented as something new.

It had not been necessary to traverse all the findings by the Securities Commission and Judge Doogue in his column as those decisions had already received wide coverage in the media.

In sum, Brian Gaynor had expressed honestly held views in an informed and balanced way.

### Discussion and Decision

First, the Press Council does not agree that this piece of journalism is likely to be read as a news item.

The Council is puzzled by the submission that it appeared without a by line, when the newspaper printed a photograph of the writer immediately under the headline, accompanied by his name.

Further, a more careful reading of the sidebar to the front page of the business indicates that Brian Gaynor's column is not listed under "News", rather it is one of several sections highlighted within the business pages; ie the reader is directed to News – "Designer to ditch DJs" (C3), or to Brian Gaynor – "Passing the Feltex buck" (C2), or to International – "Food price time bomb" (C6) etc. Brian Gaynor's column is here signalled as being different from general news articles.

There are other markers within the text that indicate that this is a column and not a news report, such as "This column wrote . . .". Further, various colloquial expressions such as "an exercise of dressing up mutton to look as lamb" and "the buck is passed around and around", suggest the language of the columnist not the reporter.

The Press Council has repeatedly said that opinion and comment pieces can take a strong line, reflecting the views of the writer. Often, opinion columns might challenge, even, at times, offend. But that is a legitimate role of the press.

Nevertheless, the Press Council has also reiterated the need for information presented as "fact" to be accurate.

The complaint also stressed the need for statements, even in opinion columns, to be based on "true facts" and not to "ignore, disregard, put to one side, or diminish what the true facts are".

The submission for Mr Thomas argued the columnist had omitted "true facts" – the rulings in favour of



the directors – but the Council does not accept that argument.

The column begins “This week’s district court decision . . . dismissed all charges against the five Feltex directors . . .” and later this reinforced by “The directors were found not guilty on the MED charges . . .”. Further, the photograph of the directors is firmly captioned “CLEARED: Feltex directors”.

Mr Gaynor also went to considerable length to explain and detail Judge Doogue’s judgment, especially noting why the directors were found not guilty and citing her sharply critical comments about the Ernst and Young auditors.

The complainant suggested that the comment “as most investors, with the notable exception of the Feltex directors, realised that the company had serious problems” was entirely unsupported by any factual basis.

However, the writer is being sarcastic. He knows that the directors knew they had serious problems, but he is using irony for deliberate effect, after pointing out that the then Chairman had rejected calls for up-to-date financial information during heated questioning at the Feltex ASM in December 2005.

In any case, the Press Council is of the view that Mr Gaynor was entitled to express his opinion that the directors could have done more to keep investors better informed. That is, they may have taken “all reasonable steps to ensure they complied with the law”, but they may also have chosen to go beyond the (incorrect) advice from the auditors and disclose the breach of the loan facility in the report for the half year ending December 2005.

He had noted the “frequent requests” for better and more up-to-date information at the ASM. He might also have noted the significant criticism by the Securities Commission in its report (October 2007) into Feltex Carpets Ltd – IPO Prospectus, Financial Reporting and Continuous Disclosure.

The Commission concluded that changes to a loan facility with Feltex by the ANZ Bank “were material information that a reasonable person would expect to affect the price or value of listed securities, if the information were generally available to the market . . .” and that “Feltex should have disclosed these changes to the market on 27 October 2005”.

The Securities Commission explained that failure to comply with the continuous disclosure provisions of the New Zealand stock market incurs civil liability for a company but, as Feltex was no longer trading and had no material assets, the Commission could not pursue action against the company for its failure to disclose the information.

Obviously, no one could be held responsible.

As far as the complaint against the comment that “The Feltex IPO was clearly an exercise of dressing up mutton to look like lamb” is concerned, the use of that common idiomatic expression is hardly material in the overall context of the column. Further, in the Council’s view, it is clearly Mr Gaynor’s opinion and justifiable within what is equally clearly an opinion piece.

The nub of this complaint is that Mr Gaynor’s commentary was unfair and unbalanced in that despite a District Court judgment in favour of Mr Thomas and

the other directors, Mr Gaynor implied that they were somehow to blame for the failure of Feltex.

Instead, it seems to the Press Council that Mr Gaynor was primarily using the court’s verdict to raise legitimate questions about the lack of definition of corporate responsibility in New Zealand.

The heading (“Feltex ruling revives familiar debate”), the introduction (Lack of corporate responsibility means the buck is passed around and around”) and the opening sentence (“This week’s district court decision, which dismissed all charges against the five Feltex directors, has reignited the debate about corporate responsibility”) combine to point to the possible consequences of the court’s ruling.

The theme is neatly summed up towards the end: the “expert” advisors, Ernst and Young, had not performed to a professional standard (in the words of Judge Doogue), but only directors, not auditors, can be prosecuted under this section of the Financial Reporting Act, and the directors could not be held responsible because they had (quite properly) relied on the “expert” advice.

The whole thrust of the column develops the argument that clear lines of responsibility need to be established for the financial reporting process.

The Press Council does not accept the claim that this column unfairly and inaccurately blames and denigrates Mr Thomas and the other directors.

The associated complaints about misleading by commission or omission and a lack of balance are also not upheld.

The complainant requested that the Press Council recommend a correction, an apology and a contribution towards costs. All are consequently nullified. However, it should be noted that the Press Council has no power to make such recommendations.

In part, the New Zealand Press Council was established to provide an independent forum for the resolution of complaints, cost-free to both parties.

Press Council members considering this complaint were Pip Bruce Ferguson, Kate Coughlan, Sandy Gill, Penny Harding, Keith Lees, Lynn Scott and Stephen Stewart.

Barry Paterson, Chris Darlow and John Roughan took no part in the consideration of this complaint.

## **CASE NO: 2179 – DALE WILLIAMS AGAINST WAIKATO TIMES**

Dale Williams, Mayor of Otorohanga, is upset at a critical reference to him in a *Waikato Times* feature about the (then) pending local body elections. The feature, published on September 25, 2010, was written in a colourful and entertaining style about a range of candidates and issues. Mr Williams, who was re-elected unopposed as mayor, says the slighting comment about him ruined his chance to also be elected to the Waikato District Health Board. His complaint is not upheld.

### **Background**

The feature aimed to stimulate interest in issues facing voters who would be electing candidates for the Waikato electorate's various district, city, and regional councils, and district health board. The feature did not adopt a serious tone; it set out to capture attention by focussing on the "human interest" aspects and personalities of the elections rather than analysing particular issues. Only a few candidates featured, such as youthful first-timers.

Special attention was given to the views of "ordinary" members of the community, and their opinions were sought on a variety of issues likely to be of concern to voters. The feature's initial focus was on Otorohanga.

Most interview subjects were identified - but not all. One unidentified man, interviewed while using a lawnmower, launched into what the newspaper called "a bitter tirade" against Mayor Williams. The mayor was assured of victory in the election, with no one standing against him, and the man's comments about him reflected that. Four short sentences were attributed to the man, one of them extremely derogatory.

### **The Complaint**

Mr Williams was upset that the comments were published without being referred to him, and feels that the newspaper deliberately sought out this particular man.

Mr Williams he believed he knew the identity of the man interviewed in the feature and this man had a record of causing trouble for him. The man was not allowed within 500 metres of Mr Williams by court order. He had been convicted in 2009 of a range of offences against Mr Williams, his family and property. The man had also damaged council property. Mr Williams listed other concerns about him and his potential to cause more trouble, and cited police involvement. "This person is well known locally as having a deep hatred towards me. Neither locals who have complained to me about the story nor I believe the reporter 'chanced' upon this person."

Mr Williams said the newspaper later told him "everyone they spoke to in Otorohanga had good things to say about the mayor and council". "If so, how come they chanced upon the only person who didn't? Also, if that's true, how does printing his insults give the story balance?"

Mr Williams asked why the newspaper had not asked him for comment, or to give some balance. If so, he would have told the reporter about this person's history.

He said he was re-elected unopposed, for the third time, "so why print an attack on me in a story supposedly about the forthcoming election when no one's voting for me?"

Of most concern to him, however, was that he was also seeking election to the Waikato District Health Board. The *Waikato Times* story had "ruined" his chances as the newspaper circulated in the DHB's area. "Anyone reading that story now has an opinion of me that is based on lies and gutter journalism."

He had contacted the newspaper's editor and reporter, but neither was remorseful. He wrote a complaint to the newspaper, but did not get a response.

He said that, while the matter was unresolved, he would be unavailable to the newspaper. He had previously made himself freely available to reporters, believing it important to do so.

### **Waikato Times' Response**

Editor Jonathan MacKenzie said that, as he had previously explained to Mr Williams, he had no way of knowing if the man interviewed was the same man Mr Williams was concerned about. "Our reporter simply stopped a bloke on the side of the road mowing lawns."

The reporter, as part of his brief, spoke to people at random for their views on the issues and the people associated with the election.

The "rhetorical" comments relating to Mr Williams were a small part of a much bigger feature about the region. "They did not warrant further exploration, inspection, or comment from anyone. They simply provided a bit of colour in a story that was bigger than a one-horse race for the mayoralty in Otorohanga."

Voters had their own views on those who ran for office and the newspaper was entitled to print them.

He denied that the *Waikato Times* was involved in any kind of conspiracy against Mr Williams, and it had previously published many "positive" stories and photographs about him. He hoped Mr Williams would make himself available to the newspaper in future.

### **Discussion and Decision**

Mr Williams believes he knows the identity of the person interviewed. The *Waikato Times* editor says the newspaper has no way of knowing if it is the same man.

Mr Williams says the newspaper told him "everyone they spoke to in Otorohanga had good things to say about the mayor and council". He asks how the newspaper "chanced" upon the only person who didn't.

Mr Williams says the man he suspects was interviewed has "a deep hatred" of him and has been convicted of offences against Mr Williams.

Mr Williams did not name the man. The newspaper did not name the interview subject either.

While the Press Council has sympathy for Mr Williams' situation, and while it questions the newspaper's motives in not identifying the interviewee in view of the circumstances outlined, the Council has no reason not to accept the editor's assertion

The comments added colour to a "colour" feature. People are entitled to express their views about those

standing for public office, within conventions such as decency, slander etc.

The *Waikato Times* editor says voters have their own views on those who run for office and newspapers are entitled to print them. The editor also says the remarks did not require further exploration, inspection or comment from anyone.

The Press Council agrees, and the complaint is not upheld.

Press Council members considering this complaint were Barry Paterson (Chairman), Pip Bruce Ferguson, Kate Coughlan, Chris Darlow, Sandy Gill, Penny Harding, Keith Lees, John Roughan, Lynn Scott and Stephen Stewart.

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

## **CASE NO: 2180 – JOSE AND LINDA ARMSTRONG AGAINST WANGANUI CHRONICLE**

Jose and Linda Armstrong complained that the *Wanganui Chronicle* failed to comply with Press Council Principle 1 (Accuracy, Fairness and Balance) in reporting matters concerning police raids in relation to alleged gang activity in various North Island centres in February 2011. The Press Council does not uphold the complaint.

### **Background**

On February 11, 2011 the *Wanganui Chronicle* ran a story headed “Wanganui homes raided”. The story reported on police raids focusing on “gangs, methamphetamine and organised crime”. The raids were extensive involving more than “100 police staff executing search warrants” in several North Island towns. Particular emphasis was given to one of these raids on a house at Salisbury Ave, Wanganui. The story carried a picture of the Salisbury Ave house with police cars outside it. The story dwelt on aspects of the Salisbury Ave raid and included various residents’ reactions. These reactions were mixed, ranging from a lack of any knowledge of any raid, to observations that certain Australian gang members had moved into two Salisbury Ave houses a few days before. The story quoted one resident as saying Salisbury Ave “was a quiet little street”.

The story referred to raids being carried out on three other Wanganui properties but the addresses of these were not mentioned.

In an article the following day *Chronicle* ran a follow up “first person piece” (as the *Chronicle*’s editor describes it) article describing Salisbury Ave as a “quiet little street at the back of Wanganui East”. The reported event in the street, according to the author, a resident, was the exception not the rule.

### **The Complaint**

Jose and Linda Armstrong essentially complain the February 11 story unfairly highlights Salisbury Ave. The complainants argue they are not saying Salisbury Ave should not have been identified by the *Chronicle* at all. Rather, they say the article unduly highlighted the

Salisbury Ave raid when it should have given at least equal prominence to other places where raids were carried out (particularly in other affected Wanganui suburbs). The complainants say the *Chronicle* engaged in unfair and unbalanced reporting by concentrating on Salisbury Ave when the house in question was just one of many across the North Island targeted. The complainants say the reputation of the street and the residents has been damaged by the association with gang activity. And they say the article “gravely” affects the marketability of properties in the vicinity.

The complainants also claim the follow up (February 12) *Chronicle* story merely compounded the problem, since it detailed some negative events that had happened in the street over the previous decade.

### **The Response**

*Wanganui Chronicle* responds by denying the claim its reporting was unfair, unbalanced or biased. It refers to the fact there was indeed a police raid at a house in Salisbury Ave on the day in question. It says it gave proper prominence to the fact the Salisbury Ave raid was part of a much wider police operation. The *Chronicle* says it was not able to identify the Wanganui streets where other raids were carried out because the police would not identify those addresses. The *Chronicle* knew about the Salisbury Ave property because one of its reporters happened to see police activity there on the day.

*Wanganui Chronicle* says nothing in the February 11 article suggested Salisbury Ave was rife with gang activity. It says it referred to Salisbury Ave merely as a place at which police conducted an operation. It says that nothing in its reporting cast aspersions on Salisbury Ave residents or suggested illegal activities were regularly carried on there. It points to various positive references to Salisbury Ave in the article published the following day.

### **The Decision**

*Wanganui Chronicle*’s February 11 article accurately reported an event which occurred in Salisbury Ave the day before. The article described the raid in question as being part of much wider police investigations. There was nothing in the article which suggested the Salisbury Ave property was the centre or sole object of the police operation. There was nothing in the article associating Salisbury Ave residents with gang activity. Nor did the article suggest Salisbury Ave was a street known for criminal behaviour.

*Wanganui Chronicle* is correct in the Council’s view in comparing this incident to many others when streets or specific addresses are identified in media coverage of adverse events.

The Council notes the *Chronicle*’s February 12 story regarding Salisbury Ave. This piece when viewed objectively refers to the street and its residents in a constructive and positive light. While listing various negative events as have occurred in the previous decade or so these events are really described as being isolated and out of character with the neighbourhood. The Council does not interpret the February 12 story (which followed the previous piece in the very next edition) as the complainants do.

The Council regards the articles complained about as being balanced and fair. It does not see them as being misleading.

The complaint is not upheld.

Press Council members considering this complaint were Barry Paterson (Chairman), Pip Bruce Ferguson, Kate Coughlan, Chris Darlow, Sandy Gill, Penny Harding, Keith Lees, Clive Lind, John Roughan, Lynn Scott and Stephen Stewart.

## **CASE NO: 2181 – PAT NORRIS AGAINST THE NELSON MAIL**

Pat Norris operates a company liquidation business in Nelson. He complained that articles in *The Nelson Mail* about him and his business were inaccurate, unbalanced and unfair. The complaint was not upheld.

The newspaper published seven items about Mr Norris in the period June-October, 2010. The first, on June 22, stated that Mr Norris had suddenly resigned from two liquidation cases “under a cloud” and attempts were being made to remove him from a third. It also reported that he had taken ownership of assets of companies he was liquidating which liquidators were not permitted to do.

Subsequent articles revealed that before coming to Nelson in 2006 he had headed a company that failed, and that when employed by a Hamilton panel beater he had been convicted of using a document for pecuniary advantage. The paper reminded its readers, more than once, that Mr Norris had attracted national attention when he was convicted for having secretly filmed his wife having sex during an affair.

Besides the liquidation business, Norris Management Services, Mr Norris had set up a company called Nelson Merchant Surplus which advertised itself as a dealer in “liquidated commercial office equipment, tools, machinery and other merchandise”.

His first wife told the paper he had no professional qualifications and had trained as an apprentice auto electrician. In Kawerau he had done home insulation and dabbled in other work, she said, but she was unaware of him working as a liquidator before he shifted to Nelson.

The newspaper followed up these revelations with reports on Parliament’s consideration of a bill to bar people with convictions for dishonesty from providing insolvency services. Nelson MP Nick Smith named Norris Management Services under parliamentary privilege as evidence of the need for legislation.

In October, the paper reported that Mr Norris was laying off staff and taking no more cases. It said the Ministry of Economic Development was investigating him.

### **The Complaint**

Mr Norris maintained *The Nelson Mail* had used its position to unfairly discredit his reputation and his company. It had conducted a biased investigation of his past personal and commercial affairs and its reporters had been influenced by third party interests who were not named and who had ulterior and sinister motives that had not been disclosed.

He said the newspaper had highlighted criticisms from directors and shareholders of failed companies. Liquidators primarily served creditors whose rights the newspaper had ignored.

He considered the paper’s investigation of his personal background was a breach of privacy and had harmed children and young people by alienating him from his family, particularly his sons. The reports had blurred fact and comment, headlines were inaccurate, he had suffered discrimination and the paper’s informants had undisclosed conflicts of interest.

He made specific complaints of inaccuracy that are set out, with the editor’s responses, below.

### **The Editor’s Response**

The editor said *The Nelson Mail* stood by all its reports. They were an important exposé. The paper had not unfairly used its power to destroy the complainant’s reputation. The reporters were doing their job and as a result of their work the community was better informed of the complainant’s activities and reputation.

He pointed out that the complaint, dated October 27, was too late for Press Council consideration of most of the items cited. Told the Council would consider the earlier articles as background to the complaint, the editor replied to each specific claim.

### **Specific complaints of error in five stories**

(1.) The first story, published on June 22 was headed “Liquidator quits under a cloud,” and said Mr Norris had “suddenly resigned from two cases he was working on.....”. Mr Norris supplied the Council with his final reports as liquidator in the two cases cited by *The Nelson Mail*: Seamaster Marine and Nelson Bays Concrete. Each report stated the receiver had resigned having concluded the receivership.

The editor held that the resignations were undisputed and the phrase “under a cloud” was justified by other material in the story.

In view of the liquidation reports the Council found the headline and reference to the resignations in the opening paragraph to be inaccurate and unfair.

However, the June 22 story was out-of-time for the Council’s complaint process, and could be considered only as background to the complaints about stories published within the Council’s time limits. Since the resignations were not mentioned in the later stories the Council was unable to uphold the complaint on that error alone.

The June 22 story extensively quoted an owner of another company Mr Norris was liquidating, Murchison Buses. The woman was concerned that a car she had owned was transferred to Mr Norris’ ownership before being onsold to a Richmond company. She also said one of her buses went to a company in which Mr Norris was majority shareholder, and another bus had passed to his neighbour.

Mr Norris supplied the Press Council with the Liquidator’s Third Report on Murchison Buses Ltd and a signed certificate of acceptance of the report by a secured creditor, the ANZ National Bank. The report explains the steps taken to sell the assets of Murchison Buses and the dispute that arose with the shareholder quoted in the Nelson

Mail. Mr Norris says a copy of his report was supplied to the newspaper.

The Press Council notes the June 22 story quoted Mr Norris in its second paragraph saying the concerns were driven by disgruntled customers and it was common to have those in his line of work. He was able to reinforce the point further down the story when he is quoted saying that people going through liquidations were often suffering emotional turmoil and huge financial strain, and it was logical he would be blamed when they weren't happy with the results.

While the thrust of the story was against him, his point of view was included.

He claimed that the story was unfair in a reference to a further liquidation when it mentioned there was no payout to unsecured creditors. The company's liabilities for tax and wages left no funds that could be paid to unsecured creditors. The editor conceded that the reference would have been "better considered by readers in the context of knowing whether creditors having priority have been paid". The Council found the reference fair in its context. It was intended to reflect the view of a shareholder who saw no payout despite the cost of Mr Norris' liquidation service.

(2) The second story, published July 16 concerned the failure of company he owned with his former wife. He claimed it falsely referred to his creditors being left \$150,000 out of pocket. He said the item was also false in claiming he had been convicted of an offence in the Hamilton District Court on May 10, 1999 and fined \$1000. And it was wrong, he claimed, in stating he was not a paid-up member of the insolvency business association INSOL.

In reply the editor supplied a copy of the final liquidator's report on Mr Norris' company that lists claims from preferential and unsecured creditors together exceeding \$150,000. It stated there were no funds available for distribution to them. Mr Norris contested this to the Council, insisting the liquidator's report was out of date when it was filed and did not take into account payments made by a receiver he had appointed.

He offered a Court of Appeal decision in support of this contention but the Council found its passing reference to such payments did not provide sufficient information about them.

The editor provided the Council with a copy of a record of a conviction against Patrick Dean Norris in the Hamilton District Court on May 10, 1999 on a charge of taking, obtaining or using a document for pecuniary advantage, and a fine of \$1000.

He supplied an email from the chairman of Insol confirming Mr Norris was "not a paid member" on July 14. Mr Norris gave the Council a photocopied page of Insol's 2010 directory which did list him as a member. The Council considered the newspaper was entitled to rely on the chairman's word about his "paid up" status.

It found all the contested statements in this story supported by the evidence the editor provided.

(3) A story on August 26 referred to Mr Norris as an unqualified liquidator. Mr Norris maintained this was false

since professional qualifications were not required by law. He said he had the support of leading legal firms as most insolvency practitioners did. The story also misquoted him with a reference to "shareholders" when he had said "creditors".

The Council agreed with the editor that the reference to a lack of qualifications was not false, it was established by the newspaper's investigation of the complainant's background.

The editor conceded the error in the quotation but said a later paragraph made it clear Mr Norris was referring to creditors. The Council found it an honest mistake that would have caused only minor confusion in its context.

(4) A story on October 14 referred to "widespread concerns" about Mr Norris' business practices. He challenged the editor to state what those concerns were. The editor cited four business people quoted in the *Nelson Mail's* stories, a complaint of theft, Mr Norris' dishonesty conviction, the Companies Office and Dr Smith MP.

Mr Norris repeated his complaint at the statement that his Hamilton company had, "collapsed leaving creditors \$150,000 out of pocket". The editor provided evidence for that statement in the July 14 story.

(5) The final story, published on October 19, reported that Mr Norris was under investigation by the Ministry of Economic Development. Mr Norris said he was unaware of any such investigation. The editor supplied a copy of an email of October 14 confirming the National Enforcement Office of the MED was investigating Mr Norris.

### The Decision

The headline and first paragraph of the June 22 story were inaccurate but the error was not repeated in stories published in the timeframe for the complaint to be considered. If Mr Norris had lodged a complaint with the Press Council about this article, within the time limits for complaining, it would have been upheld on grounds of inaccuracy.

On the questions of fairness and balance, Mr Norris complained that it was unfair to judge the work of a liquidator entirely on the word of owners or directors of failed company since a liquidator was primarily required to serve the interest of creditors.

He complained that the newspaper did not seek the views of creditors and its reports were therefore unbalanced. The Council noted, however, that the first story, and some subsequent reports, included comment from Mr Norris that alluded to this bias.

Careful readers could have noticed that all of the criticism of his work was coming from principals of the companies in liquidation, not from their creditors.

Mr Norris complained not only of lack of balance, fairness and accuracy but that the articles breached Press Council principles of privacy, protection of children, the need to distinguish fact from comment, non-discrimination, avoidance of subterfuge and declarations of conflict of interest.

None of those principles were breached. If Mr Norris' privacy was invaded it was to raise fair questions about his fitness to be offering himself as a company liquidator. His

convictions were a matter of record, the incident involving his former wife was national news.

The articles were clearly dealing in fact, they did not directly involve children, they were not guilty of gratuitous discrimination, were not gathered with subterfuge and there is no suggestion the writers had a personal conflict of interest.

The complaint is not upheld.

Press Council members considering this complaint were Barry Paterson (Chairman), Pip Bruce Ferguson, Kate Coughlan, Chris Darlow, Sandy Gill, Penny Harding, Keith Lees, John Roughan, Lynn Scott and Stephen Stewart.

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

## **CASE NO: 2182 – COMPLAINT AGAINST THE NORTHERN ADVOCATE**

The Press Council has considered a complaint by a Northland family against *The Northern Advocate*. By a majority of seven to four the Press Council has upheld the complaints relating to breaches of the Privacy and Photographs Principles. Complaints relating to Accuracy, Fairness and Balance (Principle 1), Comment and Fact (Principle 4), and Headlines and Captions (Principle 5) are not upheld.

### **Background**

On December 7, 2010, *The Northern Advocate* published a front-page article picturing an injured but un-named driver being removed from an accident situation with the heading “Driver injured after ‘hooning’ into wall”.

In the body of the article it was evident that the term ‘hooning’ had come from a member of the public and there was mention that Whangarei police ‘were not ruling out a medical condition as a contributing factor in the drama’.

Perspectives of a number of eye-witnesses were provided, and the information that the driver was taken to hospital with moderate injuries following the trail of destruction left by his ute which had careered out of control.

The same day that the newspaper appeared, a daughter of the man involved visited the reporter, angry and upset about the fact that the man was identifiable in the photograph, that his dignity had not been respected and that the word ‘hooned’ in the heading suggested that the man’s driving had been irresponsible.

The editor then received a letter on December 19 alleging breaches of the Press Council Principles of Accuracy, Fairness and Balance; Privacy (Those suffering from trauma or grief call for special consideration); Comment and Fact; Headlines and Captions; Photographs and Graphics.

The editor and reporter were accused in the letter of showing ‘a total lack of empathy’ and the complainants stated that the family had been affected and that the healing process would be long, physically and emotionally.

The complainants requested the paper not to respond to this complaint ‘with excuses or trying to justify what you have done as this would only be seen as insulting’. They requested a front-page apology.

The paper’s editor responded that he understood how media coverage of events such as these could upset families; that the driver’s daughter had been ‘clearly upset’ on the day she came in; that he told her what her rights were in terms of a formal complaint; that they had not thought the photo could allow the driver to be identified and that he had not been named; that they agreed ‘clarification of the headline is appropriate’ and proposed publishing an attached clarification on page 3.

The editor apologised for any upset the report had caused the man’s immediate family, and invited them to write a letter expressing their views, for publication. He hoped that the driver was making a quick recovery, and if they were dissatisfied with the solutions suggested they could approach the Press Council.

A short clarificatory statement was published, on page 3 as the editor had mentioned, stating that the term ‘hooning’ did not imply that the driver involved ‘was in any way behaving irresponsibly’ and that the paper now understood that the driver had crashed after losing control for medical reasons. The paper apologised to the driver and his family for any inference that reckless driving had been involved.

### **The Complaint**

On January 11 the family forwarded the editor’s reply to the Press Council, interspersing his comments with reactions of their own. They still felt that the paper had breached ‘professional and moral boundaries’ and believed that their daughter had been told she was ‘overreacting’.

Despite the editor’s claim that he had provided details on how to register complaints, the family stated that they had had to approach their Citizens’ Advice Bureau to find out how to complain to the Press Council.

Their issue was that the driver’s dignity had been breached as the photo showed him in a way that they found ‘devastating’ and that as a victim he should have been treated with dignity and respect. The paper’s publishing of him in that situation, whether or not he was identifiable, was the cause of their distress.

They further took issue with the location and size of the clarification and apology. They did not wish to avail themselves of the option of writing a letter to the paper as they believed the driver’s medical condition was his business, and any letter might lead to further identification of the driver and his family.

In this response (although not in a later formal complaint to the Council) they stated that they wished to meet face to face in a mediated hearing with the editor and reporter.

### **The Newspaper’s Response**

The editor replied to the family’s complaint via the Press Council, acknowledging that the word ‘hooning’ had possibly led to an inference that the accident had occurred because of poor driving rather than a medical condition, despite the paper’s having mentioned the latter option in the article.

On further examination of the photo, the editor acknowledged that the driver’s face could have been further obscured.

He described his perception of the visit with the driver’s daughter, maintaining that he had decided not to try to resolve the situation immediately because of her ‘emotional state’. However, he reiterated that he had provided details of how to contact the Press Council, and also provided contact details for the paper if she wanted to complain further.

He explained why the article had been written (it was an unusual crash, in a public place, and had resulted in closure of part of the CBD) and inquired as to the driver's condition.

He stated that at no time had the daughter been told she was overreacting, either by him or by other staff members. Additionally, he had clearly indicated where the clarification would be located in the Saturday paper, and reiterated the family's right to write to the paper.

While he felt in hindsight that a face-to-face meeting after the initial meeting could have resolved most of the issues in the complaint, he believed that to attempt this while the daughter was so upset would have been counter-productive.

### Discussion

It is obvious from the correspondence and the complaints that the family felt outraged about the publication of the driver's photograph in a situation where they believed his dignity had been breached, and with a heading to the article that seemed to imply that he had driven irresponsibly.

It is equally obvious that they do not feel that the editor and the paper have fully understood their position, or the pain and anger they experienced and apparently continue to experience.

However, it is also equally obvious that the editor did take aspects of their complaint into consideration, publishing a clarification that indicated that the accident was the result of a medical condition not poor driving.

He also subsequently (in his response to the complaint to the Press Council) acknowledged that that the face could have been further obscured.

As to whether the daughter was accused of overreacting, or whether the paper's response was 'professional and empathetic', the parties have different perspectives of those aspects of the complaint and the Council is not able to decide on them.

### Conclusion

The majority of the Press Council considers that the following principles have been breached in this situation. 2: Privacy, including the statement that "Those suffering from trauma or grief call for special consideration"; and 10: Photographs and Graphics - Editors should take care in photographic and image selection and treatment. Photographs showing distressing or shocking situations should be handled with special consideration for those affected.

However, the complaints against Accuracy, Fairness and Balance (Principle 1), Comment and Fact (Principle 4), and Headlines and Captions (Principle 5) are not upheld. It should have been clear to readers of the full article that medical causes were being investigated as part of the accident.

Further, the paper did publish a clarification about the 'hooning' comment and apologise to the family, and the editor does appear to have shown genuine concern for the impact of the article on family members, although they dispute this.

Press Council members upholding the complaints relating to Principles 2 and 10 were Barry Paterson, Sandy Gill, John Roughan, Pip Bruce Ferguson, Stephen Stewart, Chris Darlow and Keith Lees

Press Council members who would not uphold the complaint relating to Principles 2 and 10 were Kate Coughlan, Penny Harding, Clive Lind and Lynn Scott.

## CASE NO: 2183 – KATIE TUCHOLSKI AGAINST OTAGO DAILY TIMES

Katie Tucholski complained to the Press Council about a story in the *Otago Daily Times (ODT)*, published on page 3 of the paper on December 30, 2010. The complaint is not upheld.

### Background

Under the headline "Owner defends pet after bichon bitten" the article started in an ironic tone: "There may be more to a canine caper in Dunedin than a simple case of dog bites dog. In fact, it may be a case of dog bites dog to save dog".

The story then continues: "Or, more exactly, Kaiser the German shepherd mauls Murphy the bichon frise to protect an unnamed cocker spaniel".

It goes on that the above is the claim of Kaiser's owner, Katie Tucholski, who is contesting a decision by the Dunedin City Council to classify Kaiser as a menacing dog which would require the dog to be neutered and kept caged or muzzled at all times.

On November 10 several dogs were being exercised at the Wakari Dog Park. Hearing barking, the bichon's owner turned to see Kaiser with Murphy, her bichon, in his mouth.

The council animal control team had reported the events to the Dunedin City Council, stating the following: Mrs Young, the bichon's owner, heard growling, and turned to see her dog in the mouth of Kaiser. She screamed, and the owner managed to get Kaiser to release Murphy. The smaller dog needed veterinary care and suffered extensive bruising and muscle damage.

However, Mrs Tucholski insisted that the attack was not unprovoked – she claimed that a third dog – a cocker spaniel – had been attacked by Murphy and that Kaiser had intervened to protect the cocker spaniel.

Kaiser had previously been involved in an incident after grabbing the arm of a member of the public in 2007, the report continued. At that time the staff had opted not to classify the dog as menacing after Mrs Tucholski had offered to keep the dog muzzled and on a lead when in a public place.

Mrs Tucholski had declined comment for the article and Mrs Young could not be contacted.

### The Complaint

In her complaint, Mrs Tucholski, citing inaccuracies, claimed that publication of the report had caused her considerable stress, damaged her professional reputation, resulted in her receiving negative response from the public, and caused her considerable embarrassment and humiliation.

She said the report had not been well researched. It contained errors of fact; it was not Mrs Tucholski who was in the park at the time of the incident, it was her husband; the bichon was not "mauled" and there is no reference to that term in the animal control officer's report; Murphy was never bitten – there was no broken skin; a menacing dog classification does not require a dog to be neutered or kept caged – that is at the council's discretion.

Her other claims related to issues of lack of balance and unfairness and that the tone of the article was emotive. Another story published by the newspaper two weeks later about dog attacks in another town was much less sensational.

Through her lawyer, she had initially complained to the *ODT*.

She had declined to comment for the article as it was being written, prior to publication, because the case was under appeal.

Mrs Tucholski stated that the response of the publisher to her complaint was “paltry”.

### The Response

The deputy editor stated that the reporter had contacted Mrs Tucholski when he was preparing the story from Dunedin City Council documents – she declined to comment.

Four weeks after publication the paper had received a letter from the complainant’s solicitors seeking a considerable damages payment.

The newspaper responded to this letter immediately, and said the lawyer’s letter would be answered fully after the return of the reporter from his holiday.

On February 2 a further response was sent to the complainant’s lawyers, noting that had the *ODT* been informed of any inaccuracies in the article at the time of publication, it would have published a correction at the time. It also offered to print a correction immediately. Further it offered an opportunity for Mr and Mrs Tucholski to present their perspective of events in an article.

At the time of responding to the complaint made to the Press Council, the newspaper had not had any response to these offers.

### Discussion

The newspaper, told by the complainant’s lawyers of the level of Mrs Tucholski’s dismay and distress at the tone and content of the story, immediately advised that they would respond further when the editor had been able to check with the reporter, who was on leave.

The editor in the second response to the complainant, offered a correction and the opportunity for the complainant’s version of the story to be published.

Mrs Tucholski claims to the Press Council that she believed that such a correction would be inadequate and not placed in the paper in a place where it redressed the inaccuracies, lack of balance and damage to her reputation that she says have occurred as a result of the story.

It was unfortunate that the article referred to Mrs Tucholski as having been in control of the dog at the time of the incident, when she was not. However this information was contained in papers on the Council report where it stated “the owner ... pulled [the dogs] teeth apart to release Murphy.” The offer of a prompt correction was declined by Mrs Tucholski.

The Press Council has noted the *ODT*’s fast response to the complainant when her lawyer contacted the paper. The editor acknowledged inaccuracy in the story, and offered Mrs Tucholski the opportunity to contribute to another report to address her concerns about balance.

While Mrs Tucholski does not like the “tone” of

the article and has objected to words like “mauled” and “bitten”, given the serious injuries sustained by the small dog, the Council does not find that the tone or emphasis is excessive.

The complaint is not upheld.

Press Council members considering this complaint were Barry Paterson (Chairman), Pip Bruce Ferguson, Kate Coughlan, Chris Darlow, Sandy Gill, Penny Harding, Keith Lees, Clive Lind, John Roughan, Lynn Scott and Stephen Stewart.

## CASE NO: 2184 – MARTIN WARRINER AGAINST THE KAPITI OBSERVER

Martin Warriner, of Paraparaumu, complained that *The Kapiti Observer* had failed to adequately retract and correct a statement that he “hates” the macron, a diacritic that the Kapiti Coast District Council was using – in his view illegally – over the district name in its documents.

The complaint is not upheld.

### Background

On November 8, 2010, *The Observer* published an article headed *No ‘Maoriland’ macron* stating how Mr Warriner had forced the council to back down over its use of the macron over the letter “a” in Kapiti.

The article quoted Mr Warriner, described as an English immigrant, as saying the macron was “offensive to the New Zealand language.” He was also quoted as saying: “At the end of the day, this is New Zealand – it’s not Maoriland. I didn’t come to Maoriland, I came to New Zealand. I speak the New Zealand language, I’m a citizen of New Zealand.”

On November 14, Mr Warriner emailed the editor a letter he wanted published. In the email, he said the article was sensationalised and did not follow the emphasis he thought the reporter who interviewed him was following.

In it, Mr Warriner apologised to those who had taken offence at his use of the word “Maoriland” and since publication, he had received “a crash course (phone, face-to-face and written) in aspects of Maori culture” he was unaware of.

On December 20, 2010, the newspaper published another story about the council and the macron, reporting how the council had taken a stand against the man “who hates its macron” and, by a 6-4 vote, decided to use the macron on all its documents.

The article also quoted Mr Warriner as disagreeing with the decision.

### The Complaint

Mr Warriner emailed the editor on December 20 and said he had received further adverse racial remarks.

He was on public record as saying his stance did not threaten the use of macrons in Te Reo Maori. He had only challenged the district council’s illegal insertion of the macron above its name. He submitted a suggested retraction.

The next day, the editor responded that the sentence in the report clearly referred to the council’s use of the



macron and it was a subject that had angered Mr Warriner. He saw no need for a retraction and apology but would run his view as a letter to the editor.

Mr Warriner replied the same day that such a step was unacceptable. He claimed the newspaper was responsible for the “re-fuelled racial hatred towards me and my family” and he sought a retraction and apology for saying he “hates its macron.”

On January 6, 2011, the newspaper published a short letter over Mr Warriner’s name quoting two paragraphs from his email of December 20, which explained his position over the macron.

Among other things, it stated that he was not threatening the use of macrons in Te Reo Maori and at no time had he indicated that he “hates its macron.”

In an email to the editor that day, Mr Warriner said he had not given his permission for the paper to print his view as a letter to the editor, and the letter had generated more adverse racial remarks. He repeated his expectation that the newspaper print a retraction and correction.

### The Editor’s Response

The editor, in his response to the Press Council, said the second article was accurate. It did not say Mr Warriner hated macrons in the Maori language, as he suggested; the use of the word “its” made it clear Mr Warriner took issue with the council’s use of the macron.

Mr Warriner claimed the newspaper incited racial hatred towards him, but any backlash received would have been as a result of his accurately reported comments, the editor believed.

As for the publication of the second letter, the editor said that Mr Warriner had said that placing his view as a letter was unacceptable, which he took to mean that a letter to the editor was not good enough, Mr Warriner wanted an apology and retraction. At no time did Mr Warriner inform him the letter was not for publication.

### Discussion

The two articles covered newsworthy events, and the newspaper was justified in reporting them. Even Mr Warriner is prepared to accept that he might have chosen his words more wisely when he was quoted in the first article, and they were bound to get a reaction. The newspaper cannot be held to account for any criticism that came Mr Warriner’s way as a result of what it accurately reported.

Nor can the newspaper be criticised even if what Mr Warriner believed would be emphasised in the article did not turn out to be. Any reporting is likely to change as facts and comments are gathered.

The phrase in the second article which claimed Mr Warriner “hates its macron” states emotively something that might have been more accurately described as strong objection. But the content of the article makes clear that Mr Warriner was not objecting to macrons per se; he objected to what he believed was an illegal act by the council in putting the macron over its name.

Given Mr Warriner’s actions and statements in the past about the council and its use of the macron in Kapiti, it cannot be said that the newspaper was wrong in reporting it that way.

The Press Council believes that while a less emotive word might have been more appropriate, the use of the word “hates” does not justify an uphold decision.

The second published “letter” is more troublesome. It is part of an email and Mr Warriner made it clear to the editor that its publication as a letter was “totally unacceptable.” There does not seem to have been any discussion on what would appear in the “letter,” although it made the point even more strongly that Mr Warriner’s objections were focused on the council’s macrons, not Te Reo.

In publishing the second letter, the editor was taking a pragmatic approach to a correspondent whose aim was to get the newspaper to apologise. The editor chose to edit and publish part of an email as a response.

That was a mistake, though not, in the Council’s view, worthy of an uphold decision. Certainly, they were the words of the complainant but the editor should have known it was not what he wanted.

The editor was entitled to reject the suggested retraction and correction, particularly as he did not accept that the newspaper had done anything wrong.

The Press Council also notes that Mr Warriner was attacking the newspaper quite publicly by copying into his emails numerous other parties, including apparently another newspaper, a practice that is seldom helpful when trying to negotiate a successful outcome.

### Conclusion

The complaint is not upheld.

Press Council members considering this complaint were Barry Paterson (Chairman), Pip Bruce Ferguson, Kate Coughlan, Chris Darlow, Sandy Gill, Penny Harding, Keith Lees, Clive Lind, John Roughan, Lynn Scott and Stephen Stewart.

## CASE NO: 2185 – ALLAN GOLDEN AGAINST THE DOMINION POST

Allan Golden has complained to the Press Council about a *Dominion Post* report on the upgrading of an Interislander ferry. The complaint is not upheld.

### Background

*The Dominion Post* reported on February 19 that the Interislander company was taking the ferry Aratere out of service for an upgrade. The report contained details of the likely impact of reduced ferry services across Cook Strait, warning passengers that they might have to book early.

### Complaint

Mr Golden complained to *The Dominion Post* that the report was unfair and unbalanced because it did not mention the alternative Bluebridge ferry service. He said not everyone knew there was an alternative service and the newspaper had done a disservice to all intending passengers by not mentioning it.

He claimed the report had been an ‘infomercial’ for the Interislander.

In his later complaint to the Press Council, Mr Golden said the newspaper gave the impression that the *Interislander* was the only option for getting across Cook Strait and the newspaper appeared to have ‘an unhealthy relationship’ with the Government, which owned the *Interislander*.

He said the newspaper had an obligation to inform the general public about the impact on ferry services, not just those who used the *Interislander*.

### The Newspaper’s Response

*Dominion Post* editor Bernadette Courtney rejected Mr Golden’s claim that the report was an ‘infomercial’ for the *Interislander* and said the newspaper reported objectively on the *Interislander* line and had regularly reported on its shortcomings.

The report correctly stated that the *Aratere* would be out of service, leading to a reduction in services. This was relevant information for people who use the service.

She said the newspaper report did not mention *Bluebridge* because there was no need to. If *Bluebridge* had announced extra services in response to the withdrawal of the *Aratere*, this would have been included in the article as relevant information for prospective travellers.

She said *The Dominion Post* was not a trade directory listing rival services, nor a travel agent.

### Discussion

Mr Golden has taken the view that because *The Dominion Post* mentioned only the *Interislander* line in its report about the *Aratere*, then the report was unfair and unbalanced and did a disservice to passengers who travelled on the *Bluebridge* line and to those who were unaware that there was an alternative services.

In the view of the Press Council, there was no obligation on *The Dominion Post* to approach *Bluebridge* for comment, or to mention its alternative service to somehow provide ‘balance’. It was a straightforward report about the upgrading of the *Aratere* and its likely impact on the services provided by the *Interislander*. Had *Bluebridge* responded by increasing its services to take up the slack, then it would have been appropriate to include that.

The complaint is not upheld.

Press Council members considering this complaint were Lynn Scott (Acting Chairman), Kate Coughlan, Chris Darlow, Sandy Gill, Penny Harding, Keith Lees, Clive Lind, John Roughtan and Stephen Stewart.

## CASE NO: 2186 – HON MURRAY McCULLY AGAINST SUNDAY STAR-TIMES

Hon Murray McCully, Minister for the Rugby World Cup and Minister of Foreign Affairs, complained about a front page article in the *Sunday Star-Times* on January 30, 2011. He claimed that various assertions, including the headlines and a caption under an accompanying photograph failed to meet journalistic standards of accuracy, fairness and balance.

His complaint is upheld.

### Background and Context

The article appeared on the front page. It was headlined “Fiji Dictator’s World Cup Freebie” and “Military hardman can’t be kept out”.

It also featured photographs of Fiji coup leader Frank Bainimarama and his brother-in-law, Francis Kean, with a caption stating that they “would be exempt from the visa blacklist imposed after the 2006 coup”.

The story suggested that New Zealand faced the “embarrassment” of being “forced” to host the two men. Kean, the Fiji naval commander, was attempting to become the Chairman of the FRU and if that happened, Bainimarama was expected to become the FRU President. Under IRB rules, two officials from Fiji could attend the Rugby World Cup and the host nation would have to pay their costs.

The report included information that Kean was a “convicted killer” (manslaughter), comment from a FRU insider that Kean was the frontrunner for Chairman and closed with Steve Tew, the NZRFU’s CEO, explaining that the VIP hosting programme was a significant cost but standard for such events.

### The Complaint

Mr McCully argued that the assertions were incorrect and “grossly inflated”.

He had been forced to issue a media statement the same day, explaining the correct situation ie that members of the Fiji military regime could apply for an exemption from the sanctions denying them a visa and that the decision would then be made by the Minister of Immigration, under advice from the Minister of Foreign Affairs, but that “under current circumstances” any such request would be denied.

In short, the travel sanctions applied to the leaders mentioned in the article and headlines.

Further, the newspaper had published these assertions without putting them to the Government or its appropriate departments either for checking of accuracy or for balancing comment.

Finally, when he had initially complained to the newspaper, the editor had mentioned the media coverage of the Minister’s press statement as being sufficient to counter any concerns about the original report. In his view the newspaper’s response was both inadequate and unethical.

### The Newspaper's Response

The editor's first reply to the complainant, and later in response to the Press Council, stressed that his counter argument to the story had been widely reported, including in the *Sunday Star-Times* the following week.

He claimed the ministry had been approached for comment about "the state of Fiji rugby" but they had been told that the minister would not comment.

Further, comment from Immigration had also been sought but without success.

### Further exchanges

Mr McCully took issue with the claim that the Ministry of Foreign Affairs had been asked for comment. He stressed that neither the Ministry nor the respective Ministers for Foreign Affairs and Immigration had been asked to comment on the assertion that the government could not prevent Frank Bainimarama from coming to the World Cup.

He repeated his view that the article was inaccurate because the Fijian military was covered by the sanctions against entry and the NZ government would not grant any visa exemptions.

The editor confirmed that comment had been sought from the Ministry of Foreign Affairs. A spokesperson (unnamed) had provided the comment that "Fiji Military Employees are currently subject to a travel ban", but with a rider, "Any rugby players who are captured by that ban are able to file an application for an exemption to be considered, and these are assessed on a case-by-case basis".

The editor also pointed out a passage in a pamphlet produced by the Department of Labour and the Ministry of Immigration, "Sanctions against Fiji". "The ban on sporting contacts applies to sportspeople (including sports administrators) . . . representing Fiji . . . at all levels. However, such people are not subject to the ban if they are participating in a regional or international tournament which requires travel to NZ and the NZ host sporting body does not have control over the selection of the participants."

### Discussion and Decision

The editor of the newspaper would have it that "the position could not be much clearer" when he referred to the leaflet explaining the sanctions against Fiji, in particular the ban on sporting contacts.

However, that leaflet begins by listing the classes of people covered by the ban on travel to and within New Zealand. It is not necessary to list all the groups here, but the very first group is particularly significant – "all Republic of Fiji Military Force personnel, including members of the territorial forces".

An obvious question then, is to ask what is the position of sports people who are also Fiji military personnel?

Certainly, the position of the Minister of Foreign Affairs is clear. According to his media statement, as far as members of the Fiji military regime are concerned, "the sanctions apply" and there will be no exemptions.

If that is the case, both the caption ("Frank Bainimarama and Francis Kean would be exempt from the visa blacklist") and the headline ("Military hardman can't be kept out") are inaccurate.

Further, the assertion of the first paragraph, that NZ could be "forced to host" Bainimarama as a VIP even though he is blacklisted, is also inaccurate.

The Press Council accepts that the newspaper made some attempts to check with government departments but this was a story which needed to be put directly to the Minister of Immigration and/or the Minister of Foreign Affairs or put at least to their respective offices.

Finally, in the Council's view it is not sufficient simply to argue that balance was provided by reporting the Minister's media statement, including his rebuttal of the January 30 article.

In this case, a fair voice was not sought to balance the claims made in the newspaper's report and the complaint is upheld on the grounds of a lack of accuracy, fairness and balance.

Press Council members considering this complaint were Lynn Scott (Acting Chairman), Kate Coughlan, Chris Darlow, Sandy Gill, Penny Harding, Keith Lees, Clive Lind, John Roughan and Stephen Stewart.

## CASE NO: 2187 – MALCOLM PEASE AGAINST TARANAKI DAILY NEWS

Malcolm Pease, complained about the *Taranaki Daily News'* publication of a cartoon on March 14, 2011 concerning New Plymouth Base Hospital.

The complaint is not upheld.

### Background

The newspaper had previously published many reports about general funding for health in Taranaki, the growth of Taranaki Area Health Board deficits, and whether it would be able to afford a multi-million dollar upgrade to the New Plymouth hospital. One such report appeared in the newspaper on March 12 about plans for an \$80 million extension to the hospital. The newspaper called this a "significant announcement" and on March 14 it published a cartoon about the issue from contributor Shane Dunlop on its Opinion page.

### The Complainant's View

Mr Pease wrote to the newspaper the day the cartoon appeared, objecting to its contents. He expressed disgust and said it was "extremely sick". He wanted the newspaper to apologise to its readers. The newspaper published the letter without comment, and did not reply directly to Mr Pease.

Mr Pease complained to the Press Council on March 18, expressing even stronger objections to the cartoon's contents and asking for the editor to be reprimanded for accepting such material for publication.

In subsequent correspondence with the Press Council, Mr Pease expressed disappointment that the editor had not replied to his letter of complaint.

He noted the Press Council's Principle 4 of its Statement of Principles which covers cartoons, and advises that they fall into the "opinion" category. He said that, in publishing

the cartoon, it would appear that the editor agreed with the cartoonist. He also objected to some subsequent Dunlop cartoons, but they are not the subject of this complaint.

### The Newspaper's Response

Deputy editor Rob Mitchell said the cartoonist had an "offbeat" sense of humour and some of his contributions "verged on black humour". This would aptly describe the cartoon complained of.

It was a satirical cartoon. Through newspaper convention, and because of its placement on the Opinion page, it was clearly the cartoonist's opinion and not necessarily that of the newspaper.

Mr Mitchell accepted that some readers could question the taste of some of the Dunlop cartoons, including this one, but they were clearly comment, opinion and satire, not fact.

The newspaper published Mr Pease's letter of complaint without comment as it did not want to be seen "as having the last word". He admitted that, in hindsight, the newspaper should probably have contacted Mr Pease. He would be happy to do so after the Press Council considered his complaint.

### Further Comment from the Complainant

Mr Pease was not satisfied, because no editor's comment was attached to the letter of complaint he had published in the newspaper. He considered the editor was "going along with" the cartoon's publication. He wanted the editor to make the cartoonist aware of why the material was objectionable, as well as an apology from the editor and an undertaking that such "opinions" material would be in future be carefully vetted before publication, with the authors being told what was – or was not – acceptable.

### Discussion and Decision

Cartoonists are expressing their opinion, and aim to provoke comment. Satire or black humour is a legitimate part of that.

The cartoon was clearly published on the newspaper's Opinion page and as the newspaper points out, this clearly distinguishes it from "fact". It does not necessarily depict the newspaper's view.

The Council notes that the newspaper did publish Mr Pease's letter setting out his views of the cartoon.

The Press Council has consistently upheld the right of cartoonists to be provocative and has previously noted that cartoonists must enjoy considerable freedom in their role.

The complaint is not upheld.

Press Council members considering this complaint were Lynn Scott (Acting Chairman), Kate Coughlan, Chris Darlow, Sandy Gill, Penny Harding, Keith Lees, Clive Lind, John Roughan and Stephen Stewart.

## CASE NO: 2188 – JOHN BATES AGAINST SUNDAY STAR-TIMES

John Bates complained about an article published in the *Sunday Star-Times* on April 24, claiming that the Press Council's Principles relating to Fairness, Accuracy and Balance, Comment and Fact, and Headlines and Captions had all been breached. His complaint is upheld by a majority. Two Council members dissented from this decision.

### Background

The article outlined the contents of a book, "Badlands NZ; A Land Fit for Criminals", that had just been published.

The writer, David Fraser, was sharply critical of New Zealand governments for producing offender-friendly legislation and regulation, while showing scant concern for the victims of crime.

The report summarised the author's views, included several quotations and gave examples of Fraser's statistics.

The report was published on the front page under the bold headlines *Violent New Zealand* and (in a larger font) *Law system "encourages criminals"* and began "An international law and order expert says . . .

### The Complaint

Mr Bates complained to the newspaper via e-mail on May 2, 2011. Having received no reply by May 23, he then brought his complaint to the Press Council.

He took issue with the claim that the author was "an international law and order expert", suggesting instead that he was an ex-probation officer.

He disagreed with the statistics cited, pointing out, for example, that international comparisons based on how many people are imprisoned per crimes recorded is meaningless, because reporting and recording crime varies greatly from country to country.

He considered the headlines, especially *Law system "encourages criminals"* to be inflammatory as well as inaccurate.

In his view the report about the book was "propaganda" for the Sensible Sentencing Trust. Fraser's opinions had been presented as factual "without any counter opinion being sought". The newspaper had misinformed readers by its failure to question the views and the credentials of David Fraser.

### The Newspaper's Response

The editor pointed out that the opinions expressed in the article had been presented as the views of the author, not the newspaper's.

The complainant had suggested that the report could have sought the views of Kim Workman, Director of the Rethinking Crime and Punishment group, but Workman's opinions had been "regularly reported" in the past.

Fraser did have credentials in the law and order field – he was a former analyst for the National Criminal Intelligence Service and had worked for the UK Probation Service for 25 years.

Finally, a range of letters, both for and against the views expressed, had been published the following week.

## Discussion and Decision

The Press Council does not accept the complaint that the headlines and captions are misleading.

The caption placed immediately under the image of the front cover of the book is “*David Fraser says criminals thrive in New Zealand*”. That is certainly his view. Further, the format of *Law system “encourages criminals”* with quotation marks, makes it abundantly clear that Fraser’s views are being quoted ie it is not the newspaper making the claim.

Overall, the headlines summarise the substance of the report.

The complainant would also have it that the newspaper has failed to make a clear distinction between comment (or opinion) and fact.

The Council Principles in this area state that “an article that is essentially comment or opinion should be clearly presented as such” and this piece puzzled to some extent because it seemed part book review (albeit completely uncritical) and part report about the author and his new book.

Nevertheless, the editor’s argument that it is clear that the opinions of the author are being reported is accepted. The extensive use of quotations is backed by phrases such as “Fraser writes”, “Fraser says”, “he said” and “Fraser argues that . . .”

This part of the complaint is also rejected.

However, the heart of the complaint is that taken as a whole the piece is misleading because it lacks any counter balance to the strong opinions given such prominent coverage.

Here, the Press Council is in agreement with the complainant.

Comment from a source opposed to the views expressed by David Fraser could have easily been sought and published. Even if covered briefly, such comment would have warned readers about accepting the writer’s credentials, statistics and views without some scepticism.

This was particularly important when the newspaper’s report presented Fraser’s analysis so uncritically.

The Council notes and accepts the editor’s comment that the views of Kim Workman have been reported in the past.

However, the Press Council’s Statement of Principles affirms that “in articles of controversy or disagreement, a fair voice must be given to the other side”.

The complaint is upheld on the grounds of a lack of balance and fairness.

## Dissenting opinion:

The dissenting members, Kate Coughlan and Clive Lind, said the story was clearly identified as one man’s opinion contained within his recently published book. As such, the onus on the newspaper to provide some balancing opinion is lessened and there was no absolute obligation to seek alternative views on a well-traversed topic.

Press Council members upholding the complaint were Barry Paterson, Pip Bruce Ferguson, Stephen Stewart, John Roughan, Keith Lees, Chris Darlow and Sandy Gill

Those not upholding were Kate Coughlan and Clive Lind.

## CASE NO: 2189 – MARTYN BRADBURY AGAINST STUFF

Martyn Bradbury complained that a report on the *Stuff* website about comments by Independent MP Hone Harawira on the killing of Osama bin Laden misquoted and misrepresented what he had said.

The complaint is not upheld, but the issue raises questions about the online treatment of developing stories, reaction to them and disappearance of the original item as the story develops – and how organisations like the Press Council can adjudicate on constantly evolving, impermanent “new media”. This is the first complaint of this nature the Council has received.

## Background

On May 2, 2011 the TVNZ Te Karere programme featured Hone Harawira commenting on the killing of al-Qaeda leader Osama bin Laden. Mr Harawira, speaking in Maori, said bin Laden was a fighter for “the rights, the land and the freedom of his people”.

His remarks prompted controversy, and a subsequent apology from him about how he had expressed himself. His comments had been seen as support for bin Laden’s actions which was a mistake, he said.

On May 5 the *Stuff* website reported his (translated) comments in the context of a wider political reaction story. Later, *Stuff* amended its report.

This complaint concerns the original *Stuff* report – now unobtainable – and its later change.

## The Complaint

Mr Bradbury said the first *Stuff* report misquoted Mr Harawira. He claimed *Stuff* had said Mr Harawira “celebrated bin Laden’s life”. Later it had amended its report to say “celebrate life”.

Mr Bradbury said *Stuff* had “totally misreported and misquoted Hone”. After misquoting him, it had re-edited its own story. *Stuff*’s report had left the impression that Mr Harawira celebrated the life of Osama bin Laden.

## Stuff Response

Editor Mark Stevens said the report was edited as part of regular updating of a developing story. “In this case, the word ‘his’ was removed to better align the copy with the translation provided by Te Karere.”

He disputed Mr Bradbury’s claim that *Stuff* had misquoted Mr Harawira. “The entire interview was about Mr Harawira’s thoughts on the death of Osama bin Laden so his response was therefore in relation to bin Laden.”

*Stuff* had not changed the tone or meaning of what was attributed to Mr Harawira.

## Discussion

As the original *Stuff* story has not been provided, the Press Council has to rely on what is available on the *Stuff* site. The relevant material (Mr Harawira’s words, translated from te reo):

“It is custom for Maori to honour and mourn the deceased. So I acknowledge him and bid him farewell,

return to your ancestors who wait for you behind the veil of death.

“Despite what the media said his family, his tribe, his people are mourning, they mourn for a man who fought for the rights, the land and the freedom of his people,” Harawira told TVNZ’s Te Karere on Monday.

Also, the phrase complained of was in reported speech and was not a quote: People should not damn bin Laden but celebrate the positive aspects of [his] life.

This complaint puts the Press Council in an unusual position. Mr Bradbury quotes from a report that no longer exists in its original form, as *Stuff* updated it as a developing story. However, *Stuff* has admitted editing the original report by deleting the word “his”, and it does not resile from the use of the word celebrate.

*Stuff*’s system does not allow retrieval of original versions of up-dated stories, unless a copy has been separately saved.

It would have been helpful, but not essential in this case as the facts are not disputed, if Mr Bradbury had made a “screen grab” of the *Stuff* report which upset him at the time, and then supplied the Press Council with a print-out of that.

Significantly, the man directly concerned, Mr Harawira, has not complained. It is also significant that Mr Harawira had to apologise for his remarks, and clarify them.

### Decision

This complaint is not upheld.

*Stuff* has acknowledged altering the story to better align with the translation provided by Te Karere. The story was accompanied by a video-clip of the Te Karere interview, which included a translation with English sub-titles, from which readers could draw their own conclusions.

The Council is not entirely sure that there was a misrepresentation. It is significant that Mr Harawira had to apologise and then clarify his original remarks after his comments, and not just the contested phrase, were widely seen as support for bin Laden.

Any misquote around the use of “his” was fleeting and overtaken by editing and updating of the story.

It is one of the advantages of on-line copy that alterations / updates / corrections can be easily made. *Stuff* has advised they are upfront about corrections and mark stories appropriately where a correction has been made.

It is unfortunate that the Council was not able to view the article complained about. Certainty must exist about the source material before the Press Council can consider upholding a complaint, though that is not material to this case.

Given the changing nature of on-line copy prospective complainants are urged to take a hard copy or screen-grab if they have concerns about an on-line article.

Press Council members considering this complaint were Barry Paterson, Pip Bruce Ferguson, Kate Coughlan, Chris Darlow, Sandy Gill, Keith Lees, Clive Lind, John Roughan and Stephen Stewart.

## CASE NO: 2190 – THE CHURCH OF SCIENTOLOGY OF NEW ZEALAND AGAINST NEW IDEA

The Church of Scientology has complained about two articles in *New Idea* concerning husband-and-wife actors Katie Holmes and Tom Cruise and the Church.

The complaints are not upheld.

### Background

On January 31, 2011, *New Idea* published an article headed *Katie Holmes: Science of Addiction*, which reported how there were concerns over Ms Holmes’ health, mental state and appearance. It said former scientologists claimed she was being given therapy via devices called e-meters that can cause addictive highs.

The article quoted another report in *Star* magazine and two former scientologists who said that e-meters were regularly used in auditing or counselling. One of them claimed his e-meter experience was like taking drugs.

An “insider” was quoted as saying that Cruise was encouraging his wife to turn more to Scientology for more “auditing” when times were tough.

On February 21, 2011, *New Idea* published another article headed *Tom’s Shock at FBI Probe: Scientology in Crisis*. The article quoted from *the New Yorker* magazine which claimed Cruise was reeling after a report that the church was allegedly involved in human trafficking, violent treatment and “slave” labour.

The article, under the tagline of *Investigative Report*, went on to quote former scientologists and others about various activities within the church.

It also quoted responses from the church and the actor’s lawyers denying the allegations.

### The Complaints

Mike Ferriss, secretary of the church in New Zealand, complained in a letter dated February 4 to the editor of *New Idea* that the January 31 article contained falsehoods and misleading statements about Scientology. It was also deliberately biased and was therefore unfair and lacked balance.

He also complained that the magazine did not seek comment from the church, and that the former members’ comments were “entirely false” and derogatory.

In another letter dated February 16 about the *Scientology in Crisis* article, Mr Ferriss said that article also contained “falsehoods, inaccuracies, speculation and misleading headlines.”

Mr Ferriss disputed many of the claims in the article and said *New Idea* staff had not approached the Church, in New Zealand or overseas, for comment or to check the veracity of the allegations.

### The Response

In a response to Mr Ferriss dated April 13, *New Idea* editor Hayley McLarin said the *Science of Addiction* article was published in good faith from overseas sources which she had no reason to doubt.

She did not accept the magazine was obliged to seek comment from the church in New Zealand, or that the story was misleading.

The editor similarly defended the *Scientology in Crisis* article, and said that the allegations of the former members had been expressly referred to as accusations and were not presented as necessarily being the truth.

“To the extent that the story can be said to be speculative and sensationalist, that reflects the fact that it was published in a women’s magazine focused on celebrity gossip and entertainment, not a serious news journal, and readers will read it with that in mind,” the editor said.

### Discussion

While both articles fall within the gossip genre in terms of presentation, they are different in terms of their content. The first article lacks the quite extensive quotes from named people contained in the second, which even quotes a representative of the church and Tom Cruise’s lawyers.

The first article quotes people named in other articles and resorts to an unnamed “insider” and “sources.” To that extent, the second article contains some balance and journalistic endeavour.

But neither article, as the editor seems to say, is serious journalism and readers are unlikely to take them seriously. Further, the articles complained of are stacked with conditions which indicate the allegations are unproven.

Church members understandably resent seeing their beliefs or practices besmirched in a gossip magazine more interested in its celebrity members than the Church itself, but that is the nature of the genre where even editors seem to concede their readers do not expect serious journalism.

Gossip by its very nature has a much lower threshold of credibility and, providing articles are displayed as such, the Press Council recognises that strictly applying its principles to such articles is difficult when details are often speculative and conditional.

The Press Council has said previously there is no obligation in cases like this involving celebrities and organisations outside New Zealand, and where the story is written by an overseas writer, to require a publication to seek comment from a New Zealand representative. That remains the case in both articles complained of.

### Decision

The complaints are not upheld.

Press Council members considering this complaint were Barry Paterson, Pip Bruce Ferguson, Kate Coughlan, Chris Darlow, Sandy Gill, Keith Lees, Clive Lind, John Roughan and Stephen Stewart.

## CASE NO: 2191 – THE CHURCH OF SCIENTOLOGY OF NEW ZEALAND AGAINST NEW ZEALAND WOMAN’S WEEKLY

The Church of Scientology of New Zealand has complained about two articles in *New Zealand Woman’s Weekly* relating to actor Katie Holmes, her alleged state of mind and her relationship with the church.

The complaints are not upheld.

### Background

On January 31, 2011, under the heading *Mother of all Meltdowns* and a tagline, *Shock Treatment*, the magazine claimed the actor wife of Tom Cruise was looking “sad and vacant” and the behaviour of her four-year-old daughter, Suri, was starting to hinder her professional life.

The article, among other things, also claimed that according to former scientologists, Holmes was likely to be indulging in a “controversial church treatment called an e-meter.” The device emitted a low-level electric charge that could kill pain and elevate energy levels and an anonymous “expert” was quoted as saying it was addictive.

On February 28, the magazine published another article headlined *Is Katie Losing Suri?* and a tagline, *FBI Probe*.

The article claimed a “war” was being played out between the parents on the education of the child at either a Catholic or Scientology school, and again referred to Holmes’ appearance among other things.

The article also said there were new allegations of child slavery in the church, which the FBI was investigating.

### The Complaints

Following publication of both articles, the church’s secretary, Mike Ferriss, twice complained to the magazine.

In a letter dated February 4, he said an e-meter was not a treatment but was “purely a guide to measure the tiny amounts of energy contained in negative and painful experiences of past memories.”

The process was not addictive while the *Shock Treatment* tagline was also wrong. Scientologists around the world were opposed to psychiatry’s shock treatments.

Referring to the February 28 article, Mr Ferriss said the information relating to the FBI probe was false and misleading and stemmed from another magazine article that had been discredited.

In both instances, Mr Ferriss said the magazine had made no attempt to provide balance from the Church and the stories were biased and unfair.

The editor, Sarah Stuart, replied the article only referred to allegations relating to the FBI probe, which had been headline news at the time the story was written.

This was disputed by Mr Ferriss who said the FBI investigation had occurred a year before and had been discontinued. He received no reply to his complaint about the earlier article.

### The Responses

In her response to the Press Council, the editor said the story was about an American celebrity mother’s concern

for her daughter's schooling and the internationally sourced material was believed to be correct. Only one sentence referred to the US investigation.

She did not believe the story was either unbalanced or overly sensational.

The *Shock Treatment* tagline related to the "surprise news" that Ms Holmes was receiving the treatment and the editor said she believed the e-meter process could be described as a treatment.

No comment was sought from the New Zealand church because it was written and researched overseas, reported on international celebrities, appeared in the gossip section and did not relate to the New Zealand branch. If the story had been about New Zealand members, comment would have been sought.

In his response dated May 17, Mr Ferriss reiterated that the *Mother of All Meltdowns* article was inaccurate, unfair and unbalanced, and the magazine should check that its information was accurate rather than relying on overseas gossip magazines.

Quoting former members meant the article inherently lacked balance and discussion about Scientology in women's gossip magazines in connection with its celebrity members did not mean the topic could be reported inaccurately, unfairly or with bias.

While the editor might not see the need to include comment from the New Zealand church, she did not explain why no balancing material had been included or even that there were other views. Such material was available.

### Discussion

The Press Council has debated before (Case 2123) whether publications need to seek balance for articles about celebrities and the Church of Scientology when they have no particular relevance to New Zealand. This is the situation with both articles complained of. It would be a step too far to expect a magazine to seek local comment in such circumstances.

Both articles are also gossip and displayed as such. Gossip is not necessarily true. The articles are unlikely to be taken seriously by an objective reader, given their lack of respected, named sources and no detail from the subjects themselves.

Mr Ferriss complains of a lack of accuracy, balance and fairness and it is understandable that the Church should feel aggrieved at some of the comments made. But gossip by its very nature has a much lower threshold of credibility and, providing articles are displayed as such, the Press Council recognises that strictly applying its principles to such articles is difficult when details are often speculative and conditional.

The Press Council has said any licence in such ethical areas has its limits, and they would include glaringly wrong or inaccurate comments. But *Woman's Weekly's* details and allegations are not glaringly incorrect or inaccurate within the genre.

### Decision

The complaints are not upheld.

Press Council members considering this complaint were Barry Paterson, Pip Bruce Ferguson, Kate Coughlan,

Chris Darlow, Sandy Gill, Keith Lees, Clive Lind, John Roughan and Stephen Stewart.

## CASE NO: 2192 – DAVE HENDERSON AGAINST THE PRESS

Dave Henderson claims *The Press* failed to comply with Principle 1 (Accuracy, Fairness and Balance) of the Press Council Statement of Principles when reporting as to Mr Henderson's alleged entry into the Christchurch CBD "red zone" at various times after the February 22, 2011 earthquake.

By a majority of 5:4 the Press Council has not upheld the complaint.

### Background

On April 1, 2011 *The Press* ran a story headed "Access to red zone infuriates". The story reported concerns of unnamed business owners as to why Mr Henderson had been allowed into the red zone while others "[battled] to get access". The story referred to Mr Henderson, a bankrupt no longer allowed to operate a business, having been "spotted" with colleagues or "friends", inside the red zone at least twice. The story referred to Civil Defence as saying business owners had different access rights but all went through the same process. Mr Henderson, according to Civil Defence, "had no special access rights and was subject to the same constraints as others".

The story proceeded then to quote from an "open" letter from a business owner addressed the Christchurch mayor questioning the basis for Mr Henderson having free access to the zone while others were denied similar rights. The story reported Mr Henderson as not having responded to questions from *The Press*.

It transpires the open letter quoted in the story was written anonymously.

### The Complaint

Mr Henderson complains the *The Press* reporter contacted him by email sent at 11.32am March 30 seeking a response to various questions regarding Mr Henderson's alleged access within the red zone cordon. The reporter sought a reply by 4pm the same day. Mr Henderson says he did not access the email until later on March 30. Mr Henderson is aggrieved because despite the story in question not actually running until April 2 there was no further attempt by *The Press* to contact him. Mr Henderson claims that with the story being published three days later he was given no reasonable opportunity to respond to the reporter's questions. He says the rights accorded to him by Civil Defence were the same as those given to other business people.

Mr Henderson further claims *The Press* failed to mention the open letter quoted was written anonymously. Mr Henderson says *The Press* should have mentioned this fact. Mr Henderson says the letter was "clearly vitriolic and nasty". He claims the *The Press* changed the phrase in the letter "he and his henchmen" to "he and his friends" so as to ameliorate (or mitigate) the vitriol. Mr Henderson says



the paper should not change a quote from an anonymous letter “to make it work better for [the] story”.

### The Response

*The Press* responds by denying the claim its reporting was unfair, lacked accuracy or was unbalanced. First, the newspaper says Mr Henderson was given adequate time to respond to the reporter’s questions on March 30. Secondly *The Press* says “the story in no way suggests that Mr Henderson had no right to be in the red zone, rather it is a reflection of widespread frustration within the business community as to the manner of Civil Defence providing access”. Thirdly *The Press* says it did not need to refer to the open letter as being anonymous. It had been “widely circulated” (presumably other than by *The Press* article). The story had been corroborated through separate avenues. And fourthly “henchmen” had been changed to “friends” out of a concern Mr Henderson might be defamed. *The Press* refers to an earlier Press Council determination permitting letters to the editor to be shortened to manage legal risks.

### The Decision

The majority of the Press Council did not uphold the complaint but had some concerns about the article.

*The Press* should have recorded that the open letter from a “business owner” was anonymous, even if it was well circulated about the community.

Moreover, having given Mr Henderson a deadline of a few hours, the article was not published for another three days. The reporter also adopted a cavalier approach to his questioning of Mr Henderson.

Nevertheless, access to the red zone was a matter of legitimate public interest, particularly when some people were being denied such access. Mr Henderson’s ability to gain access was a matter for inquiry.

The article records *The Press* had other sources that Mr Henderson had been seen in the red zone, and it also recorded that Civil Defence had said Mr Henderson had received no special privileges.

It was therefore accurate and, given Mr Henderson’s high profile, it was not unfair or unreasonable to follow up public concerns about favoured treatment about access to the red zone.

Mr Henderson says he does not read *The Press*, and that it was unacceptable to be given a short time to respond for a story that was not published until three days later.

Equally, however, he could have told *The Press* their deadline was too short and that he would need more time. He did not do so. It seems clear from the correspondence between the parties that they have a certain familiarity based on past experience and practice and, in this instance, it served neither party well.

Mr Henderson’s complaint of the editing of one word from the letter is a minor matter because the word could have been regarded as objectionable and *The Press* was entitled to remove it although, having made the change, the use of quotation marks could be questioned. Again, that is a minor matter.

Mr Henderson complained of a lack of accuracy, fairness and balance but on all counts, the majority does not believe the complaint should be upheld.

### Minority opinion

The minority of four members did not consider Mr Henderson was given sufficient time to answer the questions the reporter put to him in the March 30 email. A four hour response time was not reasonable especially since the story did not run until three days later. Mr Henderson was entitled to treat the 4pm deadline as being final and could be excused for thinking that any comment made after 4pm would be disregarded.

Contrary to the newspaper’s assertion the article, when considered objectively, concentrates on Mr Henderson and implies there was something nefarious about Mr Henderson’s activities in the red zone. The emphasis was not on the wider frustrations the business community had with Civil Defence over access to the cordoned area. If *The Press* was in fact reporting on those frustrations there would have been no need to refer to Mr Henderson’s bankruptcy (an irrelevancy) or the fact Mr Henderson had allegedly been seen in the area unaccompanied by Urban Search and Rescue staff or police. The latter reference suggests some impropriety on Mr Henderson’s part. If the object was to demonstrate inconsistencies in the way Civil Defence was administering access to the zone there was no need to quote so extensively from the open letter, a letter which was demonstrably aimed at Mr Henderson. Given the story’s emphasis and the later publication date the minority takes the view *The Press* should have given Mr Henderson a better opportunity to reply.

The minority does not agree with *The Press* over its treatment of the anonymous open letter. The fact it may have been widely circulated does not detract from the fact the correspondence was anonymously written. Anonymous correspondence must be treated with some scepticism at least in the first instance. The minority believes the newspaper should have indicated the letter extensively quoted came from an anonymous source.

The Council accepts that in the ordinary course a newspaper may modify a letter to the editor for legal reasons. This was the Council’s decision in *Banks v Greymouth Evening Star* (decision 828). But this anonymous letter was not a letter addressed to the editor for publication as such. The letter was addressed to the mayor and was apparently open. It was a provocative piece. It contained a reference which, by the newspaper’s own admission, was potentially troublesome. It should have been treated cautiously by *The Press*.

Press Council members not upholding the complaint were Barry Paterson, Clive Lind, Kate Coughlan, Stephen Stewart and John Roughan.

Those members who dissented from this decision and would have upheld the complaint were Pip Bruce Ferguson, Keith Lees, Sandra Gill and Chris Darlow.

## **CASE NO: 2193 – PAUL KEARNS AGAINST GREYMOUTH STAR**

Paul Kearns makes a complaint under Principle 1 (Accuracy, Fairness and balance), Principle 6 (Discrimination and Diversity) and Principle 11 (Corrections) of the Press Council Statement of Principles. Mr Kearns states that the article which is the subject of his complaint, “Shunned O’Connor lashes out”, was highly offensive and inflammatory and promoted a fallacy that “gay people = sexually perverted misfits”.

Mr Kearns’ complaint is not upheld.

### **Background**

The article was published in the *Greymouth Star* on April 1, 2011 and Mr Kearns states that the *Greymouth Star* also used the word “gay” to insult “all politicians” in a front page article the following night.

The article concerned Damien O’Connor’s comments regarding his withdrawal from the Labour Party list and his statement that the list was drawn up by “a gaggle of gays and self serving unionists”.

The article quoted Mr O’Connor, currently a list MP who represents the interests of the West Coast and Tasman, as stating that the composition of the list gave “straight shooters” like himself little chance of gaining a fair deal so he had withdrawn his name before the list was decided.

The article also included comments attributed to an anonymous blogger as saying Mr O’Connor had echoed what the multitudes had been thinking – “the Labour lineup is a squalid bunch of sexually perverted misfits and bludging, treasonous unionists”.

### **The Complaint**

Mr Kearns believes that the comments in the article were highly offensive and inflammatory and promoted a fallacy that “gay people = sexually perverted misfits” and that the comments in the article “amounted to hate speech”.

He believes that there must be a better way to report the news regarding Mr O’Connor’s words without propagating such hateful speech as a legitimate opinion.

Mr Kearns acknowledged that the *Greymouth Star* published a letter he wrote in reply to the article but he believes that this did not address the substance of his complaint which was that “the *Greymouth Star* acted irresponsibly by publishing abusive and insulting anonymous comments that inflamed the situation”.

### **Response from the Greymouth Star**

In reply the editor stated that Mr Kearns was taking offence at the *Greymouth Star* for publishing comments that were already widely published.

The editor went on to state that as the original comments came from the local MP Damien O’Connor, the paper had an extra duty to their West Coast readers to put the story in the context of that, and the way it was being portrayed in the media.

The editor stated that reporting what a blogger was saying, was not to express the opinion of the *Greymouth*

*Star*, and should be seen in context of the broader story. It was a reflection of public opinion which on that morning certainly favoured Mr O’Connor for his forthrightness. The paper also carried a sidebar in the same edition quoting MP Kevin Hague who professed to not being offended by Mr O’Connor’s comments.

The *Greymouth Star* offered Mr Kearns space in the lead position of the letters to the editor and he accepted this. His complaint was subsequently published almost in full.

### **Discussion and Decision**

The Council was provided with copies of the article and Mr Kearns’ published complaint letter.

The Council agrees with the complainant that a term such as “sexually misguided misfits” is offensive if applied gratuitously to a gay people but in this case the Council does not consider its use gratuitous.

The newspaper clearly reported the unnamed blogger’s use of the phrase to illustrate the kind of sentiment Mr O’Connor’s comment had aroused.

The Council is confident that editors would take care not to allow language such as this, directed at any group in the community, to be used without fair reason.

The complaint is not upheld.

Press Council members considering this complaint were Barry Paterson, Pip Bruce Ferguson, Kate Coughlan, Chris Darlow, Sandy Gill, Keith Lees, Clive Lind, John Roughan and Stephen Stewart.

## **CASE NO: 2194 – LABOUR PARTY AGAINST HERALD ON SUNDAY**

The Labour Party has complained about an article appearing in the *Herald on Sunday* on April 17, 2011.

The complaint is not upheld.

### **The Article**

The article, which appeared on page 6 of the publication, was headed “Red fern idea finds fertile ground”. The first paragraph read:

A SUGGESTION the All Blacks should wear a red fern for the Rugby World Cup was quickly dismissed – but that hasn’t stopped the Labour Party stealing the idea for election year.

The article referred to a proposal, which had been abandoned, that the All Blacks wear a red fern in support of the quake hit Christchurch, it said:

Labour leader Phil Goff had supported the red fern proposal – and now his party has adopted it for its new logo.

The article referred to comments by various people on the new Labour logo and the development of it. A co-owner of the advertising company which made the logo was quoted as saying “it took six to nine months to finalise the design”.

On April 24, 2011, on page 21 of its publication, the *Herald on Sunday* under the heading of Clarifications” stated:

Last week we said in the introduction of a story that the Labour Party had stolen the All Blacks' idea of a red fern for its new logo. This intro was tongue-in-cheek and not intended to suggest intellectual property theft by the party. The logo revamp was a long-term project that pre-dated the All Black concept.

### The Complaint

The complaint is that the article, which was not an opinion piece, was inaccurate and unfair. This was because the Labour Party had been developing the red fern idea prior to the suggestion that the All Blacks wear a red fern. Prior to publishing the article, the reporter had approached two members of the Labour Party and had been told that the red fern logo had been under development for six to nine months, that it had been used on Labour's website since February/March (the Botany by-election) and it had been used in press releases to media organisations since March 8, 2011.

The complaint is that the article was factually incorrect, inaccurate and unfair. It refers to a contact which Francesca Mold, Labour's Chief Press Secretary, had had with Jonathan Milne, deputy editor of the *Herald on Sunday*. There was subsequent email traffic between Ms Mold, Mr Milne and the editor of the *Herald on Sunday*. In the email exchange, the *Herald on Sunday* agreed to print a clarification. Ms Mold did not agree with the terms of the clarification.

### The Newspaper's Response

In a lengthy response, the *Herald on Sunday* said that the reference to "stealing the idea" from the All Blacks was intended to be tongue-in-cheek. This was demonstrated by the very high hyperbole in the term "stealing", by the brevity of the article, and the light-hearted metaphorical headline of the nature reserved by the paper for "bites" and human interest stories.

The editor of the *Herald on Sunday*, in an email to Ms Mold after she had complained to the newspaper, agreed that the story was unfortunate and perhaps gave a wrong impression which was clarified in the story which clearly stated that the design on the logo took six to nine months. After claiming that a reasonable reader would see the introduction as being tongue-in-cheek, he noted that Ms Mold obviously did not share the view and he was therefore happy to have the matter clarified the following weekend.

### Discussion

The Council does not share the editor's view that a reasonable reader would see the comment as tongue-in-cheek. The introduction clearly stated that the Labour Party had stolen the idea for election year. By implication, the heading reinforces this view. The fact that there was a reference to the six to nine months period of design does not alter that impression, but it does confuse the issue. The comment would not, in the Council's view, lead many reasonable readers to accept the allegation in the introduction as being tongue-in-cheek.

The article, which was a factual article and not an opinion piece, was inaccurate and unfair. The newspaper would have known the statement was incorrect at the time it was published. If it was intended to be tongue-in-

cheek this was not obvious. There has been a breach of the Council's principles.

However, the issue in this case is whether the clarification subsequently published by the *Herald on Sunday* was a sufficient response. Unless the error is grievous, a publication's prompt acknowledgment of the error and a willingness to correct it is usually sufficient to escape an uphold decision by this Council. If the newspaper had published a correction which satisfied the Labour Party, it is unlikely that there would have been a complaint to this Council.

The complainant believes that it is unfair for publications to make claims in prominent news stories that they later admit are not true or fair, yet the resulting "clarification" is published a week later in a couple of sentences buried in the back of the paper where no-one sees it. There is substance in this point. What was required here was a correction rather than a clarification. Further, the correction is to be given fair publication. However, as the *Herald on Sunday* is a weekly newspaper, it can not be criticised for publishing the correction a week later, as that was its next publication.

There was an exchange of emails between the complainant and the newspaper over the terms of the clarification. The editor made an amendment to his proposed clarification as a result of this exchange. The amendment did not satisfy the complainant as it wished the newspaper to acknowledge that it had been told by two spokesmen for the Labour Party that the logo had been in use since the Botany by-election and in development for more than six months as a brand. It wanted included a statement of regret and an apology. Ms Mold did advise the editor that she was not happy with the clarification but it was a waste of her and his time to debate it further.

A publication, when it has made an error, should promptly correct and do so in terms that acknowledge the error. While it may be suggested that it is merely semantics, there is a difference between "correction" and "clarification". This article called for a correction, not a clarification. However, that said, the contents of the clarification do sufficiently correct the inaccuracy in the original article. The Labour Party may have wanted stronger wording but, in the Council's view, the content was sufficient, albeit that it did not explicitly acknowledge that the fault lay with the newspaper.

The issues therefore are whether the placing of the clarification near the end of the publication and the use of the word "clarification" rather than "correction" mean that the correction was not adequate. In the Council's view, the *Herald on Sunday* would be wise to rename its clarifications column a corrections column and to place it nearer the beginning of the newspaper. If it does not do so there will be cases where a clarification will be held not to be a sufficient correction.

This is a borderline case, where a minority of the Council was of the view that the clarification was not an adequate correction. However the view of the majority of the Council is that while it would have been preferable for the "clarification" to have been headed "correction" and placed in a more prominent position in the newspaper, the Council's view is that the clarification was adequate.

The complaint is not upheld.

Press Council members considering this complaint were Barry Paterson, Pip Bruce Ferguson, Kate Coughlan, Chris Darlow, Sandy Gill, Keith Lees, Clive Lind, John Roughan and Stephen Stewart.

## **CASE NO: 2195 – JOHN TANNAHILL AGAINST SUNDAY STAR-TIMES**

John Tannahill complained about a *Sunday Star-Times* opinion column alleging the column was inaccurate, unfair, unbalanced and abusive.

His complaint is not upheld.

### **Background**

On April 24, 2011 an opinion article was published in the *Sunday Star-Times*, written by Richard Boock, on the subject of the use of whips in horse racing. The article was clearly labelled 'Opinion' and went on to criticise horse racing as less "the Sport of Kings these days as the Sport of Sickos". Mr Boock suggested that readers show their opposition to the practice of 'horses being flogged and abused' by not attending the races.

On Monday April 25 Mr Tannahill attempted to send an email to Mr Boock complaining about the article in extremely intemperate terms. Mr Tannahill objected to being referred to as SICKO (sic). He sent the email to an incorrect email address, but cc-ed the editor of the *Sunday Star-Times* into the email.

The editor replied the next day, stating that while he was 'less than impressed' himself, columnists are actively encouraged to express their views even when these are unpopular.

He further stated that "I do expect them to stop short of offensiveness...while Richard is free to despise whips in racing...that does not mean it is acceptable to damn an entire industry".

Mr Tannahill emailed the editor back on April 28 in a friendly tone, stating that 'I am informed that you have asked [Racing editor] Barry Lichter to write a reply to the Boock rendition. That will be good. I was prepared to write one myself but now I will rely on Barry Lichter". He further stated that he had not received an acknowledgement from Mr Boock to his emails, and requested the editor to ask Mr Boock to send an apology. If this was not received, action would be taken against him and the paper.

Later that day the editor replied by email, stating that he had invited Mr Boock to come along and have a chat, but had not heard back yet.

The next email sent by Mr Tannahill to Mr Boock was dated April 29 and contained a series of statements followed by multiple question marks, emphasising that Mr Tannahill was still waiting, that Mr Boock should apologise or face the consequences, and requesting him to look at a youtube clip, the contents of which were quite objectionable.

It is not clear from the email addresses, but he must have sent a copy of this email to the editor, who replied the same day commenting on gracious responses in other

emails he had received on the topic, contrasting these with the tone of Mr Tannahill's emails. Mr Tannahill replied on May 14 that the editor was "an incredible disappointment", that all he had wanted was an apology and that he now intended to take formal steps for defamation against Mr Boock and the paper [this was later rescinded when the complaint went to the Press Council].

### **The Complaint**

On the May 14 Mr Tannahill wrote to the Press Council complaining that the Boock article was inaccurate, unfair, unbalanced and abusive. While he accepted that Mr Boock was entitled to his views, "he has classified all people like me as SICKOS". He described the editor as "a mamby pambly who keeps fobbing people off", stating that racing people had been informed that Barry Lichter would be writing a reply, but then the editor had not asked Mr Lichter to do this. Mr Tannahill stated that over 26,000 people in New Zealand derived their income from the racing industry, and that he would like to see Boock horse whipped although he accepted this was far from likely.

### **The Newspaper's Response**

The editor replied on May 31 reiterating that the piece was clearly labelled as opinion; that letters were published the following week both for and against the columnist's views; that Mr Lichter's involvement had been discussed but as he was on leave the newspaper had decided to publish the letters instead; and that many emails, including "a video of a man masturbating" had been sent by Mr Tannahill. He further stated that Mr Boock had received death threats [by whom it is unclear]. The editor did not plan to spend further time on the matter.

Mr Tannahill, in a further letter to the Press Council dated June 13, stated that he had not written a reply to the article because of his belief that Mr Lichter was to do so; that he objected to being referred to as "Tannahill"; that his "tongue in cheek comment" in his letter to the Council had not been understood by the editor (this refers to having Mr Boock horsewhipped); that Mr Boock was not entitled to call people sickos and that while the paper had published a range of letters, he stated that there were more that were not published, nor had the NZ Racing Industry been given any opportunity to reply. He claimed that his video link was "comical, not offensive".

### **Discussion**

The facts in this case are not disputed. Both Mr Tannahill and the editor accepted Mr Boock's article as opinion. They also agreed that there had been discussion about Mr Lichter's involvement, although this had not happened in the end. Both agreed that a range of letters on the topic had been published.

Mr Tannahill may have held back from writing a response because of his belief that Mr Lichter was to do so, but there would have been no obligation on the paper to have published his response had he written it.

Where Mr Tannahill took issue was with Mr Boock's claim that people involved in the industry were 'sickos'. The editor's initial response appeared to agree with him,

in the statement that “that does not mean it is acceptable to damn an entire industry”.

However, Mr Tannahill’s subsequent offensive language and the sending of a video clip that he deemed to be ‘comical’ but others might well find offensive, appear to have dissuaded the editor from further consideration of the complaint. The fact that he sent his initial complaint to Mr Boock to an incorrect email is his error and probably contributed to his failure to receive a prompt reply from Mr Boock, who had obviously been alerted to the situation subsequently by his editor, and via a later, equally intemperate, email from Mr Tannahill.

### Conclusion

If complainants to a paper feel that they have a legitimate complaint, they would be wise to pursue this complaint in a temperate manner. The editor’s response to Mr Tannahill was always prompt, and initially warm, but Mr Tannahill’s subsequent stream of emails appears to have soured the correspondence. No journalist, in the Council’s opinion, should have to put up with being the recipient of obscene videos and the kind of intemperate language in which Mr Tannahill expressed himself.

The column is an opinion column, hence may express an opinion and even, on occasions, offend. Opinion columns do not need to be balanced, and although Mr Tannahill alleges inaccuracy this point was not developed. It is perhaps unfortunate that the Barry Lichter piece did not eventuate, but the Council is satisfied that an alternative point of view was expressed through the letters to the editor. It was also noticeable from the published letters that there were many readers who agreed with the column.

The complaint is not upheld.

Press Council members considering this complaint were Barry Paterson, Pip Bruce Ferguson, Kate Coughlan, Chris Darlow, Sandy Gill, Keith Lees, Clive Lind, John Roughan and Stephen Stewart.

## CASE NO: 2196 – MARCUS WILKINS AGAINST NEW ZEALAND KIWIFRUIT JOURNAL

The New Zealand Press Council has upheld, by a majority of 5:4, a complaint against the *New Zealand Kiwifruit Journal* from Marcus Wilkins who wrote to the *Journal* on May 13 last year, commenting on an article in the March edition that had set out the intellectual property rights of plant breeders.

Describing himself as the holder of possibly the world’s first kiwifruit variety right, Mr Wilkins said the article had failed to mention that the rights of kiwifruit breeders in New Zealand have been removed by the Kiwifruit Export Regulations 1999.

He believed the regulations applied only to Hayward Kiwifruit, the first commercial variety, and that growers who develop a new variety should be able to export its fruit independently.

His letter was referred to Zespri for a response, which was supplied by the company’s deputy chairman, Peter McBride.

Mr McBride’s response was published ahead of Mr Wilkins’ letter, the response running over two pages of the July edition with Mr Wilkins’ letter printed in facsimile form on the page following it.

Mr Wilkins complained that his letter was treated unprofessionally in both its placement and presentation, that his full address was published without his consent, and that he was not warned a response would come from Zespri rather than the author of the article.

He asked that the next edition of the *Journal* contain an apology for publishing his address and signature and for the greater prominence given to Zespri’s reply. He also asked for a policy on the treatment of letters to the editor to be published.

The edition of September, 2010 contained an account of Mr Wilkins’ complaint, along with an apology to him, and set out a policy for the treatment of letters to the editor which it undertook to publish on page three of future issues.

Mr Wilkins was not satisfied and complained to the Press Council.

The Council has found the treatment of Mr Wilkins’ letter unfair and unreasonable. It says it is normal and natural for replies to letters, even long replies, to follow them.

While it is not unusual for magazines to print a letter in raw facsimile form for added effect, in this case the Council finds it gave readers the clear impression Mr Wilkins’ letter was not considered worthy of the same editorial attention and design that Zespri’s reply received.

The facsimile presentation also had the unfortunate, and no doubt unintended, consequence of publishing the complainant’s full address and signature.

Though the *Kiwifruit Journal* apologised to Mr Wilkins for publishing his address and for the treatment of his letter, the Press Council has upheld his complaint, finding it grossly unfair to publish a well-laid-out response which covered far more ground than Mr Wilkins’ letter had warranted, and publish it ahead of Mr Wilkins’ letter.

In the view of the majority of the Council an apology was the least that could be expected but its lack of heading and placement well back in the *Journal* was not sufficient.

The view of the minority was that the apology was adequate to remedy the deficiencies in the manner of publication of the letter and response.

Those members upholding the complaint were Clive Lind, Stephen Stewart, Sandy Gill, Kate Coughlan and Pip Bruce Ferguson

Those members not upholding the complaint were Barry Paterson, John Roughan, Keith Lees and Chris Darlow.

## **CASE NO: 2197 – DELAWARE BAY RESIDENTS ASSOCIATION AGAINST THE NELSON MAIL**

The Delaware Bay Residents Association, through chairperson Grant Williams, complained that an editorial in the *Nelson Mail*, regarding the closure of a shooting range in the Cable Bay area of Nelson, breached principles of accuracy, fairness and balance, comment and fact, discrimination and diversity, and corrections.

The complaint is upheld on the grounds of inaccuracy.

### **Background**

The editorial on the long-running dispute regarding a shooting range in a rural-residential area east of Nelson, published in the *Nelson Mail* on March 26, argued that the issue illustrated the tension between new arrivals in rural areas and their willingness to accept activities and noise levels commonly prevalent in rural areas. The editorial specifically identified new residents, “some from overseas”, as being the complainants about the noise of the shooting range. It stated that new citizens, whilst they must be accorded the same rights and privileges as those born here, should be willing to fit in and not impose their values and desires on the community which has accepted them.

While the newspaper had previously covered the saga (2007), the editorial did not mention an Environment Court decision (delivered in March 2011) regarding the permissible noise levels for the shooting range.

The editorial stated that the closure of the shooting range was the loss of a valued resource which came at a high cost to its owners and that it was due to complaints by recent arrivals into the district.

### **The Complaint**

The day following publication Mr Williams complained to the newspaper that the editorial contained false information and was objectionable and damaging to residents who lived near the shooting range. Three days later Mr Williams wrote again to the editor of the *Nelson Mail* on behalf of the Delaware Bay Residents Association elaborating on his initial complaint.

In his capacity as chairperson of the Association Mr Williams argued that pertinent facts had been omitted from the editorial which, had they been included, might have led readers to a different conclusion.

Specifically, these related to the date of establishment of the shooting range which the Association claimed post-dated the arrival of residents close to the site and quoted evidence to the Environment Court in support of this.

In relation to the noise levels, Mr Williams quoted the findings of the Environment Court that noise exceeded a reasonable level and had an adverse effect on the environment, specifically residents in proximity.

Mr Williams also pointed out that the affected residents, at a cost of \$12,000, had employed acoustics experts to consider the effects of the range and that the Association had offered \$30,000 towards relocating the shooting range.

Mr Williams stated that the Environment Court had

imposed restrictions which led to the owners deciding to close the range. He acknowledged this was a severe blow to the owners.

Finally, Mr Williams addressed the editorial’s claim that complainants were recent arrivals in the district and from overseas. He found this out of kilter with the facts and distinctly anti-immigrant. He identified himself as a “hunting, gathering, house building, flounder net mending, wire straining, digger driving, farm-bred Kiwi and tangata whenua of a mere 35 plus generations”. Thus, he argued, the claims that “new arrivals” had shut down the range were totally incorrect, highly offensive and ridiculous.

### **The Newspaper’s Response**

The newspaper did not respond to the initial complaint nor did it respond to Mr Williams’ letter of March 30. On May 6, following a request from the Press Council regarding the formal complaint, the editor wrote to Mr Williams stating that he (the editor) would be writing a personal letter of apology to him and his fellow Delaware Bay Residents Association members. The editor also offered an opportunity for the complainants to submit a Voices or Opinion column reflecting on the new ambience in the area since the shooting stopped. The editor argued that as the story “was a while ago now that the time for us to relitigate it as a story seems long past.”

### **Complainant’s Response**

The Delaware Bay Residents Association welcomed the offer of a personal apology but did not consider the offer of a Voices or Opinion piece as a satisfactory remedial measure. There was also concern expressed that despite careful wording such a piece ran the risk of further polarising Delaware Bay and the wider community. Additionally, the Association wished the *Nelson Mail* to take responsibility for the misinformed editorial of March 26 and pointed out that the delay was caused by the newspaper’s failure to respond to the original complaint and to Mr Williams’ letter of March 30.

### **Newspaper’s Response**

On June 6 the newspaper responded by defending the editorial as comment on a long-running saga, stating it was based on a reasonable assessment and interpretation of the facts as well as readers’ opinions. The newspaper also rejected the claim that the views were objectionable and damaging to the community though it did accept that the editorial would be at odds with the residents who were unhappy with the shooting range.

The newspaper argued that the issues illustrated a familiar problem in rural New Zealand where the arrival of rural-residential developments brought town dwellers into proximity with often disruptive rural activities. In this way the dispute could be seen to be “reverse sensitivity”.

The newspaper reinforced its perspective based on what it claimed to be “facts”:

The range had been operating within its permitted limits;

It provided a popular and socially useful service;

It had been established for some time;

The “caveat emptor” principle should be applied

when considering complaints from residents regarding neighbourhood noises.

Additionally the newspaper stood by its labeling of the complaints as coming from a few “new arrivals” and by its claim that some residents had moved to the area from overseas. The newspaper argued that “the court would not have made its ruling if these residents had not pursued an action and sought relief.”

It also explained that editorials are succinct and tend to argue a firm clear line without traversing finer points nor do they have to present other points of view.

The newspaper requested evidence to back Mr Williams’ claims that the editorial was “damaging to the community” otherwise it would be regarded as rhetoric. The editor claimed a newspaper’s right to advocacy.

### Discussion

The owners of the shooting range chose to close their business rather than comply with the noise level requirements of the Environment Court ruling. To argue, as the *Nelson Mail* does, that the noise level restrictions would not have been enforced by the Environment Court had neighbours not complained is a false argument. The Council notes that the Nelson City Council was also an applicant to the Environment Court hearing.

The Council finds it inaccurate that the complaining neighbours arrived in the vicinity after the shooting range was established. The Environment Court noted “...the fact is that the commercial, non-police and police use of the Range were not being undertaken on the site at the time of subdivision. These gave rise to a massive increase in shooting activity on the site.”

As regards the noise, the Environment Court said “... we consider the present combination of private, non-police and police activity on the range and on the site fails all three of the tests to which it is subject in this case. The noise generated by these activities exceeds a reasonable level as well as being offensive and objectionable to such an extent that it has an adverse effect on the environment ...”

Similarly, evidence from the Delaware Bay Residents Association to the Press Council demonstrated that it was also misleading to suggest that the complainants had recently arrived from overseas.

Such inaccuracies, added to the failure to make any mention of the Environment Court ruling or attempts by local residents to help relocate the shooting range and on top of the misleading statements about arrivals from overseas imposing their will on locals, combined in an unfortunately misleading manner.

Furthermore two aspects of this complaint strike the Council as curious. Firstly is the significant delay in responding to the complaint or, indeed even to acknowledging the complaint’s existence, until forced to do so by the Press Council’s formal request for a response early in May. There has been no explanation of why this occurred.

The other aspect worth noting is that the newspaper was initially apologetic and offered a “personal letter of apology” from the editor as well as an opportunity for the Association to submit an opinion piece. However, when the

newspaper responded it took a distinctly different attitude and refused to acknowledge that there were grounds for complaint.

The Press Council acknowledges that opinion may be freely expressed in an editorial column but that any information given as fact should be accurate. There were inaccurate and misleading statements in the editorial.

The newspaper’s failure to deal with the complaint for six weeks nullified the potential efficacy of the offered right of reply. A timely right of reply is often considered sufficient redress for inaccuracy or error.

Therefore, on the grounds of inaccuracy, the Press Council upholds the complaint.

Press Council members considering this complaint were Barry Paterson, Pip Bruce Ferguson, Kate Coughlan, Chris Darlow, Sandy Gill, Keith Lees, John Roughan and Stephen Stewart.

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

## CASE NO: 2198 – MARTIN DEVLIN AGAINST THE NEW ZEALAND HERALD

Martin Devlin complained about three stories published by the *New Zealand Herald*. The first two reports appeared on the newspaper’s website and the third report was given front page prominence. His complaint about unethical journalism traversed several of the Press Council principles, especially a lack of accuracy, fairness and balance; misleading headlines and captions; and misleading readers by the technical manipulation of a photograph.

Parts of his various complaints are upheld.

### Background

The first item *Martin Devlin escorted off plane* (*nzherald online*, May 24 at 2.01pm) reported that the broadcaster had been escorted off a plane by police, after the flight had been diverted back to Wellington because of fog in Auckland.

It continued, “witnesses said Devlin was “making a scene” and being “abusive” to the crew after the delays.”

The second item *Devlin says cabin staff “overreacted”* (*nzherald online*, May 24 at 5.48pm) added Devlin’s version of the events – he had commented about the delay, asked if the plane had the equipment to fly in fog and the stewardess had over-reacted.

The report repeated the claim that “witnesses on the flight” said Devlin had been making a scene and had been abusive.

The next day, May 25, the newspaper featured a front page story, highlighted by a red headline, *AIR RAGE: EVICTED DEVLIN SPEAKS OUT*. It was accompanied by a very large photograph of Mr Devlin, captioned *CLASH: Devlin says he did nothing wrong but other passengers say he made scene and was abusive*. The report noted that no charges had been laid by the police. It also noted that Mr Devlin had been charged after an incident in Auckland (in December, 2010) but those charges had been dropped after he had completed police diversion.

## The Complaint

The complainant took exception to the AIR RAGE headline. He suggested that these words meant violent, even dangerous behaviour but the story never stated or explained how he had acted in a violent or threatening manner.

He thought it “grossly unfair” to give such prominent treatment to a minor issue. He pointed to the front page placement, the large photograph and the red headline (which had also been used as billboard advertising).

Although the newspaper had used “passengers say” and “witnesses said”, only one passenger had been spoken to directly. The other “source” the newspaper had relied on was someone who had Tweeted about the incident. Readers were never informed that the second “source” was a Tweet and difficult to verify.

Mr Devlin claimed that he had been denied a right of reply. The newspaper had printed that he was being “abusive” but had failed to contact him to put that allegation to him.

He suggested that the photograph was “highly prejudicial” and may even have been tampered with or photoshopped to be “unnerving”.

Further, the newspaper’s slanted coverage could be seen in its use of emotive language, such as “Clash” (the caption under the photograph), and in not revealing that no charge had been laid by the police until near the end of the article.

In sum, the *New Zealand Herald* had failed to meet journalistic standards and had been unfair in turning a minor story or even a non-story into a front page “extravaganza”.

## The Newspaper’s Response

The deputy editor rejected allegations of unfair and unbalanced reporting.

First, the report explained Mr Devlin’s point of view on the incident (via his comments to TVNZ and then distributed by NZPA) – that the air hostess had over-reacted to a critical but non-threatening remark.

His views had been made the focus and thus it was puzzling to see how the newspaper could be accused of coverage biased against Mr Devlin.

The newspaper had spoken to a passenger, the police and the airline. It also had the words of the Tweeter.

*AIR RAGE* was not used inaccurately. It was a “generic” term and could be used to describe passenger frustration and complaints at delays. It did not imply violence.

The newspaper had tried to make contact with Mr Devlin. Two detailed messages had been left with his wife and a journalist had attended a Gala Dinner that night to get comment but Mr Devlin had chosen not to attend.

The photograph had not been tampered with nor photoshopped.

Finally, there was indeed a story: six months after facing charges following an incident in which the well-known media presenter jumped on the bonnet of his wife’s car, he has to be escorted off a plane by the police.

## Discussion and Decisions

The Press Council was surprised that the newspaper did not try to seek comment from Mr Devlin directly. According to the complainant, “the *Herald* had my number”.

However, the newspaper tried to contact him through his wife and by later sending a reporter to the Gala Dinner, expecting to see him there.

The report did give considerable scope to his rejection of the allegations about making a scene and being abusive. His denials (originally given to TVNZ) were covered at some length.

The Council also rejects his objection to the word “*CLASH*” which he considered highly emotive. There is little doubt, even amongst the claims and counter-claims, that a stewardess took exception to a remark he passed. .

The suggestion that information that the police had declined to press any charges had been deliberately “buried” towards the end is also rejected. It was important information, placed in a natural position within the article (and several paragraphs from the conclusion).

The complaint that readers had been misled by technical manipulation of a photograph is similarly not upheld. There is no evidence that the image had been tampered with. Further, the newspaper was under no obligation to inform readers that the photograph was file footage rather than a supplied publicity image.

However, there are two particular complaints which gave more concern to the Press Council.

First, the newspaper repeatedly stated the accusations against Mr Devlin. ie “other passengers say he made a scene and was abusive”, “witnesses said he made a scene and was abusive” and “Devlin had been abusive toward an air hostess and was making a scene one passenger said”. There is a clear sense of people in general agreement and confirming the accusations.

Yet the newspaper seems to have spoken only to one (unidentified) passenger who was making this claim about Mr Devlin. Any backing for this version of events seems to have merely been a Tweet, a Tweet that was apparently deleted shortly after making it.

The deputy editor stresses that the Tweet confirms that he was “abusive”.

However, Mr Devlin claims that he contacted the Tweeter who said he composed . . . “*Devlin escorted off our fog delayed flight by 2 police. Hostess told me he was abusive. He tells me it was nothing.*”

The Tweeter was obviously not a direct witness of the situation. Instead he repeats what he was told by an air hostess, (and according to the complainant’s submission, a different hostess from the one who had taken offence at his comments).

The accusation that Mr Devlin had been abusing staff is a serious one and it needed careful verification and corroboration. It is not enough to claim that fair and reasonable balance was given simply by publishing his denials.

Secondly, the heading *AIR RAGE: EVICTED DEVLIN SPEAKS OUT* is over-exaggerated and not justified by the article over which it is placed.

Devlin was not “evicted” from the plane by the police, he was escorted.

More importantly, the Press Council does not accept the argument raised by the newspaper that a Wikipedia definition of “air rage” allows the term to be used to mean the general frustration felt by passengers annoyed by lengthy delays.



It takes the view that “Air Rage” suggests aggressive behaviour, behaviour exhibiting a loss of control, and there is no evidence of such action in the article. He certainly may have made an ill-considered remark, but there is no suggestion that he became violently angry.

These two complaints about a lack of accuracy and a misleading headline are upheld. Finally, the Council turned to Mr Devlin’s overriding contention that he was treated unfairly because the newspaper twisted a minor story into a “front page extravaganza”.

The Council has been loath in the past to delineate the positioning that editors might give to stories, for prominence inevitably depends on transitory factors, such as the relative importance of other news items on any given day.

Furthermore, the Press Council accepts that police escorting such a public figure from a plane, especially given the previous incident, was a valid story for the newspaper to cover.

Nevertheless, the cumulative effect of the red headline, the power of “AIR RAGE”, a particularly large photograph, the dominant position on the front page, the three times repeated phrasing of “making a scene and being abusive”, as well as the details about previous charges, has to be weighed in terms of general fairness.. In short, was this report so sensationalised that it became “overcooked” and thus unfair to Mr Devlin?

On balance, and despite its long-standing reluctance to adjudicate on the placement of stories, the Press Council unanimously agreed that the overall coverage was indeed unfair. This aspect of his complaint is also upheld.

Press Council members considering this complaint were Barry Paterson, Pip Bruce Ferguson, Kate Coughlan, Chris Darlow, Sandy Gill, Penny Harding, Keith Lees, Clive Lind, Lynn Scott and Stephen Stewart.

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

## **CASE NO: 2202 – MATTHEW HARRIS AGAINST WAIKATO TIMES**

Matthew Harris in a brief complaint claims *Waikato Times* failed to comply with Principles 1 (Accuracy, Fairness and Balance), 2 (Privacy), 4 (Comment and Fact), 7 (Confidentiality), 8 (Subterfuge) and 11 (Corrections) of the Press Council Statement of Principles in reporting matters around the sale of a Nintendo video game titled “Dead or Alive: Dimensions”. The Press Council does not uphold the complaint.

### **Background**

On June 2, 2011 *Waikato Times* ran a story headed “Withdraw in Europe... sold out in Hamilton”. The story reported on the sale of the video game, allocated a PG classification by the New Zealand censor, by a Hamilton retailer EB Games. The game allegedly violated European “child pornography laws”. The story basically asked why the game, which apparently included a mode that allowed

players to “undress” female characters, was apparently freely available in New Zealand while being “pulled” from sale in Europe.

The story reported comments in connection with the game from EB Games head office; from a Liz Quilty the mother of three children aged between 12 and 15; from an unidentified Hamilton expert in rape and sexual abuse and from other sources. EB Games said it had complied with all classification legislation. Ms Quilty made various remarks about the unsuitability of the game for minors. The expert’s views reflected those of Ms Quilty.

The story referred to the Nintendo game trailer as carrying a warning over content. The story reported the Chief Censor Dr Andrew Jack as having called the game back for re-classification as a result of the *Waikato Times* enquiries.

### **The Complaint**

Matthew Harris claims the *Waikato Times* article;

- a. insinuated that EB Games was selling the game to minors “with no proof” (presumably of age);
- b. did not prove any minor had purchased the game;
- c. mentioned EB games without referring to other retailers who might have sold the game (this amounting to harassment);
- d. did not say the Quilty family has purchased the game; and
- e. otherwise misrepresented the facts particularly in connection with EB Games.

### **The Response**

*Waikato Times* responds by denying the claim its reporting breached the Principles in question. In particular;

- a. The story did not imply the game was being sold by EB Games to minors improperly. The game had been given a PG classification;
- b. There was no need to say minors were actually buying the game. This was not the point. The point was the game had been given a “child friendly” rating allowing children to play and buy the game;
- c. Simply highlighting the fact the game was available at a particular store is not harassment;
- d. The point in mentioning the Quilty family was to demonstrate their particular opposition to the game and that they would not be buying it.

### **The Decision**

The Council does not agree with Matthew Harris.

The real thrust for the *Waikato Times* story was the apparent inconsistency between the approach taken by regulators in Europe to the “Dead or Alive: Dimensions” game on the one hand and that taken by the New Zealand censor on the other. The classification of video games in this country has been topical and at times controversial. The Council sees the story in question as being aimed squarely at this issue.

The Council does not take the view EB Games was referred to in an unbalanced way or was otherwise “harassed”. There was no suggestion by *Waikato Times* that EB Games had acted illegally. Putting it simply the story pointed to a game with salacious content being freely

available for sale in Hamilton when perhaps it should not have been. EB Games was correctly described as a retail outlet through which the game was distributed. Questions had been raised and the Chief Censor had responded by agreeing to re-look at the classification.

The complaint is not upheld.

Press Council members considering this complaint were Barry Paterson, Pip Bruce Ferguson, Kate Coughlan, Chris Darlow, Sandy Gill, Penny Harding, Keith Lees, John Roughan, Lynn Scott and Stephen Stewart.

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

## **CASE NO: 2200 – COMPLAINT AGAINST THE NEW ZEALAND HERALD**

A resident living close to Eden Park, Auckland, has complained to the New Zealand Press Council about a breach of his privacy following a June 1, 2011 article in the *New Zealand Herald* which named specific addresses near the park and detailed where the owners of homes so identified would be during the Rugby World Cup.

The article included an aerial picture graphic of the park with streets and numbers of houses, including the complainant's, clearly identified by tags.

The complaint is not upheld.

The Herald article was headlined *Not long now until party time* with the sub-heading *They're living on the edge of the Garden of Eden, so where will they be for the World Cup? The Herald knocks on every door.*

The following text detailed what home owners in the park's immediate vicinity would be doing at the time of the Rugby World Cup.

The complainant was not named but the text recorded against his address: "Will be overseas for one week but will not rent out. 'Don't fancy a bunch of English dudes ripping the place up.'"

The complainant emailed the *Herald* the same day saying he was asked a few questions by a male reporter "who didn't ask permission to use any of the information provided." He had specifically mentioned that anything discussed was anonymous. But the article directly referred to his house which was identifiable.

"The article specifically gives a timeframe when the house will be empty and therefore is an open target to be robbed and I interpret this as a breach of our privacy. Given we've been robbed before, criminals in the area need no second invitation."

In a response dated June 7, deputy editor David Hastings said in light of his complaints, the *Herald* had reviewed its coverage and sought the views of the reporter. He appreciated his concerns about the published comment but he was satisfied the reporter followed correct procedure.

He clearly identified himself and took notes during the interview. The request for anonymity was made after the interview had been completed, "and this was respected as was done with a number of similar requests in the survey."

In a response, dated June 14, the complainant said he

would have thought professional judgement and common sense would have over-ridden internal procedures, particularly after a recent *Herald* article showing a rise in crime in surrounding areas.

The complainant said the request for anonymity had been "completely contravened" when comments were attributed to an identifiable address. Dissatisfied, the resident complained to the Press Council.

In his formal response to the Press Council, Mr Hastings repeated the points he had made in the email, and pointed out how the graphic did not include full details of others who had similarly requested anonymity. The request for anonymity was that his name be withheld and nothing more.

"On [the complainant's] other point, we do not agree that the time frame in the article was specific. It mentioned he would be away for a week whereas the tournament lasts for just over six weeks."

### **Discussion**

The facts in the complaint are largely undisputed. Where differences arise is in interpretation, particularly on what was meant by anonymity.

The complainant understood this would mean neither he nor his home would be identified. To the newspaper it meant that the complainant personally would not be identified, and it believed the complainant knew that.

The deputy editor acknowledges the complainant's concerns about the published comment, but is satisfied correct procedures were followed.

The question for the Press Council is whether there has been a breach of privacy.

The reporter did follow procedures but the complainant, whose experience with the media is not known, was expecting nothing he said would lead to the identification of his home or person. In that, there has been a regrettable miscommunication, and it is a pity that he mentioned such detail at all.

The Press Council also acknowledges the complainant's concerns, but the newspaper was open about its intentions and the complainant spoke openly of his situation.

### **Decision**

The complaint is not upheld.

Press Council members considering this complaint were Barry Paterson, Pip Bruce Ferguson, Kate Coughlan, Chris Darlow, Sandy Gill, Penny Harding, Keith Lees, Clive Lind, Lynn Scott and Stephen Stewart.

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

## CASE NO: 2201 – INDOOR TANNING ASSOCIATION OF NEW ZEALAND AGAINST CONSUMER

The Indoor Tanning Association (INTANZ), through media representative Matt Adams, complained that an article in *Consumer* about the New Zealand indoor tanning industry was inaccurate in regard to sunbed emissions and Vitamin D synthesis.

The complaint is not upheld.

### Background

A *Consumer* investigation into sunbed operators involved undercover research visits to 69 operators, of whom the Consumer found only seven complying fully with voluntary standards.

As a result *Consumer* called for an end to the current voluntary regime and for regulation and licensing of all operators. In 2010 December *Consumer* magazine reported that the International Agency for Research on Cancer (part of World Health Organisation) had reclassified sunbeds as a “group 1” carcinogen (same as cigarettes) and called on all governments to regulate sunbed use after findings that “even one sunbed session before age 35 increases melanoma risk by 75%”.

The article also detailed the outcome of the undercover operation measuring specific operators against industry guidelines. A further panel identified groups at high-risk of contracting skin cancer and, in a small sidebar, the report quoted Dr Marius Rademaker, Associate Professor of Dermatology at Waikato Hospital saying “Vitamin D is produced by a specific wavelength of light which most sunbeds don’t produce. Vitamin D is also rapidly degraded by sunlight so prolonged UV exposure may reduce your Vitamin D production – a fact that is often overlooked.”

In preparation for publication *Consumer* was in contact with Matt Adams representing INTANZ. This is an industry group with the following aims:

- a fair portrayal of the tanning industry in the media;
- providing assistance to sunbed operators to improve safety and quality of services;
- giving the public a better all-round understanding of sunlight and sunbeds.

A draft of the article was made available and Mr Adams objected to Dr Rademaker’s comments specifically on the emissions spectrum of sunbeds. Consumer considered Mr Adams’ argument but concluded that the qualifications of Dr Rademaker supported the veracity and relevance of his statement.

A series of exchanges followed and Mr Adams supplied a New England Journal of Medicine report by Dr Michael Holick regarding sunbeds and the synthesising of Vitamin D. The magazine thanked Mr Adams for his input and stated that “we have made an editorial decision to make a slight change to the draft article.”

### The Complaint

Following publication Mr Adams complained to *Consumer*. He stated that INTANZ strongly supported any initiative to promote improvement in the indoor tanning industry.

However, he argued that despite the poor performance of some in the industry it was entitled to factual reporting. Firstly he objected to Dr Rademaker’s statement that most sunbeds do not emit the right wavelength of UV light to synthesise Vitamin D upon exposure to them. Secondly he objected to the statement that using a sunbed increased chance of skin cancer by 75%.

He argued that by not correcting Dr Rademaker’s statement – to be in line with the material Mr Adams had supplied – or at least presenting INTANZ opinion as an alternative and by using the WHO statistics on skin cancer risk from sunbeds, *Consumer* failed in its self-stated duty to disclose all essential facts and not suppress relevant available facts. Regarding the melanoma risk of sunbed use, he argued it was misleading to include people with Skin Type 1 who should never use a sunbed. If Skin Type 1 users were removed from the statistics, Mr Adams claimed there was no increase in the risk of melanoma.

He requested *Consumer* make a media statement to this end. When this did not eventuate, Mr Adams made a complaint to the Press Council. His complaint, however, is mainly related to the comments by Dr Rademaker that most sunbeds do not produce specific wavelengths of light that would stimulate Vitamin D in the skin.

### Consumer Response

*Consumer* stood by its use of the WHO statistic (that exposure to UV, either naturally or from artificial sources, is a known risk factor for skin cancer). Consumer disagreed that, with the exception of Skin Type 1, there is no increase in the risk of melanoma from using a sunbed. Furthermore, it emphasised the undercover survey’s finding that 24 of 69 operators did no formal skin assessment; therefore it was relevant to include all skin types in the risk assessment information.

On the topic of sunbed emissions and the resulting Vitamin D synthesis, *Consumer* advised that a study by NIWA (National Institute of Water and Atmospheric Research) reported intensity of radiation at some wavelengths in New Zealand sunbeds was several times higher than that occurring in natural sunlight, therefore findings from overseas should not be generalised to the New Zealand situation.

*Consumer noted*, in relation to Dr Rademaker’s credentials as an authoritative commentator, his involvement in the development of the Australia/New Zealand Standard for Solaria for Cosmetic Purposes, his representative roles with the Cancer Society and NZ Dermatological Society and his responsibility for the phototherapy department at Waikato Hospital which gave him detailed knowledge of UV wavelengths and the stimulation of vitamin D production. *Consumer* also quoted the UK Consensus Vitamin D Position Statement (2010), developed by seven national health agencies, regarding the value of Vitamin D in human health.

### The Complainant’s Response

Mr Adams reiterated his argument that, according to “the world’s leading Vitamin D3 researcher Dr Michael Holick” most tanning beds do emit UV B radiation and are a source of Vitamin D3 when used in moderation.

He also extended his complaint to further disagree with Dr Rademaker's quoted statements regarding the sunlight degradation of Vitamin D which Mr Adams claimed to be highly misleading.

While he appreciated that topics of Vitamin D3 and UV exposure were complex and still under study he stood by his initial complaint that Dr Rademaker's statements regarding the efficacy of sunbeds in stimulating the production of Vitamin D were wrong.

### Discussion

This is clearly a highly complex and evolving area of medical science in which debate takes place at the highest academic and medical levels. It would be inappropriate for the Press Council to "side" with one or another medical expert or academic researcher. And for that reason, it is not useful to go into detailed assessment of the various so-called experts *Consumer* and INTANZ furnished to support their argument.

*Consumer* has previously investigated the indoor tanning industry and reported on the "known" risks of sunbed use. As a result *Consumer* has taken a strong advocacy position calling for regulation. *Consumer* regards this industry as a risk to human health and has campaigned accordingly. In its public service role *Consumer* is permitted to take an advocacy role and in this case the press Council does not find it has breached its principles in doing so.

As part of this ongoing campaign, *Consumer* reported the World Health Organisation call for governments to regulate sunbed use, following sunbed reclassification as a group one carcinogen (same as cigarettes). At the same time *Consumer* conducted an undercover investigation to further illuminate the extent of the issue. This is important public information that deserved a wide airing. In order to expand on the research *Consumer* sought comment from Dr Marius Rademaker, whose qualification to comment INTANZ has called into question. Given Dr Rademaker's associate professorship, his practical work with phototherapy at Waikato Hospital and his involvement in writing Australasian standards for solarium, the Press Council believes *Consumer* were justified in seeking his opinion as that of an expert.

The INTANZ complaint is focussed solely on the question of the capacity of sunbeds to produce UV emissions which stimulate production of Vitamin D and on the claim that prolonged UV exposure can reduce Vitamin D levels. Mr Adams repeatedly reiterated INTANZ support for improvement to the safety of the industry.

However, Mr Adams argued that *Consumer* was blinded to giving a reasonable consideration of his arguments, or their further dissemination, because of the focus on the inadequacies of some indoor tanning operators. On this question, the Press Council would agree that Mr Adams' information on sunbeds and the synthesis of Vitamin D could be argued to deserve an airing. Perhaps he could have been encouraged to write a letter for publication in a subsequent issue of the magazine.

On the basis of what has been presented, and the conflicting scientific material the Press Council is not qualified to judge the claims of Mr Adams and therefore the complaint can not be upheld.

Press Council members considering this complaint were Barry Paterson, Pip Bruce Ferguson, Kate Coughlan, Chris Darlow, Sandy Gill, Penny Harding, Keith Lees, Clive Lind, John Roughan, Lynn Scott and Stephen Stewart.

## CASE NO: 2199 – SHERALEE WEBSTER AGAINST THE GREYMOUTH STAR AND HOKITIKA GUARDIAN

Sheralee Webster complained about a court report that appeared in both the *Hokitika Guardian* and *Greymouth Star*, saying it led to her being branded a thief. The Press Council upholds her complaint on the grounds of fairness.

### Background

On January 20, 2011 both newspapers reported the court appearance and sentencing of a woman who pleaded guilty to assaulting Ms Webster. The same report appeared word for word in both newspapers, and with similar headlines.

The court was told that the assailant was angry because the victim, Ms Webster, had stolen from the assailant's friend. The report noted that the court also heard that grief had played a part in the attack because the assailant's flatmate had died in the Pike River mine.

These claims were not challenged by the police prosecutor and duly reported by the newspapers' court reporter. The *Greymouth Star* headline read: 'Pike grief claim in assault'. The *Hokitika Guardian* headline was: 'Pike grief cited in assault case'.

### The Complaint

Ms Webster initially challenged the accuracy of the reports on a number of issues, but, more particularly, over what was said in court about the reasons for the assault. She said she had been attacked because the assailant thought she was involved in a relationship with the assailant's boyfriend, not because of any theft or so-called 'history' between the two women.

However, on seeing the court transcripts, she saw that the newspaper reports had reflected what had been claimed in court.

Even though she was not named in the newspaper reports, she said people in Hokitika were able to identify her as the victim of the assault and, therefore, the apparent thief. They also knew the theft referred to the property of a miner who died at Pike River.

She said the resulting publicity had made life impossible for her in Hokitika because many people believed what they read in the local paper. After the court hearing she had lived behind closed curtains and didn't want to be seen in the town. She said as the victim, she had been 'revictimised' by the newspaper reports and did not feel safe.

She had asked for retractions and apologies in both newspapers, but editor Paul Madgwick stood behind his court reporter and the accuracy of the report and would not publish a retraction.

### The Editor's Response

Mr Madgwick said Ms Webster had not put her complaint in writing to the newspaper but had phoned him demanding a retraction.

He said the newspaper's court reporter had 24 years' experience and he was satisfied that she had reported only what was conveyed in court.

Ms Webster's account of events varies from what was said in court, but he said that was an issue for her and police to sort out. "The court report can only, and must, be sourced solely on what is said in the courtroom."

### Discussion

The Press Council has seen the court transcript and accepts, as does Ms Webster, that the newspapers' report accurately reflected what was said in court. So Ms Webster has no grounds for complaint about accuracy against the newspapers, nor grounds for asking for a correction or retraction.

Editor Paul Madgwick is correct in saying that the newspaper must rely solely on what is said in court. But does the newspapers' responsibility end there?

The Council finds that Ms Webster does have cause to complain about her subsequent treatment by the *Hokitika Guardian/Greymouth Star*.

Although the newspaper reports did not identify Ms Webster by name, the Council accepts her account that in a small community she was readily identifiable and the theft from a friend referred to in court was known to be a theft from a miner who perished at Pike River.

This was a highly charged situation contributed to by the newspapers' report, however accurate.

It comes down to an issue of fairness. It is also a fact that another woman had been arrested for the theft and was awaiting a court appearance. That was information available to the newspaper and it could have been useful in a subsequent follow-up story about the impact on Ms Webster.

Given the particular circumstances of this case the newspaper had an obligation to correct the record once they were aware that someone else had been charged.

The Press Council upholds the complaint on the grounds of fairness.

Press Council members considering this complaint were Barry Paterson, Pip Bruce Ferguson, Kate Coughlan, Chris Darlow, Sandy Gill, Penny Harding, Keith Lees, Clive Lind, John Roughan, Lynn Scott and Stephen Stewart.

## CASE NO: 2203 – TIM MANU AGAINST KAPI-MANA NEWS

A complaint by Tim Manu against *Kapi-Mana News* is not upheld.

### Background

On April 19, 2011 an article appeared in *Kapi-Mana News* headed "NZ First Mana electorate committee "moves on" from Tim Manu". The article was loaded on Stuff.co.nz with the same heading. The article said that the Mana

electorate secretary/treasurer, in a letter to *Kapi-Mana News*, stated Mr Manu was "not deputy chairman and has no association with the Mana Electorate Committee of the NZ First party".

This was in response to a claim by Mr Manu to the paper on March 17 that "he was one of the contact people for the electorate committee 'as I am the deputy chair'". The party, presumably via the secretary/treasurer, argued that the deputy chair post had been vacant until filled at the beginning of April by Marise Bishop, who it claimed was appointed at a regional party meeting.

Mr Manu had, according to the article, "laughed off" suggestions that he has tried to present himself as the local face of the party, despite his claim on 17 March to be deputy chair.

### The Complaint

An exchange of emails took place between Mr Manu and *Kapi-Mana News*, initially requesting a published response to the article, but then lodging a formal complaint with the paper. The complaint claimed that the heading was misleading; that aspects of the information contained in the article were incorrect; that he had not "laughed off" suggestions, as he had communicated with the reporter only by email; and that he was legitimately deputy chair at the time.

Bringing the complaint to the Press Council Mr Manu alleged that the article breached Council principles of accuracy, fairness and balance; comment and fact; headlines and captions; and conflicts of interest (the latter was with regard to a claim he had made that the paper's article was likely to be politically biased, a claim strongly rebutted by the editor.)

### The Newspaper's Response

The editor responded that Mr Manu has a history of complaint with the paper over a range of issues; however this did not imply bias or assumption with regard to the article in question.

With regard to Mr Manu's dissatisfaction that his email was not included in the article, the editor replied that the article had already been submitted before Mr Manu's email was received, and it had not been anticipated. Further, the email did not warrant the revision of the article, as the reporter had spoken with Mr Manu the week before the article was printed.

The editor backed his reporter, stating that he had had difficulty in contacting Mr Manu, who had not answered some questions asked by the reporter; nor had the reporter given any indication that responses would automatically be published. The editor felt that the article's focus was on whether or not Mr Manu was undermining the party by claiming to be deputy chair and not on other issues that he raised in his email.

A threat of legal action by Mr Manu (later withdrawn) was also an incentive for the paper not to publish the response. However Mr Manu had been invited to pursue any complaint he might have, through the editor. An emailed complaint had been received almost a month after the article was published, and it was the only complaint received about the story.

The editor rebutted the claim that the headline was misleading, as it reflected the story's content, believed at the time to be accurate. The paper had been contacted mid-March by Ms Bishop, as deputy chair of the Mana Electorate, expressing concerns about Mr Manu still claiming to be deputy chair and undermining the party. Mr Manu's attempt to get the paper to state that he was deputy chair, in an earlier article on Winston Peters' speaking engagement, had been checked by the paper with the Electorate secretary, who had confirmed Ms Bishop as the legitimate holder of the role.

While the editor felt his reporter should have attempted to contact the former committee chair for her contribution, the reporter was having sufficient difficulty contacting Mr Manu. To add to the confusion, Mr Manu, having originally claimed that there were two deputy chairs, now claimed that Ms Bishop was appointed illegally. While there may have been oversights in the reporter's background work for the article, these did not constitute bias.

On May 24 the editor had contacted NZ First Party President Kevin Gardener, who believed that Ms Bishop was the deputy chairperson for the branch. A further question to Mr Gardener had not yet received a response, and was the cause of a delay in responding to Mr Manu. Should Mr Manu's complaint be found to be valid, then the paper was committed to reporting this 'as soon as is practical' and Mr Manu had been informed of this.

### Further developments

The editor received a late reply from the NZ First Party President confirming Ms Bishop's co-option (not election) to deputy chair in December last year, although the Secretary/Treasurer had stated this happened in April 2011. On July 26, *Kapi-Mana News* published a clarification to this effect.

Mr Manu, in response, reiterated his complaints.

### Discussion

It is obvious from the editor's response to the Council, that the newspaper has gone to considerable lengths to determine the legitimacy of Mr Manu's complaint. This had not been easy, as there was evidence from a former committee chair that there may in fact have been *two* deputy chairs (Ms Bishop and Mr Manu) at one point, but the paper had ultimately relied on the evidence of the current chair, the current secretary/treasurer, and subsequently had this backed up by the NZ First Party President. The paper was therefore correct in stating that Ms Bishop was the deputy chair at the time that the article was published, although the situation was obviously muddy.

In relation to the comment that Mr Manu "laughed off" suggestions, the Council notes his email to the reporter commenced "Haha thanks [reporter's name]". Hence the comment about laughing off suggestions could have arisen from this.

This complaint has largely revolved around the issue of whether or not Mr Manu was entitled to call himself deputy chair. He obviously believed that he was (with some evidence from past branch members/office holders

to support this belief) but the current office holders, including at national level, disputed this claim. The paper acted responsibly in trying to ascertain the accuracy of Mr Manu's claims, both before and after publication of the article. While there may have been some minor oversights by the reporter, the Council believes that the paper acted appropriately.

The complaint is not upheld.

Press Council members considering this complaint were Barry Paterson, Pip Bruce Ferguson, Kate Coughlan, Chris Darlow, Sandy Gill, Penny Harding, Keith Lees, Clive Lind, John Roughan, Lynn Scott and Stephen Stewart.

## CASE NO: 2204 – JAMES MORRIS AGAINST THE NATIONAL BUSINESS REVIEW

James Morris complained that the headline and thrust of an article published by the *National Business Review* (*NBR*) online on May 5, 2011, following comments by Independent MP Hone Harawira on the killing of Osama bin Laden, is based on a misattributed quote. The article followed an interview on TVNZ's *Te Karere*. The interview was conducted in *Te Reo* with translations into English provided in subtitles.

The complaint is upheld.

### Background

On May 2, 2011 the *Te Karere* programme featured Hone Harawira commenting on the killing of al-Qaeda leader Osama bin Laden. Mr Harawira, speaking in Maori, said bin Laden was a fighter for "the rights, the land and the freedom of his people".

His remarks prompted controversy, and a subsequent apology from him about how he had expressed himself. His comments had been seen as support for bin Laden's actions which was a mistake, he said.

### The Complaint

Mr Morris complained that the headline "Bin Laden a Freedom Fighter – Harawira" and the thrust of the story 'rest on a quote which is attributed in the story to Harawira, but was in fact made by the presenter of the *Te Karere* programme'.

Mr Morris quoted the following from the article: "But Mr Harawira told TVNZ's *Te Karere* on Monday he acknowledged the positive aspects of his (bin Laden's) life".

"We have heard nothing but negative things about him from the Americans, but he fought for the self-determination of his people and for his beliefs" Mr Harawira said.

Mr Morris pointed out that this latter quote was not in fact said by Mr Harawira, but by the interviewer.

What Mr Harawira actually said (in response to the presenter's words) was as follows: "Indeed, despite what the media have said, his family, his tribe, his people are in mourning. They mourn for the man who fought for the rights, the land, the freedom of his people. We should not

damn them in death, but acknowledge the positive aspects of life”.

Mr Morris acknowledged to the editor that he was aware that the story had appeared under the NZPA byline.

Mr Morris did not get a response to his complaint to the editor of *NBR* and the editor did not respond to the Press Council complaint either.

### Discussion

The Press Council considers that the headline is acceptable. Mr Harawira did say “Despite what the media said his family, his tribe, his people are mourning, they mourn for a man who fought for the rights, the land and the freedom of his people”; it is not too far removed from that statement to call him a freedom fighter.

However, the report does attribute to Mr Harawira comments actually made by the interviewer, and that is where the *NBR* went wrong. Since the report was generated by NZPA it was their mistake, and the Press Council has notified NZPA who have corrected it.

If the *NBR* had responded to the complaint, the issue could have been sorted out for them too.

The *NBR* has issued a correction to the story, but unfortunately, the item still attributes the words of the presenter to Mr Harawira, showing them as a direct quote.

This complaint illustrates how immediate action on a complaint can make a difference. In his complaint to the editor Mr Morris, a long time reader of the *NBR*, acknowledged the authoritative voice of the *NBR* and stated that loose and sensationalist reporting such as in this article “distracts from hard-earned credibility of your brand”.

The Press Council agrees. This story contained an inaccuracy that could have been corrected very quickly. Furthermore, careful consideration of the complaint when making the correction should have meant that the correction was accurate.

The complaint is upheld on the grounds of inaccuracy. The Council requires that the online version of the story be annotated to show it is subject to this ruling.

Press Council members considering this complaint were Barry Paterson, Pip Bruce Ferguson, Kate Coughlan, Chris Darlow, Sandy Gill, Penny Harding, Keith Lees, Clive Lind, John Roughan, Lynn Scott and Stephen Stewart.

## CASE NO: 2205 – COMPLAINT AGAINST SUNDAY STAR-TIMES

### Introduction

The complainant complains, under several Principles of the Council, about an article which appeared in the *Sunday Star-Times* on May 29, 2011.

The article headed “Legal Funds Spent on Lawyer Slug Fest” alleged that tens of thousands of taxpayer’s dollars meant to be used to solve community legal problems have instead been spent resolving infighting between lawyers at one of the country’s top law centres.

The complaint is not upheld.

### The Complaint

The article referred to details of infighting contained in an “LSA Special Audit and Notice of Beach of Contract Report” (the audit report).

The complainant initially believed that the information had come from the audit report which the Legal Services Agency (LSA) had released under the Official Information Act and which would have been released on a confidential basis, but then found out that the report had been leaked.

The complaint relates to information in the article about the parties who had raised the personal grievances and said that the information about those parties was grossly inaccurate. A particular inaccuracy given was that two of the parties were not on paid leave, as stated in the article but had left for new employment.

The complainant checked with two other persons who had been named in the article as personal grievance complainants. One of those had spoken to the reporter and asked him to call back to verify details of his article, which he did not do. Neither the complainant nor the other person were approached by the reporter.

The complainant says:

I simply disagree with the slant taken and the naming of individuals did not add anything to the article. If the paper had taken a genuine approach to the substance of the LSA audit instead of trying to tackle sensationalism, it would have been a much better article.

Another alleged inaccuracy is that the funds used on the personal grievance matters did not come from taxpayer funds, as stated.

### Newspaper’s Response

The newspaper has not been prepared to disclose the source of its report and does not agree that it should not publish details about personal grievances which are at the heart of the issue in terms of the management of the publicly-funded group.

The editor acknowledged that since publication the reporter had become aware of employment circumstances which had changed from those mentioned in the article. Because of the privacy concerns of those people, he had not published a correction.

### Discussion

The complaint raises three relevant issues: the use by the *Sunday Star-Times* of a confidential report leaked to it;

naming staff members who had made a personal grievance claim without their consent;

stating that those persons were believed to be on paid leave at the moment.

The complaint is not against the reporting of the problems at the Grey Lynn Neighbourhood Law Office. Nor has the LSA complained.

The fact that a large sum of money was possibly spent by a community law centre in resolving staff disputes is a matter of public interest which a newspaper can, and arguably should, highlight. However, the issue raised relating to the accuracy of possible use of taxpayer’s funds can not be resolved in the complaint as the Council does not have sufficient information to know where the funds came from.

A newspaper is entitled to refuse to name its source. The publication of details from the audit report may have given the LSA a right to bring a breach of confidence case. The information was not in the public domain, it was confidential and the reporter would have known that, and it was disclosed without authorisation of the LSA or the Board at the law office. The report was marked “Confidential”.

A newspaper can publish information which might have been obtained in breach of confidence if it is about a matter of legitimate public concern. In the Council’s view, this matter fell within that category and the complaint can not be upheld on the breach of confidence issue. The fact that a copy of the report had been applied for under the Official Information Act does not affect the position.

The article contained errors of fact and, in particular, the fact that some of the complainants under the personal grievance claims were believed to be on paid leave. The Council can understand why the editor was reluctant to publish a correction in the circumstances. It may have aggravated the privacy issue.

The reporter says that he contacted the personal grievance claimants who either did not wish to comment or could not be contacted. The complainant, one of those claimants, says she was not contacted. Another has provided an email saying she was not contacted, there were no miscalls on her phone and no missed messages. A third says that she was contacted by the reporter and asked him to call her back to verify the article, but he did not do so.

The Council can not resolve the factual dispute as to whether or not the reporter made the contacts he alleges. There appears to have been no urgency to publish their story. The article stated the claimants were *believed* to be on paid leave. Had the reporter contacted the parties there would have been no need for this qualification, and the correct information would have been put before the public. The reporter would have been wise to have checked with all persons named in the article before publication.

There is an issue of privacy. Employees, who had not given their consent, were named. The source of their names was a confidential report. Details of employment disputes are usually private facts that an employee can reasonably expect will not be made public.

The ordinary expectation is that people at the centre of important new stories will be identified. Often details of the people involved give credibility and authenticity to the story. This was a story of public interest.

While a public interest factor permits publication of private facts, the publication should be no more intrusive than necessary to the legitimate aim of raising a matter of public interest.

The story in this case would not have suffered if the personal grievance complainants had not been named. It was about staffing problems and personal grievance claims at a community law office. The issue could have been highlighted without including the employees’ names.

The Council has given careful consideration to this borderline case. On one view the article was unfair to the complainant and went further than necessary. It contained an inaccuracy. However, on balance the Council

has determined that the breaches were not of sufficient materiality to uphold the complaint.

Press Council members considering this complaint were Barry Paterson, Pip Bruce Ferguson, Kate Coughlan, Chris Darlow, Sandy Gill, Penny Harding, Keith Lees, John Roughan, Lynn Scott and Stephen Stewart.

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

## **CASE NO: 2206 – SARAH TAYLOR AGAINST HAWKE’S BAY TODAY**

Sarah Taylor makes a complaint about a message in the TEXT US section of the *Hawke’s Bay Today* is insulting to non Maori and tends towards incitement of racial hostility.

Mrs Taylor’s complaint is not upheld.

### **Background**

The text message was published in the *Hawke’s Bay Today* on May 28, 2011. It was published in a regular forum column that allows the public to send in text messages and/or make comment relating to current issues for possible inclusion in the column. The name of the person who sent the text was not included in the column.

The text message related to what the sender saw as English (poms) “racist remarks regarding Maori and place names etc”. The sender regarded the English as “guests” in Aotearoa and suggested that they “Enjoy their residency and keep their incessant carping to themselves”.

### **Complaint**

Mrs Taylor found the sentiments expressed in the published text insulting, offensive and racist. She believed that it implied that “all those of non-Maori descent are guests” in their own country. She went on to state that in her opinion the text tended towards incitement of racial hostility in breach of the Human Rights Act.

She believed that the paper should not become an unwitting vehicle for vitriol against a specific racial group. At the very least such messages should be attributed.

Mrs Taylor was offered the opportunity to provide her own comment for publication in the column but declined preferring to refer the matter to the Press Council. She agreed with the editor’s analysis that the column is a “robust forum”.

### **Response from Hawke’s Bay Today**

In reply the editor stated that the published correspondence complained about was a text to the editor and these were always anonymous. The text-the-editor column was a robust forum with some rather frank exchanges of view.

He said that “while we try to weed out anything really offensive there often are texts that some readers take issue with”. The paper’s usual remedy was to offer the opportunity to have an alternative view published and this option was offered to Mrs Taylor but she declined to do so.

The editor informed Mrs Taylor that he would meet with the paper’s letters page editor to make sure they did



not “slip into publishing texts with unacceptable racial overtones”.

### Discussion and Decision

The Council was provided with copies of the Text 2 Ed column covering several weeks including the column containing the text which led to Mrs Taylor’s complaint.

It is clear to anyone reading the column that it is a robust forum that allows the public to comment and that some readers could take issue with some of the expressed comments and viewpoints.

The text is one person’s viewpoint and is expressed as such in a column which is designed for such discussion. It does not incite racism but puts forward a viewpoint and those reading it can decide how much credibility they give it.

Mrs Taylor was provided with the opportunity to give her own viewpoint which she declined.

The complaint is not upheld.

Nevertheless, the complainant’s concern about publishing texts from anonymous sources is also of concern to the Press Council. As mentioned in Case 2121, the very nature of texting seems to encourage an instant, forceful, almost throwaway response rather than the more considered approach of composing a letter to the editor. This may be well be exacerbated when you do not have to back your comment with your own identity.

Press Council members considering this complaint were Barry Paterson, Pip Bruce Ferguson, Kate Coughlan, Chris Darlow, Sandy Gill, Penny Harding, Keith Lees, Clive Lind, John Roughan, Lynn Scott and Stephen Stewart.

## CASE NO: 2207 – DUNCAN WILSON AND SUZANNE PAUL AGAINST NATIONAL BUSINESS REVIEW

Duncan Wilson and his wife, Suzanne Paul, complained that *National Business Review* reported that a company bearing Suzanne Paul’s name could be struck from the company register unless it filed its annual return by the following Monday.

They further complained that though the company did then file its return on time, and the *NBR* updated its story accordingly, the original story remained on the newspaper’s website behind a paywall.

They were also concerned that *NBR*’s original heading, ‘Suzanne Paul Beauty could be cut from company...’ appears on Google lists of references to Suzanne Paul.

The complaints are not upheld, however the case highlighted a problem for people who are the subject of a story they cannot see in full without paying a subscription to an online newspaper site. The complainants’ concern was raised by a headline and they relied on the Council to obtain a copy of the material behind *NBR*’s paywall. The Council strongly urges editors of online sites to make the full text available on request at no charge to those who are the subject of a story.

Mr Wilson and Ms Paul considered this story to be unfair on three grounds: (a) last minute company returns

are not usually newsworthy, (b) the story was as much about the activities of the Honk Group, two of whose directors part-own Suzanne Paul Beauty, and (c) her name was used in the headline and introduction to attract readers to the story and subscriptions to the paper.

Regrettably, the editor, Nevil Gibson, made no response to the complaint, nor did he reply to repeated attempts by the Council to urge his compliance with the industry’s agreed procedure.

Clearly, the *NBR* used the complainant’s name to attract attention to a story that was not strong. It covered the filing issue in three paragraphs and filled the rest of its space with unrelated material on her and the Honk Group directors.

It not only used her name in the heading and introduction, calling her “infomercial queen”, but illustrated the item on its website with her posed image. While celebrity bait of this nature may be surprising in a serious business weekly, it does not breach minimum standards of fairness. Suzanne Paul has made her name well known. A newspaper is entitled to give greater attention to a company bearing her name than its affairs might otherwise receive.

The survival of the story and its headline on the internet raised a more difficult issue.

The Council finds no fault with the newspaper’s updating of the story on its own website, which the news editor agreed to do as soon as Mr Wilson emailed her to say the company return had been filed.

The report was given a substitute heading: ‘Suzanne Paul Beauty files return, safe on register’ and noted: “Mr Wilson has informed the *NBR* that the annual return for Suzanne Paul has now been filed.”

Mr Wilson had also asked that the original story be removed from the website. This the news editor refused to do and the Press Council understood her decision. The story remained accurate at the time it was written. Editors rightly refuse to remove such stories from their web record, just as they would not previously have culled them from paper archives. So long as the material is clearly updated, the Council can see no reason to remove it.

The complainants’ lasting concern arose from the story’s wider circulation on the web. When the Council put the name Suzanne Paul into the Google search engine a line appeared - albeit on a fifth page of references to her - that read: “Suzanne Paul (in bold type) Beauty could be cut from company - National Business....”

Immediately below, in smaller type, the updated headline also appeared, along with a subscription notice. The casual reader scanning the references might have noticed only the original headline and be drawn into the story behind the paywall.

But the unfairness arose from the Google format, not the originating newspaper. In circumstances such as this, the Council can only relay some technical instructions for requesting a removal of the item from Google lists.

The complaint is not upheld

Press Council members considering this complaint were Barry Paterson, Pip Bruce Ferguson, Kate Coughlan, Chris Darlow, Sandy Gill, Penny Harding, Keith Lees, Clive Lind, John Roughan, Lynn Scott and Stephen Stewart.

## **CASE NO: 2208 – ANDI BROTHERSTON AGAINST HERALD ON SUNDAY**

Andi Brotherston makes a complaint on two grounds regarding an article published by the *Herald on Sunday*. The grounds are accuracy, fairness, balance; and headlines and captions.

Ms Brotherston's complaint is substantially upheld.

### **Background**

The *Herald on Sunday* published an article on June 5, 2011 under the heading "Wife in strife at threats".

The article related to Ms Brotherston's alleged behavior towards a blogger (Jacqui Sperling) who had published a blog relating to Ms Brotherston's husband, Martin Devlin.

The article stated that Ms Brotherston was facing questions over how her work hours were spent following what the article described as an "online spat" about her husband Martin Devlin.

### **Complaint**

Ms Brotherston believes that almost every aspect of the story was incorrect, and also stated that she was not given the opportunity to provide comment or right of reply prior to publication. She stated that she did receive a text around 9.15pm on Saturday night from [a Herald on Sunday reporter] which she read the next day. The text asked if she had been sprung by [a reporter for a rival Sunday publication] doing her husband's PR during work time. She did not realise it was a formal request for comment.

Ms Brotherston goes on to state that a comment from her employer was taken out of context and gave the impression that she had behaved in an unprofessional manner and that this continues to impact on her reputation. It implied that she was in trouble with her employer due to the behavior described in the article and this is totally incorrect.

She states that the quoted comment "A TVNZ spokeswoman said the broadcaster was aware of the issue. "It's not an issue of consequence"" was proof that there were no issues relating to her employment.

She states that the e-mail exchange (copies provided) shows that her interaction with the blogger "totally contradicts the image portrayed by the article".

Ms Brotherston denies threatening the blogger with legal action and goes on to state that she made it very clear that although the post was defamatory, she had "no intention whatsoever" of doing anything about it but wanted the blogger to consider removing the defamatory parts of the post. Ms Brotherston states that the blogger said she would take it down immediately and said she had posted it as a joke.

Ms Brotherston said the editor of *Herald on Sunday* acknowledged to her that the headline was inaccurate and conceded that it did not reflect the story content, but that he stood by the story.

The *Herald on Sunday* offered to run a clarification regarding the headline in a later edition but Ms Brotherston believes that the story should have been checked for accuracy prior to publication.

Ms Brotherston, in an e-mail dated August 25, 2011, stated that she believed there was evidence of collusion between the *Herald on Sunday* and a rival paper, the *Sunday Star Times*, regarding the article.

Ms Brotherston, in reply to the response from the *Herald on Sunday*, states that she received only the one text and any suggestion that there were multiple attempts to obtain comment from her are incorrect.

### **Response from the Newspaper**

The editor for the *Herald on Sunday* acknowledged the headline was neither fair nor accurate but stated that the story itself was correct. He states that Ms Brotherston was offered recourse by way of a published clarification.

He goes on to say that the blogger believes that the story accurately reflects her interaction with Ms Brotherston and provided a copy of e-mail confirmation from the blogger.

In that e-mail, the blogger comments that Ms Brotherston's comment about the post being defamatory and the subsequent argument as to whether they were or not, led her to believe that a threat of legal action was implied by Ms Brotherston should the post not be removed.

The editor states that there was an attempt made to contact Ms Brotherston on the night of the story and any lack of balance came about because she did not respond to the newspapers attempt to contact her.

He goes on to state that in regard to Ms Brotherston's allegations that comments from her employer have been misrepresented, no-one other than Ms Brotherston had made a complaint.

### **Discussion**

The *Herald on Sunday* acknowledges that the headline was neither fair nor accurate. Despite the fact the newspaper did offer Ms Brotherston a published clarification, it is important that a headline accurately reflect the article when it is published.

The inference in the headline and article was that Ms Brotherston was "facing questions" at work over "how her work hours are spent" because she had contacted the blogger during work time. There was no evidence in the article to substantiate this inference. In fact, the article quoted a TVNZ spokeswoman who stated "It's not an issue of consequence" which belied any such inference.

In regard to the alleged threat of legal action being taken against the blogger, while Ms Brotherston states she made no such threats, the perception of the blogger was that a threat was implied during what she saw as a heated conversation. The newspaper was using information from the blogger and this was her perception.

In describing Ms Brotherston as "angry" in her interaction with the blogger, the *Herald on Sunday* used information from the blogger herself. This was confirmed by the blogger in an e-mail to the newspaper on July 20, 2011 in which she outlines her feelings and perception of the interaction with Ms Brotherston.

Ms Brotherston may not think she came across as angry and intimidating, but this was clearly the perception of the blogger. The article did not state that Ms Brotherston was angry, intimidating and threatening, it made the comment

that the blogger had to deal with “an angry Brotherston who threatened legal action over it [the article]” based on information provided by the blogger herself.

Ms Brotherston’s complaint regarding inaccuracy concerning her interactions and behavior with the blogger are not upheld as despite Ms Brotherston’s opinion that the interaction was friendly, the blogger has a different view and is entitled to express her own opinion which was quoted in the newspaper.

The Press Council does not see a text sent at 9.15pm on a Saturday night, when the newspaper was to be published the next morning, as a reasonable attempt to seek comment. If a newspaper intends to publish unfavourable comment about a person, they should make a reasonable attempt to contact that person for comment on the allegations prior to publication. The wording of the text would also not necessarily inform a person that they were being asked to provide comment for an article about to be published.

While there was some public interest aspect in the story, the headline is incorrect and the story could have been better reported by the newspaper.

The complaint is upheld on the grounds that:

- it contained inferences relating to Ms Brotherston’s employment situation which were incorrect
- the headline did not reflect the information in the story and this is acknowledged by the newspaper
- the newspaper did not make a reasonable attempt to contact Ms Brotherston for comment prior to publication of the article.

Press Council members considering this complaint were Barry Paterson, Pip Bruce Ferguson, Kate Coughlan, Sandy Gill, Penny Harding, Keith Lees, Clive Lind, John Roughan, Lynn Scott and Stephen Stewart.

## **CASE NO: 2209 – THE CHILDREN’S COMMISSIONER AGAINST NORTH & SOUTH**

The Children’s Commissioner, Dr Russell Wills, complained to the Press Council about the cover of *North & South*’s August 2011 edition, stating that the photograph of a very young baby being held upside down, and in distress, contravened New Zealand’s obligations towards children, as set out in the United Nations Convention of the Rights of the Child (UNCROC), a convention to which New Zealand is a signatory.

The complaint is not upheld.

### **Background**

The magazine cover showed a very young naked baby being held by its feet, upside down and crying. Over the baby’s body was a hot pink banner – MIDWIVES; printed on the baby’s body was “bungled deliveries and the myth of ‘natural childbirth’.”

### **The Complaint**

The Children’s Commissioner complained that the image of the baby struck him as “cruel, exploitative and contrary to her rights under the Convention”.

He quoted the International Federation of Journalists’ guidelines for reporting of children in the media: “The way in which media represents children can influence decisions taken on their behalf and how the rest of society regards them”.

The commissioner believed that the image does not represent the values New Zealanders have towards children. The image is degrading and exploitative.

The commissioner wrote to the editor of *North & South*, complaining that the photograph appeared to have been staged in a photographic studio, and that the child’s interests could not have been considered in the taking of such a photograph; the act of holding her upside down in a distressed state for a photograph was cruel, exploitative and contrary to her rights.

He understood that the image was licensed from Getty Images and asked for information about how the photograph was produced and whether consideration of the circumstances under which the photograph had been produced had been considered by the *North & South* editorial team.

In extending his complaint to the Press Council, and in responding to the editor’s response, the commissioner stated that he believed the cover of *North & South* breached the rights of the child as set out in UNCROC.

He expanded information on UNCROC. UNCROC is an international child rights treaty that has been agreed to by 192 countries of the world, including New Zealand; it sets out fundamental rights of every child, and that the best interests of the child should be a primary consideration in decisions made affecting the child. He believed that photographing a naked distressed child and then using that image on the cover of a magazine is not in the best interests of that child.

Consent from the parents was not relevant, the commissioner said. The publication had a responsibility to act with respect for children, regardless of whether parental consent was gained or not.

He maintained that the image was degrading and exploitative, and that his complaint was fundamentally about the rights of a child to be portrayed with respect and dignity.

The commissioner’s final statement in his second letter to the Press Council concluded: “All children deserve to be portrayed in the media with respect and dignity. The image achieves the opposite of this”.

### **The Magazine’s Response**

In her response to the initial complaint to the magazine, the editor of *North & South* provided the commissioner with the Editorial Policy and Principles of Getty Images Inc, a Seattle-based stock photo agency. In essence, these policies and principles state that Getty Images Inc is an organisation driven by integrity, an individual’s right to privacy, and maintaining a balance between that right and the obligation to cover a story. The editor of *North & South* pointed out to the commissioner that he had made no mention of the story which the cover highlighted; the cover was a bold move to draw readers into a feature that raises real concerns about the state of New Zealand’s maternity services; and that a recent report from the Perinatal and Maternal Mortality

Review Committee had found that 98 newborn babies – 14% of the 720 who died in 2009 – might have been saved with earlier or better help.

She stated that *North & South* is a responsible publication with a commitment to well-researched journalism. It would never have published an image that was “cruel and exploitative”. No-one at ACP, including the publisher, had raised concerns about the image.

In response to the complaint to the Press Council, the editor again outlined how the image was ethically obtained with the consent of the baby’s parents, that the baby on the cover was not identifiable, her genitalia were not displayed, holding a new-born baby upside down is not an act of abuse, but a frequent act by a parent, and that no breach of Press Council principles had occurred with the use of the image on the cover.

She was surprised that the commissioner, empowered to advocate for the health of children, had focussed his concerns on the image of a well-cared for child but ignored the key issues related to infant health raised in the article.

The editor included a letter from a retired associate professor of neonatal paediatrics who noted that it had been common for babies to be held that way after birth. He was not aware of babies having come to any harm from this. He found nothing distasteful with the image.

### Discussion and Decision

This complaint has again raised issues on the treatment of children and young people in the media. On the one hand, there are moral and legal reasons for ensuring the rights of children are respected and adhered to. On the other hand, images of children affected by famine, or abuse, or war or poor medical treatment can add depth to a story, and focus attention on situations and practices which can be harmful and damaging to a child or children.

The Children’s Commissioner, in this complaint, has highlighted the need for the highest ethical standards to be used in deciding to use images of children in articles or stories.

The Press Council agrees with the commissioner that the parents’ consent is not a determinant factor in this case. It is possible parents may give consent to actions that are not in the best interest of the child.

The issue is whether there has been harm to this baby from the actions, and the Council takes the view that there has not. The Council is reassured in its view by the comments from the retired neonatal paediatrician. Babies and children are often dangled upside down by their parents without this causing harm. The image was not degrading or exploitative. The baby’s vulnerability was depicted, just as their vulnerability to others’ decision-making was explored in the article.

This image was strong, but it needed to be in order to draw attention to the very real issues described in the article inside the magazine.

The Council finds no breach of Principles 3 and 10

The complaint is not upheld.

Press Council members considering this complaint were Barry Paterson, Pip Bruce Ferguson, Kate Coughlan, Sandy Gill, Penny Harding, Keith Lees, Clive Lind, John Roughan, Lynn Scott and Stephen Stewart.

## CASE NO: 2210 – FEDERATED FARMERS SOUTH CANTERBURY AGAINST STRAIGHT FURROW

The Press Council has partly upheld a complaint by the Federated Farmers South Canterbury (FFSC) against Straight Furrow, on the grounds of conflict of interest.

### Background

Straight Furrow, describing itself as “New Zealand’s Rural Weekly”, published a front-page article on May 24, 2011 citing concerns raised by the Opihi Catchment and Environment Protection Society (OCEPS). Their concern was directed to Environment Canterbury (ECan) and they wanted investigation of a claim that chemicals had been dumped in the Opuha Dam when the dam was constructed in the 1990s.

The claim included an affidavit from a man who worked on the construction of the dam and also a photo provided by another source.

The report said that the Straight Furrow reporter, among others, was present when the affidavit was made ‘and believed it was genuine’. Three dumps were identified by the deponent, who claimed that sealed drums had been buried by bulldozers and that when he had gone to check on the bulldozers’ progress, an overpowering smell of chemicals had been evident.

Straight Furrow’s reporter had rung the bulldozer contractor’s firm (the original contractor is now dead) to check if any original overseers were still around or alive, but was informed that none was available.

Straight Furrow acknowledged that at the time it was considered appropriate to bury chemicals on the floor of the dam rather than have them disposed of professionally, but that there were now concerns being voiced by anglers that fish were being caught with black flesh, that these fish were often inedible because of strong odours, and that tests OCEPS was conducting on the Opihi and Opuha rivers were producing erratic results. Potential problems downstream had been commented on in a report commissioned by the Opuha Dam Company in 1999.

Other users of the dam might also be at risk if toxic materials had leached out from the drums, as the Opuha is a popular destination for various water sports users.

ECan had said it was not uncommon for former employees to come forward and tell of chemical dumps and it was taking swift action to check the claims, with the environmental protection manager cited as saying the matter was very serious and its truthfulness, and the location of the dumps, needed to be verified.

In the article, Straight Furrow also identified a likely problem herbicide that could be buried in the drums as being 2,4,5-T, “a component of Agent Orange” referred to later in the article as ‘more commonly referred to as Agent Orange’.

Straight Furrow published a subsequent article on August 2, 2011 (after FFSC’s complaint) verifying that ECAN’s review showed that ‘there were no pesticide in any of the water samples and pesticide levels in sediment and

fish/eel flesh and liver samples were consistent with other samples taken from around Canterbury'. However, further sampling should be done. The article was followed by an editorial and article rebutting concerns that the reporter was a member of OCEPS, information which had been removed from the original draft of the article the reporter submitted. Both the editor and the reporter stated that her participation in this group had not biased her investigation.

### The Complaint

FFSC, through its National Vice President Dr William Rolleston, complained to the paper after its publication of the first article, alleging breaches of the Press Council principles of "conflict of interest" and "accuracy, fairness and balance". FFSC was concerned that the reporter had not disclosed her role in OCEPS which, the organisation claimed, raised questions about lack of impartiality by the reporter and the paper.

Further, FFSC maintained that 2,4,5-T is a component of Agent Orange but 'it is not Agent Orange. Agent Orange was not manufactured nor used in New Zealand'. The paper's claim that 2,4,5-T was 'commonly referred to as Agent Orange' was therefore incorrect. Neither did the article take account of the different concentrations of dioxin in the 2,4,5-T used in New Zealand compared with the 2,4,5-T used in Agent Orange. They provided information indicating that the dioxin level in New Zealand 2,4,5-T was approximately 100 times less than that in Agent Orange.

FFSC requested the paper to investigate the complaints, advise FFSC of its findings, and 'publish in a place no less obvious than the articles (i.e. on the front page) an acknowledgement of and an apology for not disclosing [the reporter's] conflict of interest', and an article which showed the paper was inaccurate in describing the alleged chemicals as Agent Orange.

### The Newspaper's Response

The reporter replied the next day describing the OCEPS as a very small group that looked at restoring water quality and whitebait, and she was not 'an activist' as alleged in FFSC's complaint. She was aware of others who had raised concerns about fish and water quality, but they were not members of OCEPS. She claimed that her approach to the story was only what any serious journalist would do, when encountering an affidavit raising the kinds of issues this one did.

Dr Rolleston was not satisfied with the reporter's response, and approached the editor of Straight Furrow. He reiterated that his complaint was about the reporter's non-disclosure of interest and the unbalanced nature of the article, as he saw it. He did not think it appropriate that the reporter whose impartiality was being queried, had written back to him. He referred to Press Council deadlines, requesting a swift reply.

The editor replied promptly that he was happy for the complaint to go to 'that level' (by implication, to the Press Council) but that he had offered FFSC the chance to have Dr Rolleston's letter published, and this had not been responded to. Dr Rolleston had also been offered the chance to address the issues in print but had declined. He claimed that the reporter had been the recipient of threats,

and that he himself had received insults from a FFSC member.

The editor reiterated that his reporter's membership of OCEPS was immaterial as she had expressed no opinion nor promoted any cause in the article; she had merely investigated comments made by the deponent of the affidavit and sought additional comment from a range of sources. Fairness and balance could not have been provided by anybody else, since no-one else supposedly knew of the situation.

Informed by the Press Council that Dr Rolleston had subsequently lodged a formal complaint, the editor replied that he had offered Dr Rolleston publication possibilities but the latter had never actually spoken with the editor. He stated that his reporter was just doing her job, and that her association with OCEPS had been disclosed but 'was edited out for space reasons'. Abusive comments about the reporter by a FFSC member had been received, and Mr Rolleston's claims that she was an activist 'are ludicrous'. ECAN had taken the claims seriously and acted on them. The dam's founder had expressed dismay when told of the situation and offered help. A further article had been published (August 2) in a similarly prominent position pointing out the results of the review. The editor was surprised by the vehemence of the farmers' response when 'it is well known chemicals are buried on many farms and near waterways' and it was unlikely that the frail 72-year-old deponent would have made up the story.

In that edition (but on page 6) both the editor's and the reporter's comments on the conflict of interest claim were also the subject of a substantial article; however no apology was included for the omission of the reporter's participation of OCEPS and both denied that it constituted a conflict of interest.

Dr Rolleston replied to the Press Council continuing to maintain that the article on 24 May breached the principles cited in his original complaint to Straight Furrow. FFSC did not accept the assertion that there was no conflict of interest, and stated that Agent Orange had been mentioned in the story to 'sensationalise' it and 'elicit an emotive response in the reader'. While the paper had subsequently acknowledged the reporter's role in OCEPS, it had not acknowledged that this membership should have been disclosed in the initial article, and that the balance issue was still unresolved.

### Discussion

Both sides acknowledge that the reporter's role in OCEPS should have been mentioned (rather than edited out) in the original article. While the article was largely a report of what others said it does, both explicitly and implicitly, contain the views of OCEPS and includes comments that are presumably the views of the reporter, as they are not attributed to anyone else. It is more than an exploration of the dumping issues raised by the deponent. The Council believes that the reporter's affiliation to OPEPS should have been disclosed and the omission of this fact did constitute a breach of the Principle relating to conflict of interest.

The issue of the correctness or otherwise of the reference to Agent Orange in the article is more complex.

Neither side denies that 2,4,5-T was ‘a component of Agent Orange’ but FFSC argued that levels of dioxin in its preparation in New Zealand differed significantly from those in Agent Orange, and that to claim the 2,4,5-T was ‘commonly referred to as Agent Orange’ was incorrect. In the box at the top of the article, however, the reporter *did* state that the herbicide was ‘a component of Agent Orange’ so at best the argument about accuracy is conflicted. Some members thought there was no need for Agent Orange to have even been mentioned in the article.

While some Council members expressed the view that the ‘commonly known as Agent Orange’ statement was inaccurate and grounds to uphold, overall the Council did not believe that readers would have been left with the impression that Agent Orange was involved, so this aspect of the complaint was not upheld.

### Decision

The complaint is upheld on the grounds of conflict of interest, but not upheld on the issue of accuracy, fairness and balance.

Press Council members considering this complaint were Barry Paterson, Pip Bruce Ferguson, Kate Coughlan, Sandy Gill, Penny Harding, Keith Lees, John Roughan, Lynn Scott and Stephen Stewart.

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

## CASE NO: 2211 – NORMAN HOPKINS AGAINST THE DOMINION POST

Norman J Hopkins complained that *The Dominion Post*, in an article of May 18, 2011 misled readers through inaccurate and biased information regarding the amount of tax paid by dairy farmers. He complained the headlines, the captions and the article itself failed to meet required standards of accuracy, fairness and balance.

He also complained about the inadequacy of *The Dominion Post’s* corrective action.

The complaint is not upheld.

### Background

On May 18 *The Dominion Post* devoted the upper-half of its front page to stimulating debate on whether dairy farmers in New Zealand pay enough tax. The content of the article arose from information released following a Parliamentary question to the Government Revenue Minister. The size of the headline, and its red background and with further sub-headings in a very large type, indicated that the newspaper believed it was an issue of national importance.

“IS THIS FAIR?”

Average dairy farmer’s tax \$1506 (income \$500,000+)

Average wage earner’s tax \$8020 (income \$ 50,000)”

The premise of the article was inaccurate; that the two figures represented meaningful comparisons. They did not: one was revenue (dairy farmers) the other income (wage earners).

The article canvassed a broad range of opinions on this flawed “comparison”: Federated Farmers, the Revenue Minister, a farmer, a family, a retired couple and a beneficiary. Not all were given equal weighting with the farmer, the retired couple, the family and the beneficiary being photographed and quoted in separate panels.

The Federated Farmers spokesman Conor English, Revenue Minister Peter Dunne and the individual farmer were apparently aware that they were commenting on dairy farm revenue whilst the others appeared to believe they were commenting on comparable figures thereby making a nonsense of their perspective on the “It’s fair” or it’s “Absolutely not fair” debate.

The article drew strong responses along predictable lines of those identifying the basic flaw in the article and those for whom its flawed logic provided an opportunity to voice their opinion on the issue. *The Dominion Post* printed a range of the responses including comments from the Federated Farmers, the Deputy Prime Minister and several letters to the editor, the majority of which pointed out the major inaccuracy.

### The Complaint

Mr Hopkins was one of many people who wrote to the newspaper responding to this article however none of his four letters was published. On June 6, he complained formally that the original article was biased, unfair, poorly researched and lacked balance. He argued that the headline was grossly deficient and he called for a retraction.

He also complained that the correction, when finally published, was very brief, not prominent and dealt inadequately with the many deficiencies of the original article.

### The Response

The newspaper argued:

1. The article was balanced and fair and provided equal prominence to both sides of the debate.
2. The newspaper was “entirely neutral” on the question of whether the amount of tax paid by dairy farmers was fair and was merely reporting the question asked by Labour revenue spokesman Stuart Nash.
3. It did not “duck” publishing further responses to the article including an array of complaining voices raised against its basic premise (specifically those of the Deputy Prime Minister, the Prime Minister, Business New Zealand and farmers).
4. It rejected the claim that it misled readers and quoted various parts of the article relating to statistical analysis and those sources including the IRD.
5. The newspaper expressed surprise to receive Mr Hopkins complaint “a month after the article”.
6. The newspaper advised Mr Hopkins it would investigate and keep him informed and eventually it formed the opinion that “it was appropriate to publish a correction in relation to the [income \$500,000+] headline”. The newspaper argued that under Principle 5 it “would have been preferable to use the word “revenue instead of income” in

the headline even though the \$500,000 figure was correctly explained in the article and in the part of the story quoting the farmer.

### Discussion

Mr Hopkins was thwarted in his attempt to complain about the inaccurate headline when his letters were not published. His resulting complaint, therefore, occurred several weeks after the original furore over the original article had died down.

The newspaper felt it had covered all sides of debate following the publication of the misleading headline and was surprised by the complaint coming, as it did, so long after the event.

The headline was, as the newspaper agreed, incorrect and as a result the article promoted a pointless debate. The newspaper's willingness to publish subsequent opinions redressed the original inaccuracy by allowing accurate information to be presented upon which the issue could then be canvassed.

The newspaper's 8-page defence is incomprehensible and confusing given its decision to run a correction accepting that the headline was inaccurate and misleading.

Specific points which do not illuminate the issue include:

The newspaper claimed to be a mere messenger in a debate initiated by a Labour spokesman yet no clear attribution was made to that spokesman and no quotation marks indicated to readers that this was a reported opinion of a third party.

The Labour revenue spokesman was not mentioned until the third paragraph of the main article, some six decks of headline into the story.

The newspaper claims the article was balanced and fair and argues that headlines must not be read in isolation, and articles need to be read "in their entirety with all aspects being considered together." This is a heavy onus to place on readers.

### Decision

The newspaper made a fundamental error in comparing income and revenue. It is clear that initially the newspaper believed it was publishing evidence that dairy farmers were escaping their fair share of the tax burden. The newspaper presented the issue as a major exposé. As issues of tax excite a great deal of public interest the onus is on the newspaper to ensure that its statistics are accurate.

However, the newspaper did shoulder its responsibility to correct the misinformation by subsequently publishing a wide range of opinions – and those given most prominence in the news columns were those of parties keen to expose the inaccuracy.

It was reasonable for the editor to believe that – after several weeks had passed – the debate was concluded and the matter closed. When the complaint was received, it was investigated, the complainant was kept informed of progress and a correction was published.

It is the Press Council's view that the correction, and apology, could have been given more prominence in light of the prominence originally accorded the issue.

The Press Council finds the complaint is substantiated but the newspaper subsequently took sufficient steps to address the error.

The complaint is therefore not upheld.

Mr Hopkins attended the Press Council to speak to his complaint. The editor was also invited to attend but declined.

Press Council members considering this complaint were Barry Paterson, Pip Bruce Ferguson, Kate Coughlan, Sandy Gill, Penny Harding, Keith Lees, John Roughan, Lynn Scott and Stephen Stewart.

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

## CASE NO: 2212 – NEW ZEALAND QUALIFICATIONS AUTHORITY AGAINST NORTH & SOUTH

The New Zealand Qualifications Authority has complained that an article in *North & South* magazine about NCEA breached Press Council Principles 1 and 4 concerning accuracy, fairness and balance; and comment and fact. The complaint is upheld on Principle 1 in relation to fairness and balance and not upheld on Principle 4.

### Background

NCEA is the National Certificate of Education Achievement, administered by the New Zealand Qualifications Authority (NZQA).

The article 'Blowing the whistle on NCEA', published in July 2011, accuses NZQA of 'fudging the figures' to make it appear that its moderators and teachers are moving towards closer agreement on the internal assessment of students' work.

The standfirst said 'Scaling, cheating, fudging figures, manipulating marks – and that's just the administrators. Is NCEA corrupting everyone it touches?'

The magazine quoted an anonymous source, 'Teacher Pete', who attended a workshop run by an NZQA moderator where participants heard that the Education Minister was concerned at the level of disagreement between moderator and teacher-assessment of internally assessed work. Teacher Pete claimed the moderator told workshop participants that the NZQA response was to 'fudge the figures for the minister' and ignore some of the disagreements and repeated errors.

This allegation is the basis of the article. *North & South* also quoted other critics of NCEA, including a former accounting teacher and NCEA marker, who analyses and markets NCEA data. He said the NZQA was simply putting 'spin' on the internal assessments. More schools were agreeing with the moderators' marking because teachers were now more careful about what and when they submit the work.

It also quoted the principal of Auckland Grammar School, whose school has opted out of NCEA in favour of the Cambridge International Examinations (CIE). His view was that NCEA was not transparent, valid or fair and that incorrect internal assessments had been going on for years.

## Complaint

NZQA chief executive Dr Karen Poutasi complained to the magazine and then to the Press Council that the allegations by the magazine's source were false. She said the teacher's claims were denied by the moderator who ran the workshop and by other audience members contacted by NZQA.

The article was an attack on NCEA and specifically an attack on NZQA's ethics and honesty in implementing it.

She said the article was unfair and unbalanced. NZQA was not given the opportunity by *North & South* to respond to the allegations made by the teacher or any of the criticisms of NCEA.

The article was one-sided because it published comments only from critics of NCEA. She dismissed the magazine's view that there was no point in contacting NZQA because it had avoided interview requests in the past. This was an unfair assumption.

Dr Poutasi complained that the article had published only favourable views about CIE and only negative views of NCEA. This was further evidence of lack of balance.

The article had failed to distinguish between comment and fact. The writer was opposed to NCEA and had been expressing personal views.

## The Magazine's Response

*North & South* editor Virginia Larson said the magazine stood behind the claims by their source, which had been verified by other teachers attending the workshop. Teacher Pete was also prepared to swear an affidavit in support of his statements.

Ms Larson said the article had relied on the NZQA annual report and the organisation's own statistics and there was no obligation on the magazine to seek comment from NZQA. The authority was responsible for NCEA and therefore bound to support it. She said the information from the NZQA annual report included in the article adequately covered the NZQA view.

Further, Ms Larson said that in the 15 years that she had been editor no NZQA chief executive had responded to requests from *North & South* for an interview. The writer of the present article had tried without much success to deal with NZQA in 2007.

She considered the article to be balanced, fair and accurate. She said there was an exception to the Press Council's principle 1 for long-running issues in the national interest, where every side could not reasonably be covered on every occasion. This was such an issue.

Balance didn't mean that *North & South* had to occasionally publish articles depicting NCEA in a positive light, but to publish robust, well-researched coverage of the ongoing debate.

Ms Larson said the article did not set out to compare the merits of NCEA and CIE and so the magazine was not required to examine the shortcomings of the alternative system.

As for failing to distinguish between comment and fact, Ms Larson said that where the article included opinion, this was made clear.

She said Dr Poutasi's complaint was based entirely on the presumption that the magazine's source lied and the moderator in question told her the truth.

## Discussion

The standfirst sets the tone for a hard-hitting article: 'Scaling, cheating, fudging figures, manipulating marks – and that's just the administrators. Is NCEA corrupting everyone it touches?'

This is a one-sided critique of NCEA and NZQA. It is unconvincing for the magazine to argue on one hand that there was no requirement for it to seek balancing comment from NZQA and then to argue that if it had, it wouldn't have been likely to be successful.

There is obvious rancour between the two sides and a 2007 article, also highly critical of NCEA, seems to be last time the magazine attempted to seek NZQA's views directly. That article was the subject of a complaint to the Press Council by NZQA also over fairness and balance and opinion and fact. That complaint was not upheld.

On that occasion the magazine approached NZQA for its views and included comment from NZQA and others. This time it made no such attempt.

It is not sufficient for the magazine to rely on last year's annual report and call it NZQA's balancing view, particularly when accusations of fudging, manipulation and corruption are being made.

## Conclusion

Publications are entitled to take a forthright stance and advocate a position on any issue. The Press Council is not in a position to say the article is inaccurate. But this article contained specific and potentially damaging allegations that in fairness, for balance and, not least, for the sake of its readers should have been put to NZQA. The complaint is upheld in terms of Principle 1 concerning fairness and balance.

The Press Council does not see any confusion between fact and opinion. *North & South* and the writer of this article have previously expressed strong views about the NCEA system. There is no doubt that the article is expressing the opinions of the writer and the others interviewed. The complaint is not upheld on principle 4.

Press Council members considering this complaint were Barry Paterson, Pip Bruce Ferguson, Kate Coughlan, Sandy Gill, Penny Harding, Keith Lees, John Roughan, Lynn Scott and Stephen Stewart.

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

## CASE NO: 2213 – POST PRIMARY TEACHERS' ASSOCIATION AGAINST NORTH & SOUTH

The Post Primary Teachers' Association (PPTA) has complained that an article in *North & South* magazine about NCEA was not accurate, fair or balanced. The complaint is upheld on fairness and balance.

## Background

NCEA is the National Certificate of Education Achievement, administered by the New Zealand Qualifications Authority (NZQA).



The article ‘Blowing the whistle on NCEA’, published in July 2011, accuses the New Zealand Qualifications Authority of ‘fudging the figures’ to make it appear that its moderators and teachers are moving towards closer agreement on the internal assessment of students’ work.

The standfirst said ‘Scaling, cheating, fudging figures, manipulating marks – and that’s just the administrators. Is NCEA corrupting everyone it touches?’

The magazine quoted an anonymous source, ‘Teacher Pete’, who attended a workshop run by an NZQA moderator where participants heard that the Education Minister was concerned at the level of disagreement between moderator and teacher-assessment of internally assessed work. Teacher Pete claimed the moderator told workshop participants that the NZQA response was to ‘fudge the figures for the minister’ and ignore some of the disagreements and repeated errors.

This allegation is the basis of the article. *North & South* also quoted other critics of NCEA, including a former accounting teacher and NCEA marker, who analyses and markets NCEA data. He said the NZQA was simply putting ‘spin’ on the internal assessments. More schools were agreeing with the moderators’ marking because teachers were now more careful about what and when they submit the work.

It also quoted the principal of Auckland Grammar School, whose school has opted out of NCEA in favour of the Cambridge International Examinations (CIE). His view was that NCEA was not transparent, valid or fair and that incorrect internal assessments had been going on for years.

### Complaint

PPTA president Robin Duff complained that there was no attempt at balance or fairness in the article. The magazine was wrong to rely on one anonymous source to substantiate the main claim that a moderator had encouraged teachers to ‘fudge the figures for the minister’.

He said the article did not include teachers speaking positively about the level of agreement between grades awarded by teachers in internal assessment and grades awarded by NZQA moderators.

Nor did the article include responses from NZQA, the Ministry of Education or the PPTA.

To say that NCEA was made up of 80 percent internal assessment was completely misleading. “The standards for which results are reported nationally by schools are about one-third external achievement standards, one-third internal achievement standards and one-third unit standards.”

Mr Duff said there was no evidence for the allegation that teachers were more careful what and when they submitted work, or that work was re-marked. Schools were required to select samples of student work randomly and that selection had to be done by someone other than the teacher or head of that subject.

In a further response, he added that it was unreasonable that someone known for her critical view of NCEA should write the article, and the magazine should have made this clear to readers.

### The Magazine’s Response

In correspondence to Mr Duff, *North & South* editor Virginia Larson says she saw no compelling reason for the writer of the article to seek comment from the teachers’ union.

She published a letter from Mr Duff in the letters to editor column in the following issue, among other letters that were both critical and supportive of the article.

In her response to the Press Council, Ms Larson said she considered the article to be balanced, fair and accurate. She said there was an exception to the Press Council’s Principle 1 for long-running issues in the national interest, where every side could not reasonably be covered on every occasion. This was such an issue.

This didn’t mean that *North & South* had to occasionally publish articles depicting NCEA in a positive light, but to publish robust, well-researched coverage of the ongoing debate.

Ms Larson said the article had relied on the NZQA annual report and its own statistics and there was no obligation on the magazine to seek comment about NCEA from NZQA. The authority was responsible for NCEA and therefore bound to support it. She said the information from the NZQA annual report included in the article adequately covered the NZQA view.

On the question of whether NCEA was now 80 percent internal assessment, Ms Larson said the writer had relied on previous newspaper articles citing concern by Education Minister Anne Tolley. The writer had also drawn on principals’ concerns about the ‘creep’ towards internals. The principal of Auckland Grammar School had expressed the view that internal assessment would now be up to 80 percent.

As for students’ work being marked and re-marked, Ms Larson says this had been the feedback received from teachers.

### Discussion

The standfirst sets the tone for a hard-hitting article: ‘Scaling, cheating, fudging figures, manipulating marks – and that’s just the administrators. Is NCEA corrupting everyone it touches?’

This is a one-sided critique of NCEA and NZQA and, by implication, some teachers. It is unconvincing for the magazine to argue that there was no requirement for it to seek balancing comment from NZQA when specific allegations of manipulating marks and figures were being made about the organisation. Answers to these charges weren’t going to be found in the NZQA annual report.

The article made specific claims about the actions of teachers marking and re-marking in order to get better results. The magazine argues that teachers will confirm this privately, but not publicly for fear of harming their careers. The allegations against teachers should have been put to the PPTA as their representative body.

The article states as a fact that NCEA is made up increasingly of internal assessment, of up to 80 percent. It would have been helpful to have some back-up to this statement in the form of the Education Minister’s reported concerns or the percentage figure from the Auckland Grammar School principal.

## Conclusion

Publications are entitled to take a forthright stance and advocate a position on any issue. But this article contained specific and potentially damaging allegations about NCEA and NZQA and teachers that in fairness, for balance and, not least, for the sake of its readers should have contained balancing views. The views of the PPTA should have been sought. The Press Council is not in a position to say the article is inaccurate. The complaint is upheld in terms of Principle 1 concerning fairness and balance.

Press Council members considering this complaint were Barry Paterson, Pip Bruce Ferguson, Kate Coughlan, Sandy Gill, Penny Harding, John Roughan, Lynn Scott and Stephen Stewart.

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

## CASE NO: 2214 – ANDY BOREHAM AGAINST STUFF

The Press Council has upheld a complaint against the *Stuff* website concerning a headline over a report linking a man's death to use of the synthetic cannabis product Kronic.

### Background

On August 5 *Stuff* headlined a report *Man dies after smoking Kronic - police*.

The story quoted Perth police as saying the man had had a heart attack. He was rushed to Rockingham hospital believed to be suffering from cardiac arrest. He could not be revived. "Police believe he may have been smoking Kronic Black Label in the lead up to his death," the report said.

It went on to say that the synthetic cannabis product made its way on to Perth streets just over a month after the first form of the synthetic drug was outlawed in Australia.

It said New Zealand had approved a temporary ban on the products "this week", with amendments to misuse of drugs legislation "that will come into force today". The rest of the short report backgrounded the effects of the New Zealand law change, and reasons for the action.

The *Stuff* story was actually an amalgamation of two: It combined a New Zealand story (produced by *Stuff*) with a report in Perth's *WA Today*.

*WA Today's* report, on August 5 2011, was a more general account about the WA government banning 14 more synthetic cannabinoids "after what is believed to be the first death related to the drug Kronic". It said a 38-year-old man "died last night after suffering a heart attack moments after smoking synthetic cannabis, police said."

### The Complaint

Mr Boreham contends that, because the cause of the man's death had not been established, it was unfair for *Stuff* to use a headline suggesting explicitly that Kronic was to blame.

He said police were reported as saying the man *may* have been smoking Kronic before his death from a heart attack. The headline was scare-mongering and sensationalism, to the detriment of accurate and fair reporting.

"No reasonable reader, upon seeing this headline, would surmise that what *Stuff.co.nz* is really saying is that a man died and he may also have smoked Kronic but that the two are probably unrelated. The reasonable reader would understand that a man has died and it is, at least most likely, explicitly caused by the prior use of Kronic. There is no evidence as such, which leaves the headline purely in the realms of conjecture."

Extending correlation vs causality theory could produce another result, for example if the man had drunk coffee the day he died, or if he had eaten sugar, the heading could have read: "Man dies after drinking coffee" or "Man dies after eating sugar".

*Stuff* was joining the bandwagon of backlash against products such as Kronic and using that as license to employ questionable journalistic methods that misled the public.

### Stuff Response

Editor Mark Stevens rejected the argument that the headline was sensationalism, scare-mongering or inaccurate/unfair reporting. It was accurate and reflected the body of the story.

The language used was deliberate – the man died *after* smoking Kronic, rather than saying he had died *from* smoking it.

The story had been very much in the public interest, and relevant to a New Zealand audience. The New Zealand Government had that week amended the misuse of drugs legislation to ban the product. Mr Boreham's references to coffee and sugar were irrelevant, as the Government had not banned them that week, unlike the drug product.

### Complainant's Response:

Mr Boreham said the report quoted police as saying the man *may* have smoked Kronic before his death. "It was not fact, it was conjecture."

The headline that was used would have been misleading to the average reader, who would understand the word "after" in this context to mean "because of".

Mr Boreham said a quick search of the *Stuff* website revealed eight recent headlines in which the word "after" was used in the same context as "because of". He provided the examples.

### Press Council View

The Press Council appreciates the difficulty of conveying precise meanings in a short headline. However, a headline should still accurately convey the substance of the following report.

The *Stuff* account said Australian police used the word *may*, in suggesting a link between the man's death and his Kronic use. However, the actual cause of death had not been proven.

The complaint is upheld.

Press Council members considering this complaint were Barry Paterson, Pip Bruce Ferguson, Kate Coughlan, Chris Darlow, Sandy Gill, Keith Lees, Clive Lind, John Roughan, Lynn Scott and Stephen Stewart.

## CASE NO: 2215 – RON CAMPBELL AGAINST WHAKATANE BEACON

Ron Campbell, of Kawerau, complained to the New Zealand Press Council that a report in the *Whakatane Beacon* relating to a fatal accident involving an 11-year-old girl in a truck he was driving was inaccurate, unfair and unbalanced.

The complaint is upheld on lack of balance.

### Background

Under the heading, *Slow payment prolongs pain*, and an overline saying, *Driver ‘spitting in Sam’s face’ – mother*, the *Beacon* reported on August 16, 2011, that the girl’s family feared it could be years “before they get the closure they need” over the youngster’s death.

The story recorded how the girl was killed after falling from the cab of a moving truck in May 2010 and how Mr Campbell had been convicted of careless driving causing death.

His sentence included paying emotional harm reparation of \$5000 to the family but the *Beacon* said it understood that until recently, no reparation had been paid and a warrant had been issued for seizure of property. A voluntary payment of \$50 had been made – “enough to keep the bailiff at bay” – and another \$50 deducted from his bank account.

The mother of the girl was quoted as saying she had since been receiving \$15 a week, and it would take years before the reparation was paid at such a rate, and said it felt like Mr Campbell was “spitting in Sam’s face” through an apparent reluctance to pay.

The article went on to detail the background to the court case and how the girl had suffered fatal head injuries after falling through an unsecured door with a faulty locking mechanism in a bread delivery truck Mr Campbell was driving as he did his rounds early in the morning. Five children had slept overnight in the sleeping compartment in the truck.

Mr Campbell was not approached for comment before publication.

### The Complaint

In a letter dated August 22, Mr Campbell complained to the editor that the article was biased, unbalanced and inaccurate and that he should have been approached for a response before publication.

In the letter, he said he had spoken to the reporter who had told him she had tried to contact him but could not do so. He found this “amazing” in that he was well known in Kawerau and people would have known where he was likely to be.

Inaccuracies included implying he was insensitive and delayed making reparation payments. He had followed legal advice on what to do about the payments and, when some time had elapsed, he started making payments of \$15 a week because that was all he could afford at the time after losing his driver’s licence.

Further, he had not received court documents sent to the wrong address and that was why the seizure notice was

issued. The matter had been resolved when he discussed it with the bailiff.

Mr Campbell told the editor he very much regretted the accident and was “very remorseful” about what had occurred. The comment about spitting in Sam’s face was abhorrent to him, “and very far from the truth.”

“I believe that your reporter has presented a very distorted story . . . Anyone not knowing me would think me a monster in view of that story. Thankfully, I am well known in Kawerau and surrounds, and I have received a lot of support since your inaccurate article appeared,” Mr Campbell said.

Despite various communications with the reporter and editor, no resolution was found and Mr Campbell complained to the Press Council.

### Editor’s Response

The editor, Mark Longley, said the newspaper had been approached by the mother who was frustrated that she had not received any reparation. The reporter met the mother three times and by the third meeting, reparation money had started to arrive but at a minimum rate she was not happy with.

The newspaper established from the Ministry of Justice that no money had been paid before then and that a seizure order had been issued.

The editor said that in court cases such as this, the newspaper did not tend to approach defendants as the facts were correct. He acknowledged the reporter might have been a little too emotionally involved.

He had contacted Mr Campbell after he received his letter and told him he was happy to publish parts of the letter, but not the portion on reparation arrangements because he felt that section was a series of excuses and it didn’t tally with comments from the Ministry of Justice.

He was happy for Mr Campbell to address the other issues, either through another letter or he would edit the existing one. Mr Campbell had become abusive and told him to forget about it.

The editor said: “This was an unusual story for us because it was essentially reporting on a court case where we don’t speak to the defendant. However, it did go beyond that and I felt Mr Campbell was entitled to reply to a couple of points and so offered the chance for him to write another letter. He declined. I do not feel we should be giving him the chance to make excuses as to why the reparation was not paid.”

### Discussion

In their submissions to the Press Council, Mr Campbell and the editor disagree on what was said during their conversation about whether parts of the letter (but not all) could be published. Mr Campbell also said he did not become abusive.

The Press Council cannot make judgement on such matters and for this adjudication, it is not necessary.

The editor argues this was essentially a court story. In the Press Council’s view, it was a follow-up to a court story and therefore it was not bound by the usual rules of reporting only what was said and done in court.

The mother made some serious allegations against Mr Campbell and he deserved the right of reply at the time of publication to provide balance. While the reporter said she tried to contact Mr Campbell before publication, she failed to do so and the report was therefore unbalanced.

The newspaper also disputed Mr Campbell's version of making reparation payments but in fairness, he did deserve the right to make an explanation to an issue the newspaper had raised in a very public way. This did not happen.

The editor's admission that the reporter might have got too close to the story indicates more impartial judgement was required, and the story would have been the better for including both sides of the story together.

### Decision

The complaint is upheld on lack of balance. Mr Campbell was entitled to have the allegations against him put to him for comment.

Press Council members considering this complaint were Barry Paterson, Pip Bruce Ferguson, Kate Coughlan, Chris Darlow, Sandy Gill, Keith Lees, Clive Lind, John Roughan, Lynn Scott and Stephen Stewart.

## CASE NO: 2216 – JO LIN CHIA AGAINST HERALD ON SUNDAY

A complaint by Jo Lin Chia against *Herald on Sunday* has not been upheld.

### Background

Dr Chia, a veterinarian, was an observer of a fatal car accident in Auckland.

On August 28 the *Herald on Sunday* reported on the accident, citing comment from Dr Chia. Its reporter had visited the veterinary clinic to interview her, but never asked her name and referred to her as "Doctor" throughout the brief interview.

Dr Chia was upset that the paper printed her name without having asked if it had permission to do so, and further claimed that the quote attributed to her "was not how I speak and not what I said". She was very concerned because the statement could have "serious implications in relation to the guilt or innocence of the driver".

Complaining to the paper about both those issues, Dr Chia was informed by the editor that permission to print her name was not required. Further, that the reporter's notes contained exactly the quote printed, and the paper stood by it. However, the editor offered to have the part of the article referring to Dr Chia removed from the paper's website, and this occurred.

### The Complaint

Dissatisfied with the editor's response, Dr Chia laid a complaint with the Press Council on September 1. She stated that her name and occupation had been printed without her permission. She also complained that 'brief notes' were taken by the reporter during the interview, and the language style and terminology attributed to her in

the article were not hers. She disputed the accuracy of the quoted comments.

Dr Chia cited principles of Accuracy, fairness and balance; Privacy; and Confidentiality in her complaint.

### The Newspaper's Response

The editor advised staff at the clinic had given the reporter 'Jo Lin Chia's card', that the reporter had introduced herself as a *Herald on Sunday* reporter, and took notes during what she said was barely a couple of minutes' conversation. A request for a photograph was denied.

The quote situation, according to the editor, is a 'he said, she said' situation as he had perused the reporter's shorthand notebook and both the reporter and the editor stood by her accuracy.

The privacy part of the complaint was not accepted as the editor claimed this was a significant matter of public record or interest. A man had died in a road crash and this was the most significant breaking news of the day, with high public interest. The reporter and photographer had conducted themselves appropriately and without any subterfuge.

The editor, noting Dr Chia's distress, did offer to take the paragraph down from the website as a way of showing sympathy (but not admitting error).

### Further responses

Provided with the editor's response, Dr Chia stated that she does not have a personalised business card; that she would have refused to be named had she been asked, as the publication of her name and occupation added nothing to the story and "potentially made me a target for people upset at what was published"; and that the victim's family had visited the clinic wanting more information. She now felt 'less secure' and was still offended about the claimed misquoting.

The editor, responding to Dr Chia's last comments, said that the photographer was handed a piece of paper or a card with Dr Chia's name on it, which is why she didn't ask for the name. They stood 100% behind the quote. And despite Dr Chia's feelings on the issue *Herald on Sunday's* practice is to 'fess up to our errors' and put things right when it knows it has erred.

### Discussion

This has obviously been a very upsetting situation for Dr Chia, both having observed the accident in the first place, and then subsequently finding herself identified in an article when she was unaware that her identity would be made public.

It was doubly upsetting for her that she felt the statement attributed to her was not expressed in words that she would have used, and she also contested its accuracy.

The Council is not in a position to determine whether the quote attributed to Dr Chia was factually incorrect or whether it had been expressed in language that she would not have used. As the editor pointed out, it is a 'he said, she said' situation.

In situations such as this, with high public interest, it is normal practice for papers to name people who were

witnesses or involved in such situations, unless it has reason to believe harm may come to them as a consequence. The complainant was interviewed by a journalist and did not request anonymity.

The paper had taken what it considered to be appropriate action to address Dr Chia's distress by removing the contentious paragraph from its online site.

### Conclusion

The complaint is not upheld.

Press Council members considering this complaint were Barry Paterson, Pip Bruce Ferguson, Kate Coughlan, Chris Darlow, Sandy Gill, Keith Lees, Clive Lind, John Roughan, Lynn Scott and Stephen Stewart.

## CASE NO: 2217 – THOMAS EVERTH AGAINST PENINSULA PRESS

Thomas Everth complained about an editorial published in the *Peninsula Press* (a Coromandel community newspaper) on August 18, 2011. He cited those principles of the Press Council that refer to accuracy, fairness and balance and to maintaining a distinction between the reporting of facts and the passing of opinion.

His complaint is not upheld.

### Background

Headlined "Where are all the birds?" the piece took a highly critical stance against the use of 1080 poison in NZ forests.

In particular, it stressed the dangers of "sublethal contamination" where even if wildlife is not killed outright, the low-level contaminants may create longer term, harmful effects on animal and insect development and reproduction.

It dominated the front page and continued to feature strongly on page three.

The "editorial article" was published under a by line giving the editor's name.

A footnote stated that it had been written as a "front page editorial" in an attempt "to get to the known 'facts' about the controversial pesticide programme" and said that the newspaper welcomed further debate.

### The Complaint

Mr Everth initially complained to the editor (and author of the piece) by telephone and then via a series of e-mails. He accused the editor of "inciting fear and fanning the flames of an already heated 1080 debate".

In particular, he took issue with the notion that 1080 interfered with and disrupted the endocrine system of wildlife and instead stressed the need for predator control (via 1080) in NZ forests.

He sent the newspaper a scientific research paper which rebutted the allegations that 1080 was an endocrine disrupter.

He suggested that the newspaper owed readers an apology for the "lies and the exaggeration and the baseless scare-mongering".

When the editor offered Mr Everth the opportunity to write an article opposing and counter-balancing the arguments raised in the editorial, he declined.

As any apology and/or retraction was not forthcoming, he made a formal complaint to the Press Council.

Here, he stressed that the piece was irresponsible, especially given the possibility of violence by anti-1080 activists in the local community

The complainant reiterated his various claims that the newspaper had published "outright lies and made up conjecture" and that the editor's prevailing argument was a reversal of "the facts".

### The Newspaper's Response

The editor readily accepted that 1080 poisoning was a contentious issue but he had tried to foster healthy discussion, and when Mr Everth complained, he had offered him considerable space for a counter argument, a 1,000 word reply.

He suggested that the complainant's vigorous reaction to the editorial exemplified the intense feeling (on both sides) inherent in the 1080 debate.

He denied that the editorial was written to support the pig-hunting lobby which was opposed to the use of 1080 poison.

He added that his original offer to Mr Everth, of space in the newspaper to air his "facts", remained open.

### Discussion and Decision

In summary, the complainant argues that the editorial was not based on sound science and thus misled its readers, and further, that its publication was irresponsible, given the entrenched positions held in the local community.

The Press Council acknowledges the research forwarded by Mr Everth but the Council cannot adjudicate on the accuracy of competing claims surrounding the use of 1080 poison. Each "side" attacks the science and research cited by the opposition.

In 2009, the Council noted "Readers wanting to investigate the veracity of the claims and counter-claims about 1080 would be wise to read widely on the issue rather than rely on the content of one article". (See Case 2079)

As far as the second part of his argument is concerned, the Press Council takes a different view and stresses that newspapers are entitled to encourage debate on issues of interest and importance to their own community – indeed they have a responsibility to undertake that role.

The Council is of the view that more could have been done to stress that this front page piece was in fact an editorial and thus opinion right from the outset, though it noted it was termed "editorial" both within the text and at the end.

However, the editor's claim that he was trying to stimulate discussion about an important local issue was supported by a footnote which clearly signalled that further comment would be welcomed.

Another signpost that the debate would continue was given – readers were told that a Ministry of Agriculture response to the editorial would be published later. That response duly appeared, in the newspaper's Comment and Opinion page, the following week.

The complainant was given the chance to compose a response countering the editor’s opinions, and at some length, but he declined.

Finally, the Press Council has often upheld the right of an editor to adopt a strong stance and advocate a particular position; in short, to advance their own point of view.

Inevitably, some will disagree with that stance, even be offended by the opinions expressed or by how they were expressed, but that is an inherent aspect of freedom of speech.

Of course, there would be grounds for complaint if the editorial contained grievous errors of fact, or deliberately misled or misinformed readers. But, as noted above, the Council is simply unable to determine the “facts” in this ongoing debate, and it can see no evidence at all of any deliberate or wilful attempt to mislead or misinform.

The complaint is not upheld.

Press Council members considering this complaint were Barry Paterson, Pip Bruce Ferguson, Kate Coughlan, Chris Darlow, Sandy Gill, Keith Lees, Clive Lind, John Roughan, Lynn Scott and Stephen Stewart.

## **CASE NO: 2218 – JAMES GARDINER AGAINST MANAWATU STANDARD**

James Gardiner, Communications Director, Massey University, complained to the Press Council about a *Manawatu Standard* story published on Stuff on 12 October 2011 and in the *Standard* on the same date.

The complaint is not upheld.

### **Background**

On September 28, 2011 Parliament passed a law commonly referred to as the Voluntary Student Membership Act (VSM). (This act is properly called the Education (Freedom of Association) Amendment Act). The act makes membership of a student union, previously compulsory in most universities, voluntary from 2012.

Under the headline *Hefty rises in student service fee* the article started “A Massey University levy for student services has risen by up to 71 per cent, with the university unable to say what the money will be spent on”.

The article then went on to detail the amount of the increases, who will pay, and quoted Mr Gardiner as saying that “we cannot yet say which services will be funded and which will not”.

He was further quoted as making the following points: Universities are still in talks with the government about what services the levies will be able to fund; Massey has to reach agreement with the students’ association about which services should be provided.

The article then noted the passing of the new law and what this meant in terms of optional membership of a student association.

The final statement in the article was “Our levies ... reflect the actual cost of providing universal services available to all students, which the students themselves have identified as important,” Mr Gardiner said.

### **The Complaint**

In his complaint to the newspaper, Mr Gardiner said that the intro to the story was misleading.

He said it is already known what the existing levy money is spent on – student services. He stated that he had given examples of the specifics of these to the reporter. Further, it is known what the additional money will be spent on – student services currently provided by the student associations that will now have to be funded by the university.

The reason that Massey University could not be more specific was that the issue was still under discussion. They were negotiating with both government and students over what particular student services would still be provided.

In his complaint to the Press Council, Mr Gardiner said that he felt strongly that the intro was misleading, and that one had to read well down the article to receive clarification of what was claimed in the first sentence.

Although it was not part of his original complaint to the *Standard*, he also complained that the “teaser” on the front page of the *Standard* including this statement – “the university unable to say what the money will be spent on” – further compounded the impression that the university was raising the student levy while unable to say what the money would be spent on.

In his final submission to the Press Council, Mr Gardiner reiterated that a reasonable reader would be misled by the story. It gave the strong impression that Massey University was raising its student services levy substantially, and could not provide information about how the money would be spent.

### **The Newspaper’s Response**

In responding to the complaint, the editor claimed it was self-evident that a “levy for student services” is for student services. He stated it seems fairly clear that the second clause – “with the university unable to say what the money will be spent on” – refers to additional revenue that will be received by the increase.

The editor stated that if there was any confusion about why Massey is not able to say what will and will not be funded, this was made perfectly clear through Mr Gardiner’s comments further down the story.

In the editor’s view, the article – read in its entirety – is neither inaccurate nor misleading.

Finally, in response to the Press Council, the editor maintained his view that the intro was not misleading. Even had Mr Gardiner been correct in his claim, he could have sought “the natural remedy” of a brief clarification, though the complainant did seem to accept that clarification had eventually been provided by the rest of the story.

The editor also asked the Press Council to note that none of the on-line reader comments reacting to the story gave any indication that they interpreted the article as saying Massey University has done something wrong. If readers had interpreted the article as saying that Massey University had spent money obtained from students services levy on anything other than student services, the newspaper would have been inundated with letters and texts from readers critical of such impropriety.

## Discussion and Conclusion

The fundamental point of disagreement between Mr Gardiner and the *Manawatu Standard* relates to whether or not the introduction to the article is misleading; the newspaper says it is not, Mr Gardiner says it is.

The Press Council has had to consider whether in essence the intro is accurate, and what impression a reader would gain from reading the article taken as a whole.

The “teaser” on the front page of the *Standard* certainly signals an article about an increased levy, with the University unable to say how the money will be spent. These points are also referred to in the headline and the intro to the story. However, neither is actually inaccurate, and even if there were any fleeting misapprehension or momentary confusion, it was resolved later in the report.

The details, explanations, and processes to be undertaken by the university in negotiating with students and the government about what specific services it should fund, are outlined in the article.

Mr Gardiner might have wished the article to include examples of how the student services fee is currently spent and it is noted that he did supply the reporter with some specifics. But this article was essentially about the increase in the student levy, not the existing situation.

The Press Council does not uphold this complaint.

Press Council members considering this complaint were Pip Bruce Ferguson, Kate Coughlan, Chris Darlow, Sandy Gill, Keith Lees, John Roughan, Lynn Scott and Stephen Stewart.

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

## CASE NO: 2219 – CHRIS JELLIE AGAINST NELSON MAIL

### Introduction

Chris Jellie complained on three grounds regarding an article published by the *Nelson Mail*. The grounds were accuracy, fairness, balance; comment and fact; and corrections.

Mr Jellie’s complaint was not upheld.

### Background

The *Nelson Mail* published an article on July 5, 2011 under the heading “Used car price hike claims disputed”.

The article related to doubts held by Nelson car dealers that “used car prices would soar when vehicle emission standards are stepped up next year” and an online petition about delaying implementation of the standards.

This was in reaction to the Imported Motor Vehicle Industry Association’s prediction that used car prices may increase by as much as \$5000 when the new emission standards are implemented.

The article contained comments from motor vehicle dealers in the Nelson area and also stated that an online petition had been started by the Imported Motor Vehicle Industry Association (IMVA) which was also lobbying the government to delay implementation of the new emission standards due to a shortage of suitable used vehicle stock in Japan.

David Vinsen, Chief Executive of IMVA, was quoted as the spokesperson for the IMVA.

### Complaint

Mr Jellie advised that the online petition was in fact started by him not the IMVA.

Mr Jellie contacted the *Nelson Mail* and requested that they tell him the source of their information and was told that the source was Mr Vinsen. He said that when he informed the reporter that he was recording their conversation, she requested that he send his questions to her via e-mail and he did this. Despite his “many e-mails” to the reporter, the first being July 25, 2011, she had not contacted him or provided an answer to his question “How did she get the information?”

Mr Jellie then contacted the editor and “was promised a quick response” but had not yet (September 1) received one. He went on to state that there had also not been any retraction of the story.

Mr Jellie was upset that someone could claim his [Mr Jellie’s] work as their own and that a media source would so recklessly print something without clarifying the facts. He advised that when the newspaper finally did get back to him, he was told that Mr Vinsen had confirmed that Mr Jellie had started the online petition.

### Response from Nelson Mail

The editor acknowledged the information in the article regarding the online petition was not accurate. He stated that Mr Jellie was offered recourse by way of a published correction but never replied to the offer so the editor ran the correction anyway on September 6, 2011.

He went on to say that Mr Jellie was not willing to see the correction until the matter of who supplied the reporter with the incorrect information was resolved.

The editor explained that once Mr Jellie’s complaint was received by the newspaper, the reporter informed Mr Jellie that she was happy to clarify the matter once she had spoken to Mr Vinsen.

Mr Vinsen informed the reporter that he had not given her the information so she then thought that Mr Drummond, one of the car salesyard owners, had given her the information but she was not sure. Once she had spoken to Mr Vinsen, the reporter acknowledged the error and offered to provide a correction in a further article.

When the reporter informed Mr Jellie that Mr Vinsen had not given her the information, Mr Jellie asked whom she had received it from, but she was unable to remember her exact source. The editor stated that the reporter’s reply to Mr Jellie was “self explanatory in that she was not sure at the time who had told her about the petition”. The editor believes that this was a genuine mistake on the part of the reporter, one which she was willing to correct.

The editor also stated that he did attempt to contact Mr Jellie earlier than alleged and they ended up playing telephone tag.

### Discussion

As soon as the newspaper was informed and the reporter could verify facts with Mr Vinsen, the *Nelson Mail* acknowledged that the information regarding the instigator

of the petition was not accurate and offered Mr Jellie both a published correction and an opportunity to provide comment as to why he thought the IMVA did not support his stance.

The mistake was comparatively minor and not the main thrust of the article. Mr Jellie chose not to take up the newspaper's offer and while there was a delay in publishing a correction that had partly been caused by the complainant, who would not advance any discussion about a clarifying article or correction until the reporter had told him who had given her the incorrect information.

The newspaper did attempt to discuss the correction with Mr Jellie, and published a correction and apology at a later date than desirable. But a correction was made.

Unfortunately, Mr Jellie was not happy with the response from the *Nelson Mail* as they could not tell him the source of their information regarding the online petition. The *Mail* did provide information about the source, which turned out to be incorrect. Newspapers are not obliged to disclose sources, however, and the Press Council does not believe the newspaper was obliged to do so in this case.

The complaint is not upheld.

Press Council members considering this complaint were Barry Paterson, Pip Bruce Ferguson, Kate Coughlan, Chris Darlow, Sandy Gill, Keith Lees, Clive Lind, John Roughan, Lynn Scott and Stephen Stewart.

## **CASE NO: 2220 – TONY MARTIN AGAINST THE SOUTHLAND TIMES**

Tony Martin has complained that an article appearing in *The Southland Times* on July 20, 2011 breached Council principles relating to accuracy, fairness and balance; and headlines. The complaint is upheld on the ground that the headline did not accurately and fairly convey the substance of the article.

### **The Article**

The article complained of was a full front page article on July 20, 2011 headed: SIS ON TRAIL OF SPIES

The opening paragraph said that the police national computer had been under scrutiny after the Christchurch earthquake because of fears Israeli agents loaded software into the system that would allow back-door access to highly sensitive intelligent files. It said that the SIS had ordered the checks as part of an urgent investigation of what one SIS officer described as suspicious activities of several groups of Israelis during and immediately after the Christchurch earthquake in February.

The article then referred to several matters which the newspaper said had led to the suspicions.

### **The Complaint**

Mr Martin complained that the article was grossly irresponsible, full of malicious innuendoes and riddled with inaccuracy. He said it unfairly cast a cloud of mistrust and suspicion over a group of innocent Israeli backpackers as well as Israel's internationally renowned forensic analysis team.

The editor, Fred Tulett, "connected a huge number of dots that have proven not to be connected at all".

The statements which are complained of and the reasons for the complaints are:

a) *Prime Minister John Key fielded the first of four calls that day from Israeli Prime Minister Benjamin Netanyahu*

Reason for Inaccuracy: The Prime Minister only took one call. Netanyahu's staff made four attempts to reach the Prime Minister but only one of those calls got through.

b) *Israeli's Ambassador in the South Pacific, Shemi Tzur, who is based in Australia, booked flights to Christchurch, where he visited the morgue.*

Reason for Inaccuracy: The Israeli Ambassador is based in Wellington.

c) *In the hours after the 6.3 quake struck Israeli's civil defence chief left Israel for Christchurch.*

Reason for Inaccuracy: The civil defence chief did visit Christchurch, but 9 days later, and not from Israel but from Australia where he was visiting.

d) *They (the other three tourists) made their way to Latimer Square, where Israeli officials had set up an emergency meeting point. Within 12 hours they had left New Zealand.*

Reason for Inaccuracy: The Ambassador urged all Israelis in the city to leave, to get a car and drive as far away from there as possible. The three tourists wanted to get home to be with their family. They did not leave New Zealand before 26 hours after the quake, a similar time experienced by many other foreign tourists.

e) *On Sunday, February 26 Mizrahi's body was recovered from the van and taken to the morgue where, during routine identity checks, he was found to be carrying at least five passports.*

Reason for Inaccuracy: The deceased only ever had two passports on him (one Hungarian and one Israeli) which is quite common amongst Jewish families who immigrated to Israel from Europe.

f) *It is understood the (Search and Rescue Squad dispatched from Israeli) were confronted by armed New Zealand Police Officers and removed from the area. The confrontation is understood to have led to intense diplomatic exchanges between New Zealand and Israel.*

Reason for Inaccuracy: No official Government-to-Government Search and Rescue offer came from Israel at all and therefore, no such offer was ever declined. No police confrontation occurred, the SAS – as was also suggested – was never dispatched there to deal with an unaccredited Israeli rescue squad, and no serious diplomatic exchanges resulted.

The complaint against the headline was, in Mr Martin's complaint taken from *Stuff* online, misconstrued. The headline he referred to was not the headline on *The Southland Times* article but a headline which appeared on a very similar article in the *Taranaki Daily News Online*. That headline is on the basis of the information before the Council inaccurate. Although it cannot be the subject of Mr Martin's complaint, a copy of this decision will be forwarded to the *Taranaki Daily News* with a suggestion that it amend its headline on the online version.



Mr Martin's point is that the legitimacy of the article rests on whether or not the backpackers in question were spies, a very serious accusation that rightfully demands some very tangible evidence.

The complaint that the article was not fair and balanced is that beginning with the headline "SIS on Trail of Spies" the article gave a slanted description of events as they supposedly unfolded after the earthquake. The opening paragraph raised fears that the Police National Database had been compromised by Israeli agents. A report was painted that left the unsuspecting reader with little doubt that it must be true. The bulk of the report, together with detailed graphics, images, map and mug shots all screamed "guilty". It failed to present an equally weighted counter-argument to the story. The complaint said the only balance was a short paragraph which stated that the Israeli ambassador was approached for comment and his response was "it was 'science fiction' that any Mossad agents had been involved".

### Newspaper's Response

The newspaper's response to the matters referred to above was:

- a) Mr Key told a press conference in the Beehive after the earthquake that Benjamin Netanyahu had called him four times. That comment was reported both in print and on TV news clips. After the article of 20 July 2011, Mr Key clarified and expanded on his earlier comment saying only one of the four calls got through to him. The statement in the article is therefore an accurate reflection on Mr Key's comments at the time they were published.
- b) Mr Tulett accepts that the Ambassador is not based in Australia and that there was an error in the article.
- c) Mr Tulett's position is that his information is that the Israel Civil Defence Chief did leave as he stated and later flew into Christchurch.
- d) The three did get on a flight to Wellington within hours of the earthquake and left so quickly that the Christchurch Coroner initially listed them amongst the missing. Exit from the city was one of the triggers in the investigation into what was considered the suspicious activities of the various groups of Israelis in Christchurch.
- e) The newspaper's position is that it has information that Mizrahi was found to have at least five passports in his possession. The editor says that he was told by the ambassador that when he was handed a parcel at the morgue containing Mizrahi's possessions, it included multiple passports. He acknowledges that John Key initially said that he had been found with two passports then later changed that to one with another handed in by someone else.
- f) The editor is confident that the information published was accurate. There was a confrontation and Mr Key has confirmed that. When asked at a press conference about an Israeli search and rescue team being escorted from the Red Zone by armed guards after being found there without permission he confirmed he was aware of an incident but "can't confirm all of the details in the way you have

presented them". The article did not say that the SAS was involved.

In respect to the headline the editor's position is that he considers it accurately reflects the reporting.

In summary the newspaper's position is that it reported that various New Zealand Government agencies became deeply suspicious of what they considered to be unusual activities of various groups of Israelis in Christchurch in the aftermath of the earthquake and launched a series of investigations. The Police, the SIS and the Prime Minister have all publicly confirmed that suspicions were aroused and investigations were carried out.

The newspaper has subsequently reported that nothing was found to implicate any of the Israelis in spying. It also reported that the files on the Israelis involved had not been closed.

### Discussion

The Council is concerned that Mr Martin's August 9 letter of complaint to the editor went unanswered.

The newspaper published a story based on information supplied to it by a source which Mr Tulett obviously accepted as being reliable. It was a story of considerable public interest. This Council cannot verify whether several of the statements made were inaccurate as it is not possible to confirm the newspaper's statements or the contrary statements made by Mr Martin. *The Southland Times* was entitled to report the suspicions that existed.

The statement that Benjamin Netanyahu made four telephone calls to Mr Key is understandable in view of Mr Key's own statement.

The number of passports on the deceased is still contentious and this is another matter which cannot be resolved.

The editor is confident his information on the Israeli search and rescue squad is accurate and this is another factual difference which this Council has no means of resolving.

The newspaper erred in reporting that the Israeli Ambassador resided in Canberra but the Council does not see this as a sufficient error to uphold the complaint on the grounds of inaccuracy nor does it see it as sufficiently material the statement that three Israelis left New Zealand in 12 hours when it may have been more like 26 hours.

The Council does however consider that there has been a breach of its principle that headlines should accurately and fairly convey the substance of the report they are designed to cover. The headline in this case clearly stated as a fact that there were "spies". While the article does not make that categorical claim and the standfirst raised the question as to "what were they doing?", a reader would draw an inference from the headline that the newspaper and the authorities believed that the Israelis were spies.

The article itself does not make a categorical claim that any of the Israelis were spies but instead refers to "fears" of activities of Israeli agents and that an urgent investigation into "suspicious activities of several groups of Israelis" was being undertaken. That there was an investigation is established and a factor which led to this investigation was, according to the editor's source, the activities of various groups of Israelis. However, suspicions are not evidence

of facts. It was a breach of the Press Council's principle to state in a headline that there were spies which in the context of the article must have been Israeli spies, when they were only suspicions that led to an investigation. Suspicions were wrongly reported as fact in the headline.

Thus while the complaint of inaccuracy is not upheld, because there is no way of establishing whether several of the statements were in fact inaccurate, and those that were inaccurate were not materially so, the complaint is partly upheld on the grounds that the headline did not accurately and fairly convey the substance of the article. The headline slanted the reader to the view that there was substance in the suspicions and that there were Israeli spies in Christchurch.

The complaint on balance is not upheld. The allegations were put to the Israeli Ambassador who denied them. His denial was included in the article. Additionally a pointer *Israeli envoy responds*, in the side-bar to the article, directed readers to a full response to the allegations. Together with the short categorical denial in the article this satisfied the balance requirements.

Press Council members considering this complaint were Barry Paterson, Pip Bruce Ferguson, Kate Coughlan, Chris Darlow, Sandy Gill, Keith Lees, John Roughan, Lynn Scott and Stephen Stewart.

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

## **CASE NO: 2221 – BRIAN STEEL AGAINST THE NEW ZEALAND HERALD**

Brian Steel complained that the *New Zealand Herald* failed to comply with Principle 5 (Headlines and Captions) of the Press Council Statement of Principles in reporting on the finding of the Employment Relations Authority on an unjustifiable dismissal case, brought by a former employee of the Lakes District Health Board. The story was accompanied by the headline "ERA upholds dismissal for taking DVD".

The Press Council did not uphold the complaint.

### **Background**

On August 10, 2011 the *Herald* ran a story about a Lakes District Health Board employee who lost his job after taking a DVD from his employer without approval. The story set out the background to the dismissal with emphasis on the low value of the item in question. While there was no doubt the DVD was of little value the Health Board treated the matter as being "more about principle than the cost". The story referred to the Employment Relation Authority finding that the employee's dismissal was justified in the circumstances. The story concluded with reference to the fact that in the previous seven months the employee had been given a formal warning [about another matter] and "had been spoken to on several occasions about other incidents".

### **The Complaint**

Brian Steel said the headline to the *Herald* article was misleading. Mr Steel said the headline misconstrued the

Authority's findings because the employee "was not sacked because of the theft of the DVD, he was sacked because of a lack of trust by his employer". Mr Steel said he would not have complained if the headline "had been along the lines of "Hospital Board employee sacked because of lack of trust"". Mr Steel said the Authority's "judgment is quite specific that [the employee] was not sacked just because of the theft of a DVD".

Mr Steel had no issue with the story's content.

### **The Response**

The *New Zealand Herald* responded by saying the employee was sacked for taking the DVD. The other matters (the previous warning and other adverse incidents) were taken into account in deciding the "punishment" but they were not the reason for the dismissal.

The *New Zealand Herald* maintained the headline was fair, accurate and balanced.

### **The Decision**

The Council did not agree with Brian Steel.

The Council read the Employment Relation Authority's decision underpinning the *Herald's* story. While the facts were unusual (in the sense it is uncommon for an employee to be dismissed for taking an item of such low value) it was clear from the decision that if the employee had not taken the disk he would not have lost his job. Putting it another way the taking of the DVD was the catalyst for the dismissal. The Authority was at pains to point out that summary dismissal was justified despite the low value of the stolen item. This was the real point of the story.

While Brian Steel was correct when he said the Authority found the Health Board was entitled to dismiss the employee once it could no longer trust him (the employee's actions in taking the DVD and his responses to the Health Board's concerns broke that trust) this did not make the headline inaccurate, misleading or unfair.

The complaint was not upheld.

Press Council members considering this complaint were Barry Paterson, Pip Bruce Ferguson, Kate Coughlan, Chris Darlow, Sandy Gill, Keith Lees, Clive Lind, Lynn Scott and Stephen Stewart.

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

## **CASE NO: 2222 – MICHAEL AND CAROLYN WRIGHT AGAINST WAIMEA WEEKLY**

Michael and Carolyn Wright, owners of a Richmond retirement village, complained that a series of articles in the *Waimea Weekly* about a lease increase were inaccurate, displayed a lack of balance, breached confidentiality, failed to distinguish comment from fact and did not disclose a conflict of interest.

The complaint was upheld on lack of balance.

The complainants said the editor's parents lived in the retirement village and this was not disclosed to readers. The editor, Steve Page, did not contest this information or

answer any of the issues raised. He told the Press Council he would not participate in consideration of a complaint he thought “frivolous”.

### The Articles

The *Waimea Weekly* reported that residents of the complainants’ property, Waimea Village, had challenged a valuation that was to be the basis of a 120 percent increase in lease payments. It said the Wrights were “seeking substantial increases....to cover management costs, manager’s salary, managers’ accommodation and vehicle leases - all of these costs going into their own pockets.”

A subsequent article reported a lease increase recommended by accountants and said some residents feared being forced from their homes because they could not afford it. That article stated, “Both Michael Wright and (accountant) John Murray refused to comment when contacted by *Waimea Weekly*.”

Later the paper reported a visit by Labour Party deputy leader Annette King to hear the resident’s concerns and plans by a Labour list MP, Maryan Street, to draft a bill designed to protect residents in unregistered retirement villages such as Waimea Village.

The final article subject to the complaint, dated August 24, reported that unnamed residents were moving out of the village and one accused its owners of “bullyism”.

### The Complaint

Michael and Carolyn Wright complained that the articles contained inaccuracies, breached confidentiality, were unbalanced, failed to distinguish comment from fact and failed to disclose a conflict of interest.

They made two charges of inaccuracy. They said a statement that, “In May the arbitrator valued the property at \$1.7 million” was factually incorrect, and that far from “fleeing the village”, as the final article claimed, most houses were vacated because occupiers had either died or gone into full time care or were releasing their equity in rental properties.

On the issue of balance, they said, “At no time was there an attempt to contact us to obtain a comment or check out the other side of the story.”

They believed the series of articles became less about the village and more a personal attack on them.

### The Response

Mr Page did not reply to the Wright’s complaint to him. When he was advised of their complaint to the Press Council he told the Council: “we will not be participating in what we see as frivolous complaints by individuals such as these.”

### Decision

While noting that the editor has previously participated in the complaints process, the Press Council records its strong displeasure at the non-response of the editor in this case.

The Wrights complained on five grounds: inaccuracy, lack of balance, breach of confidentiality, failure to distinguish comment from fact and a conflict of interest.

The complaint of inaccuracy was not upheld. When errors are alleged the complainant can be expected to specify what is wrong and supply correcting information.

This complaint lacked the required precision and offered no new information or evidence that would allow the Council to make a finding of inaccuracy.

On the question of balance, the complaint that the newspaper had made no attempt to contact the village owners was in conflict with a statement in one of the articles that Michael Wright and his accountant John Murray had refused to comment when contacted by *Waimea Weekly*. However, it is clear that in the majority of the articles there was no comment from the owners, and no record that they had been contacted. The tone of the articles was unabashedly on the side of the residents. The Council felt the newspaper should have made greater efforts to contact the complainants and include their response to the severe criticisms made of them by unnamed residents.

The Council found no breach of confidence on the part of the newspaper and no failure to distinguish comment from fact. The articles were presented as fact. Quotations were clearly marked, though residents’ comments were anonymous.

The complainants advise that the editor’s parents are resident in the village. Given the strong advocacy of the articles and the lack of any balancing voice, readers would have been better-served, and better able to assess the articles, by having this fact drawn to their attention.

The complaint is upheld on grounds of lack of balance.

Press Council members considering this complaint were Barry Paterson, Pip Bruce Ferguson, Kate Coughlan, Chris Darlow, Sandy Gill, Keith Lees, Clive Lind, John Roughan, Lynn Scott and Stephen Stewart.

## CASE NO: 2223 – NEIL SINCLAIR AGAINST SOUTH WAIKATO NEWS

Neil Sinclair, mayor of the South Waikato District, complained that a report of a District Council decision on Maori representation carried an inaccurate headline, contained editorial comment and accused the council of denying the public a vote on the issue. The complaint is not upheld.

### Background

On August 10 the *South Waikato News* published comment from the mayor, various council members and others on the council’s decision not to establish dedicated Maori seats, and not to put the question to a poll.

The story was headed, “Council vetoes bid for Maori seat” and said, “the public will not be allowed a say by the council.”

The next day the council issued a press statement advising that if 5 percent of the district’s registered voters made a formal submission in favour of Maori seats the council would be obliged to conduct a poll.

It explained how many signatures would be required, when the request must be received to be in time for the next election, and the cost of a poll.

The newspaper, a weekly, published this information in its next issue on August 17. The material appeared in

a paragraph well down a story that raised questions about a meeting the mayor had told the council was held with representatives of the local iwi, Raukawa, in 2005.

At that meeting, according to the mayor, the iwi representatives had indicated they did not want a seat. They preferred to have an appointee on committees when something of significance to Maori was considered, and have a Maori advisory committee set up.

The newspaper's August 17 story quoted a Raukawa kaumatua saying he had made inquiries of leading kaumatua around the area and none of them could recall such a meeting.

A fortnight later, on August 31, the newspaper reported that the mayor's credibility had been questioned at a council meeting where the 2005 hui remained a mystery. The paper quoted the council's sole Maori member expressing concern that the decision on dedicated seats was based on information the mayor had supplied.

### The Complaint

Mr Sinclair complained to the Press Council, supplying copies of his diary from 2005 that recorded his attendance at a hui on Maori representation and offering testimonials from two Maori leaders who attended it.

He was advised that complaints must first be taken to the editor, which he did.

### The Editor's Response

The editor, Florence Kerr, stood by the headline on the August 10 story and held the story was not wrong, merely "incomplete" when it neglected to mention the right to petition for a poll. This, she said, was included in subsequent stories.

She believed the paper was justified in reporting confusion over the 2005 meeting but said the material supplied to the Press Council would have "influenced the subsequent stories"

When the material was made public the paper published the fact in a story headed, "Mayor tables proof of meeting".

Mr Sinclair was not satisfied and complained again to the Press Council.

### The Decision

The Press Council does not believe the headline was misleading. While the words 'veto' and 'bid' were not well chosen they would not have misled readers.

Nor was the story in error when it said, "the public will not be allowed a say by the council." The proposition before the District Council was to invite the public to have a say through a poll; a standing right of citizens to petition for a poll is not the same thing.

A third point of complaint, confusion of fact and comment, appears to be based on a perception of the reporter's sympathy for separate Maori representation. Nevertheless, the reports are based on factual quotations and do not include editorial comment.

It may be the complaint is prompted less by these specific grounds than by the complainant's understandable annoyance that his credibility was called into question on the matter of the 2005 hui. He was able to provide the Press Council with documentary support; he could have

furnished the editor with the same information in a timely manner.

The complaint is not upheld.

Press Council members considering this complaint were Barry Paterson, Pip Bruce Ferguson, Kate Coughlan, Chris Darlow, Sandy Gill, Keith Lees, John Roughan, Lynn Scott and Stephen Stewart.

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

## CASE NO: 2224 – ANDREA BUBENDORFER AGAINST STUFF

Andrea Bubendorfer complained to the New Zealand Press Council about comments made on *Stuff's* parenting blog about disciplining children and also about a parenting blog author writing about allowing her young children to sleep unsupervised in amber necklaces. The Stuff.co.nz website is a news and information website operated by Fairfax Media.

The complaints are not upheld.

### Background

*Stuff* hosts a blog that highlights the joys, trials and tribulations of raising young children, and a lead article followed by comments from readers which was updated on 15 September 2011 attracted a lot of comments from readers, mostly of those raising young children.

One reader made the following comment about disciplining her children: "2 year-olds certainly do have impulse control – not that they want you to know it! My kid is no angel – but he can sit thru an hour and half church service being quiet, and sitting pretty still, looking a book. He can do this because we've trained him to do so – having short practice sessions at home. Training doesn't require the trainee be capable of reason – a dog can be trained not to touch food sitting in front of him – shouldn't we expect at least the same from an intelligent child? A baby learns not to stick their finger in their eyes through the negative associations that accompany it – requiring no understanding or reasoning! My kid knows that every time he disobeys us, he will be disciplined (as Christians, we do it God's way, a light smack which is never given in anger, and he says sorry ...be good boy now...big cuddle, and he goes away HAPPY, and peace reigns once again.) I'm telling ya, God's way work, for everyone involved!!"

These comments, and others following, triggered considerable discussion from contributors, including the complainant, about the illegality of smacking children, and alternative ways to discipline them.

Another article in September by another columnist (Melissa McDonnell) discussed the problems associated with teething including, amongst other things, the use of amber teething necklaces to help soothe restless little children to sleep. She questioned readers as to what they saw as the pros of cons of pharmaceutical and homeopathic remedies for teething problems.

A flurry of replies ensued, including one from a father who reported that the amber teething necklace, worn in bed, certainly had soothed his troubled daughter and enabled her to sleep.

## The Complaint

The complainant stated that she is upset that *Stuff* has published a comment on its parenting blog promoting smacking young children to discipline them. Smacking children is not a matter of personal opinion in this country, she said, it is in fact illegal.

She stated that she is also upset that *Stuff* published a comment by the parenting blog author suggesting that her baby and toddler are left to sleep unsupervised in amber necklaces, and also further comments from another parent that his children wear their amber necklaces to bed.

In support of her complaint about the danger of babies wearing amber necklaces, she cited the New Zealand Institute of Consumer Affairs position on amber necklaces. This states very clearly that children wearing these necklaces should be supervised as there is a risk of strangulation and choking; the necklaces should be removed even if the baby is unattended for a short time.

Ms Bubendorfer stated she considered it negligent for a blog writer to publish material that is acknowledged to be a safety risk for babies and toddlers, and not to provide guidelines for safe and appropriate use.

## Stuff's response

The perceived pros and cons of smacking children have been a continuing subject of debate in *Stuff's* threads for several years. The pro-smacking comments made by one reader were clearly her personal opinion and other responses from other readers were critical of her comments.

The topic of amber teething necklaces has been raised before on the Parenting blog, and argued over. People are entitled to differ, and some readers did.

*Stuff* noted that blogs are "personal, conditional, arguable, freewheeling and often knockabout forums." They are not "intended to be, and should not be read as, a piece of definitive scholarship or traditional journalism." Most readers understood that a reader's comment is a statement of opinion.

"Many of our bloggers and commenters make points that put them at odds with tradition, expert opinion or majority opinion or even question the law. *Stuff* allows them fair leeway to do so, as that is within the spirit of blogs. We are alert to boundaries of taste and legality and take our responsibilities seriously, but we also believe in the vibrancy and resilience of blog forums and the capacity of readers to handle conflicting points of view."

Further "the section of our Terms & Conditions quoted by Andrea Bubendorfer, is clear that we require commenters not to post *material that is illegal*. It does not mean that we are obliged to reject any comment indicating that a reader has arguably broken the law. To do so would disqualify much reasonable debate on the marijuana laws, alcohol use, speed limits, online downloading, benefit abuse and a range of other subjects. Comments on such subjects are moderated with care and an eye on context, but certainly not with a blanket view to deletion."

*Stuff* outlined previous dealings with Ms Bubendorfer and said the rejection of her comments was reasonable in the circumstance and in accordance with the terms and conditions of the website.

## Discussion and Decision

Comments made by a blogger and her readers on a website such as *Stuff* are not the views of the website or its editors. They are analogous to letters to editors in a newspaper.

The Press Council in the past has ruled that letters to the editor, and comments on websites, can at times be robust, and contentious. The opportunity for readers to express alternative views should be available, and it is clear that the comments posted on the *Stuff* parenting website present a range of views on the best way to parent children.

These views on parenting will not please everyone. The Press Council does not believe that the smacking advocate was given undue prominence. It was interesting to note that readers recognised that smacking a child may be illegal under the law; it was also interesting to note that the vast majority of readers were using alternatives to physical punishment when raising their children.

The issue of allowing babies to wear amber teething necklaces, either unsupervised or when sleeping, again provoked considerable reader response, both pros and cons. This matter had also been raised on previous blogs.

The Press Council does not uphold either complaint. The Council does not believe that the discussion around these issues was irresponsible.

Press Council members considering this complaint were Barry Paterson, Pip Bruce Ferguson, Kate Coughlan, Chris Darlow, Sandy Gill, Keith Lees, Clive Lind, John Roughan, Lynn Scott and Stephen Stewart.

## CASE NO: 2225 – PAUL CARRUTHERS AGAINST THE PRESS

Paul Carruthers complained about a report which initially appeared on the *Stuff* website on September 14, 2011 and was then published in *The Press* newspaper the following day. He cited various principles in his complaint, including accuracy, fairness and balance; privacy; comment and fact; and confidentiality. His complaint is not upheld.

## Background

The report was the result of an interview with a survivor of a head-on crash which had killed the well-known South Canterbury financier and businessman, Allan Hubbard.

The driver of the utility vehicle, which had collided with the car being driven by Mr Hubbard's wife, Jean Hubbard, could recall little of the accident itself, but outlined some subsequent details.

For example, he and the Hubbards had ended up in the same room at Oamaru Hospital, Mrs Hubbard "had apologised to him and wished him well", a witness who had been travelling behind the Hubbards had told him he "had nothing to worry about", the following morning he had gone back to the site of the accident which had occurred in the middle of a straight stretch of road, and he had written to the Hubbard family.

The report on *The Press* section of the *Stuff* website was headlined "Driver tells of Hubbard smash" and noted that Allan Hubbard's private funeral was to take place that day.

The report which appeared in *The Press* newspaper the following day was substantially the same report, now headlined "Crash driver talked to Hubbards at hospital". The report appeared above an account of Mr Hubbard's funeral service headlined "Friends, family pay last respects".

## The Complaint

Mr Carruthers initially complained to the editor of *The Press*. He claimed that the article was badly timed as it had appeared on the very day of Mr Hubbard's funeral and would have been distressing for the Hubbard family.

He also suggested that the words of an unnamed witness had been used to imply that Jean Hubbard had been at fault.

In his view the timing of the article was "disgusting" and an example of "gutter journalism".

In a later submission to the Press Council, he reiterated that the timing of a report implying that Jean Hubbard had caused the accident showed a "lack of human compassion" when it was published on the day of the funeral.

He argued that because the accident was still being investigated by the police, any comment about possible causes should have been completely avoided.

## The Newspaper's Response

The editor rejected the complainant's argument that several of the Press Council's general principles had been breached in the report.

For example, as far as Principle 2 (privacy) was concerned, there had been no intrusion on Mrs Hubbard's privacy and no private or personal information had been revealed. Further, the matter was of considerable public interest and a story was therefore justified.

Mr Carruthers had cited Principle 4 (Comment and Fact) but there had been no comment or opinion expressed by the reporter or by the newspaper within the article. The article was largely factual and any comments were the views of the survivor as he understood the events in question.

Principle 7 (confidentiality) had been cited as well but no confidential sources had been used in compiling the story.

The editor did accept that the story did not have any explanation from Mrs Hubbard to balance the account of the driver of the utility. However, Mrs Hubbard had not herself complained about the report.

Finally, the editor argued that the story was not focussed on attributing blame for the accident. The report had made it very clear that the police investigation was far from complete.

## Discussion and Decision

The Press Council accepts that there is an implication in the report that Mrs Hubbard might have been to blame.

However, would it have been fair in this particular instance and at this particular time to have approached Mrs Hubbard for her account of the accident? The Council thinks not – that would indeed have been an intrusion on her grief and privacy.

Further, the report does make it clear there is still much to be discovered about the accident. For example, the interviewed survivor could remember nothing of the crash itself, and it was "stressful" not knowing what had happened. Also, that "there were still so many questions hanging over the accident" and that both a police inquiry and a coroner's inquest would be many weeks away, emphasise that the real cause remained undetermined.

Members of the Press Council were sympathetic to the claim that the timing of the report was insensitive to the

feelings of the Hubbard family (though it is worth noting that no one from the family has complained).

Yet there was considerable public interest in this matter. The affairs of South Canterbury Finance, largely created by Allan Hubbard, were under investigation by the Serious Fraud Office and it had required a massive (and controversial) government intervention to ensure investors did not sustain loss of their funds. In that environment, the sudden death of its founder would have led to much speculation and possibly ill-informed debate.

While the Press Council believes the publication on the day of Mr Hubbard's funeral may be seen as insensitive, it is of the view that the public interest in the case allowed *The Press* to publish.

The various complaints are not upheld.

Press Council members considering this complaint were Barry Paterson, Pip Bruce Ferguson, Kate Coughlan, Chris Darlow, Sandy Gill, Keith Lees, John Roughan, Lynn Scott and Stephen Stewart.

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

## CASE NO: 2226 – ANNE-MAREE MCDUGALL AGAINST THE NEW ZEALAND HERALD

Anne-Maree McDougall lodged a complaint regarding an article published by the *New Zealand Herald* citing Principle 1, accuracy, fairness and balance.

Ms McDougall's complaint is not upheld.

## Background

The *New Zealand Herald* published an article on October 6, 2011 under the heading "School helps pay head's Koru membership".

The article was one in a number of articles relating to Mercury Bay Area School and it commenced with reference to a previous incident at the school that had received wide publicity.

The article predominantly covered issues relating to expenses claimed by the principal and Board of Trustee's chairperson. The expenses relating to the principal were a \$180.50 contribution to a Koru Club membership and reimbursement of fuel to attend conferences and to look at other school's gyms.

Staff were said to be frustrated with expenses like this being claimed, while their own budgets had been slashed, though the board was noted as disputing the said budget cuts.

The article noted the school had experienced problems that resulted in it being placed under limited statutory management for a short period of time.

A Ministry of Education group manager was quoted saying that a principal's expenses were a matter between the principal and the board of trustees. The principal would need to take into account "whether the spending benefited student outcomes, represented best value for money, could be justified to a taxpayer or parent, and the public reaction if it appeared in the media."

Towards the end of the article it was noted that “The Whitianga school was cleared of a number of complaints this year, by a statutory manager who left last month, but Ms Moroney [Labour MP] said she was continuing to receive complaints from parents concerned about the school management.”

### Complaint

Ms McDougall, who is both a staff member and a parent of children at the school, believes that the article breaches the principles of fairness and balance by the highlighting of the previous incident, and believes that this is “highly inflammatory”. She believes that by using this information in the article, it was a deliberate attempt to influence the reader.

She also believes that in talking about disgruntled staff, the article does not reflect what she knows is happening at the school. She went on to state that she believes that the newspaper has shown a definite bias against the school.

Ms McDougall believes that the article appears to speak for all staff at the school, and that this is not correct.

### Response from New Zealand Herald

The deputy editor of the *New Zealand Herald* does not accept that the article breached any of the principles cited by Ms McDougall.

He noted that this was one of a number of articles relating to what was happening at the school and that the newspaper did make every attempt to verify the information including requesting an interview with the principal which was declined. The school did send responses by e-mail and these were incorporated into the story.

He said that while it was clear that the principal and the school have their supporters, it was equally clear that there were members of the school community that held different views and these views had been aired formally and discussed informally.

The newspaper offered to print a letter to the editor from Ms McDougall and the offer of an interview with the principal was an open one.

### Discussion

The article is one that covers various issues regarding the school and is one in an ongoing number of articles. The information in the article contains information that is factual and not denied by Ms McDougall.

Ms McDougall takes offence at the repeated use of the previous incident at the school and also that the article purports to speak for all staff at the school.

The headline clearly states the intent of the article and the information relating to the previous incident is in the context of issues relating to parental dissatisfaction over what is occurring at the school, which is also shown in the comments from the Labour MP who states there are still ongoing parental complaints.

The Council would like to note that the use of the previous incident as a lead in to the article seems to be inflammatory with little relevance to the content of the article and could be said to have been given undue emphasis at the beginning of an article that related to expense claims.

Repeated publication of a past incident can be counter-productive to a school community that is seeking to move on from past problems.

It is also important to note that the expense claims noted in the article were legitimate ones and payment of them was properly authorized by the Board of Trustees.

The newspaper is clear in stating “The *Herald* understands that staff at the school are frustrated with expenses like this being claimed while complaining that their own budgets have been slashed”. The article does not state this as fact, but rather as a belief based on information received.

Some Council members agreed with Ms McDougall’s claim that the paper’s “staff at the school are frustrated with expenses” was too broad, and that the paper should have indicated whether this information came from a number of staff members. The Council members felt that consultation with the Board of Trustees, and with the principal via email, was insufficient to justify a sweeping statement about staff frustration.

But overall the Council did not support this point sufficiently to uphold the ground of fairness.

The principal and Ms McDougall have been given the opportunity by the newspaper to have their say and this offer is an ongoing one.

This complaint is not upheld.

Press Council members considering this complaint were Barry Paterson, Pip Bruce Ferguson, Kate Coughlan, Chris Darlow, Sandy Gill, Keith Lees, Clive Lind, Lynn Scott and Stephen Stewart.

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

## CASE NO: 2227 – ROB PATERSON AGAINST BAY OF PLENTY TIMES

Rob Paterson complained the *Bay of Plenty Times* failed to comply with Principle 1 of the Press Council Statement of Principles relating to accuracy, fairness and balance in an editorial relating to the state of the hot pools situated at Mt Maunganui.

By a 9-2 decision, the Press Council does not uphold the complaint.

### Background

On September 30, 2011, the *Bay of Plenty Times* published an editorial headed *Mount pools a city shame*. The editorial referred to problems suffered by the pools, the failure of steps taken by problems suffered by the pools, the failure of steps taken by Tauranga City Aquatics Limited (TCAL), a council-controlled organization, to rectify these problems and, significantly as far as Mr Paterson’s complaint is concerned, the opposition to the pools’ upgrade mounted by the Mount Hot Pools Protection Society.

Essentially, the newspaper argued the pools were a disgrace and not fitting of a city of Tauranga’s size and standing. Fault for this unhappy situation lay, according to *Bay of Plenty Times*, at least partly at the door of a local residents’ group including the named society.

## The Complaint

Mr Paterson said the editorial, “far from expressing an opinion, is a cheap shot and a slur upon the credibility of the two groups involved...which is entirely without merit”. The reason the community groups opposed the resource consent application to upgrade the pools was because the application “did not meet environmental guidelines”.

The upgrade application had been heard by an independent commissioner. The commissioner had rejected the application. An appeal against the rejection by Tauranga City Aquatics Ltd was withdrawn.

Mr Paterson said the rejection of the application by the commissioner and the withdrawal of the appeal vindicated those opposing the upgrade application in the first place. It was wrong for *Bay of Plenty Times* to effectively cast aspersions on the opponents in the way it did even by way of an opinion piece.

## The Response

The newspaper editor replied that it held to the view that “groups opposing the development of such an important amenity are still stalling progress in... ever growing [Tauranga City] regardless of the intentions of such opposition”.

He said “editorials are opinion columns and are part of a robust platform for debate and therefore do not require the same balance as a news article”.

The fact that the commissioner sided with the views of [Mr Paterson’s] group did not mean others cannot hold the view that groups seeking to block development of one of the city’s important facilities are in the newspaper’s view stalling city progress.

The requirement for accuracy, fairness and balance was not the issue in this case. Rather the newspaper had expressed a fair opinion on an “important public issue”. Principle 4 (comment and fact) prevailed, not Principle 1. The newspaper held firmly to the view it should not be constrained in freely expressing its opinion in a matter of public interest.

## Discussion

The majority believes that on balance, none of the Press Council’s principles has been breached. The editorial in places is strongly expressed and some people may be offended by accusations that they “continue to stall progress.”

But the editorial cannot be said to be wrong or that its interpretation of the facts is unfair. In any event, editorials will often be considered unfair by parties who do not agree with them.

The re-development of the hot pools is obviously an ongoing issue at Mt Maunganui and a review of all of the information about the pools and why proposals have not yet been developed might well be more complex than the editorial indicates.

But within the confines of an editorial written at a specific time, there is no need to resurrect all the background again.

The newspaper is entitled to hold a view and do so unapologetically. Editorials do not have to present

contrasting views.

The complainant could well have explained those different views had he taken up the newspaper’s offer of a letter to the editor.

Two members of the Council, dissenting from the majority, believe the description of the opposing residents’ actions is unfair. There is no reference in the editorial to the fact the redevelopment proposal was rejected by the hearing commissioner after he had followed due process. The editorial failed to mention that the proposal did not comply with the Resource Management Act or that the proposal had significant adverse environmental effects. The suggestion the residents’ group was acting irresponsibly and contrary to the interests of a growing dynamic city had no foundation.

Further the editorial failed to mention that the proposal was more than a redevelopment of the existing pools but was for an extended development.

Council members not upholding the complaint were Pip Bruce Ferguson, Kate Coughlan, Sandy Gill, Keith Lees, Clive Lind, John Roughan, Lynn Scott and Stephen Stewart.

Council members who would have upheld the complaint were Barry Paterson and Chris Darlow. Barry Paterson is not related to the complainant.

## CASE NO: 2228 – COMPLAINANT AGAINST NATIONAL BUSINESS REVIEW AND OTAGO DAILY TIMES

In September 2011 a man complained about an article on oil and gas royalties published in the *National Business Review*. In October the same person complained about an article referring to blogger comments about Labour Party boardings published in the *Otago Daily Times*.

In both complaints the complainant gave only a gmail address and, when requested, refused to provide any further detail.

The editor of The *ODT* advised the complainant he had received legal advice which stated that a complainant should be properly identified.

The editor noted “The rationale of the advice to establish the identity of a complainant is the need to be satisfied the complaint is a bona fide one. An email address relates only to the source of the email and the actual user could be any person or indeed a number of persons. It may also be that the person making the complaint has a vested interest or hidden agenda of their own, which brings into question the veracity of the complaint. It is not unknown for persons or groups to attempt to manipulate the media under the guise of making complaints.”

The editor of the *NBR* also questioned whether they were obliged to respond to a complainant who refused to divulge any identifying information.

Requests from the Press Council for an address; phone number; driver licence details or car registration (the complainant said he was homeless and lived in a car) were all refused.



The Press Council determined not to rule on the complaints. They reasoned that they should not rule on a complaint where the complainant had not provided any detail as to their bona fides.

If a newspaper were to publish material or a letter to the editor under the same circumstances (without establishing, or having the means to establish, the credentials of the commenter/letter-writer) the Press Council might very well say the newspaper was at fault. The same principle applied. If the Council accepted the complaint it was lowering its standards to a level it wouldn't want a newspaper to practice.

The Council understood that the complainant might not be able to provide a residential address, given his personal circumstances, and was not refusing the complaint on the grounds that he was homeless

However, he should still be able to provide some proof that was who he said he is, a legitimate person, and not simply a made-up alias or a name for some other party or person.

The Press Council declined to rule on the complaints.

# Statement of Principles

## Preamble

The New Zealand Press Council was established as an industry selfregulatory body in 1972. Its main objective is to provide the public with an independent forum for resolving complaints involving the press. The Council is also concerned with promoting press freedom and maintaining the press in accordance with the highest professional standards.

Its scope applies to published material in newspapers, magazines and their websites, including audio and video streams.

An independent press plays a vital role in a democracy. The proper fulfilment of that role requires a fundamental responsibility for the press to maintain high standards of accuracy, fairness and balance and public faith in those standards.

Freedom of expression and freedom of the media are inextricably bound. There is no more important principle in a democracy than freedom of expression. The print media is jealous in guarding freedom of expression, not just for publishers' sake but, more importantly, in the public interest. In dealing with complaints, the Council will give primary consideration to freedom of expression and the public interest. (See Footnote 3)

The distinctions between fact, on the one hand, and conjecture, opinions or comment, on the other hand, must be maintained. This does not prevent rigorous analysis. Nor does it interfere with a publication's right to adopt a forthright stance or to advocate on any issue. Further, the Council acknowledges that the genre or purpose of a publication or article, for example, satire or gossip, calls for special consideration in any complaint.

The Press Council endorses the principles and spirit of the Treaty of Waitangi and NZ Bill of Rights Act, without sacrificing the imperative of publishing news and reports that are in the public interest.

Editors have the ultimate responsibility for what appears in their publications, and to the standards of ethical journalism which the Council upholds. In dealing with complaints, the Council seeks the co-operation of editors and publishers.

The following principles may be used by complainants when they wish to point the Council to the core of their complaint. However, a complainant may nominate other ethical grounds for consideration.

## 1. Accuracy, Fairness and Balance

Publications should be bound at all times by accuracy, fairness and balance, and should not deliberately mislead or misinform readers by commission or omission. In articles of controversy or disagreement, a fair voice must be given to the opposition view.

Exceptions may apply for long-running issues where every side cannot reasonably be repeated on every occasion and in reportage of proceedings where

balance is to be judged on a number of stories, rather than a single report.

## 2. Privacy

Everyone is normally 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 significant matters of public record or public interest.

Publications should exercise particular care and discretion before identifying relatives of persons convicted or accused of crime where the reference to them is not relevant to the matter reported.

Those suffering from trauma or grief call for special consideration.

## 3. Children and Young People

In cases involving children and young people editors must demonstrate an exceptional public interest to override the interests of the child or young person.

## 4. Comment and Fact

A clear distinction should be drawn between factual information and comment or opinion. An article that is essentially comment or opinion should be clearly presented as such. Cartoons are understood to be opinion.

## 5. Headlines and Captions

Headlines, sub-headings, and captions should accurately and fairly convey the substance or a key element of the report they are designed to cover.

## 6. Discrimination and Diversity

Issues of gender, religion, minority groups, sexual orientation, age, race, colour or physical or mental disability are legitimate subjects for discussion where they are relevant and in the public interest, and publications may report and express opinions in these areas. Publications should not, however, place gratuitous emphasis on any such category in their reporting.

## 7. 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. Care should be taken to ensure both source and publication agrees over what has been meant by "off-the-record".

## 8. Subterfuge

The use of deceit and subterfuge can only be condoned in cases when the information sought is in the public interest and cannot be obtained by any other means.

## 9. Conflicts of Interest

To fulfil their proper watchdog role, publications must be independent and free of obligations to their news sources. They should avoid any situations that might compromise such independence. Where a story is enabled by sponsorship, gift or financial inducement, that sponsorship, gift or financial inducement should be declared.

Where an author's link to a subject is deemed to be justified, the relationship of author to subject should be declared.

## 10. Photographs and Graphics

Editors should take care in photographic and image selection and treatment. Any technical manipulation that could mislead readers should be noted and explained.

Photographs showing distressing or shocking situations should be handled with special consideration for those affected.

## 11. Corrections

A publication's willingness to correct errors enhances its credibility and, often, defuses complaint. Significant errors should be admitted and promptly corrected, 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.

### Footnotes

1. Letters to the Editor: 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. Abridgement is acceptable but should not distort meaning.
2. Council adjudications: Editors are obliged to publish with due prominence the substance of Council adjudications that uphold a complaint.
3. Public interest is defined as involving 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 them or to others.
4. The following organisations have agreed to abide by these principles and provide financial support to the Press Council:

### Metropolitan

The New Zealand Herald  
The Dominion Post  
The Press  
Otago Daily Times

### Provincial

Ashburton Guardian  
Bay of Plenty Times  
The Daily Post  
Dannevirke Evening News  
The Gisborne Herald  
The Greymouth Evening Star  
Hawkes Bay Today  
Horowhenua Kapiti Chronicle  
Manawatu Standard  
The Marlborough Express  
The Nelson Mail  
The Northern Advocate  
The Oamaru Mail  
The Southland Times  
Taranaki Daily News  
The Timaru Herald  
Waikato Times  
Wairarapa Times-Age  
Wanganui Chronicle  
The Westport News  
Northern News  
The Wairoa Star

### Sunday

Herald on Sunday  
Sunday Star-Times  
Sunday News

### Community

APN Community Newspapers  
Fairfax NZ Community Newspapers  
Community Newspaper Association of New Zealand member newspapers

### Business Weekly

The Independent  
National Business Review\*

### Magazines

New Zealand Magazines (APN)  
Fairfax Magazines  
Magazine Publishers' Association

\* Accepts jurisdiction but does not contribute financially

# Complaints procedure

1. A person bringing a complaint against a publication (namely newspapers, magazines and periodicals in public circulation, together with their websites) must, unless exempted by the Executive Director of the Council, first lodge the complaint in writing with the editor of the publication.
2. The complaint (which should be clearly marked as a letter of complaint) is to be made to the editor within the following time limits, time being of the essence:
  - (a) A complaint about a particular article: within one calendar month of the date of publication of the article.
  - (b) A complaint arising from a series of articles: within one calendar month of the earlier of the date from which the substance of the complaint would have been reasonably apparent to the complainant, or the publication of the last article in the series.
  - (c) A complaint concerning non-publication of any material: within two calendar months of the date on which the request to publish was received by the publication.
  - (d) A complaint arising from matters other than publication: within one month of the incident giving rise to the complaint.
3. If the complainant is not satisfied by the editor's response or receives no response from the editor within a period of 10 working days from the date on which the editor received the complaint, the complainant may then complain to the Council. In the case of the complainant not being satisfied by the editor's response, such complaint shall be forwarded to the Council within ten working days of the complainant receiving the editor's letter.
4. Complainants are requested where possible to use the online complaint form appearing on the Council's website ([www.presscouncil.org.nz](http://www.presscouncil.org.nz)) or on a form provided by the Council. The Council will however accept complaints by letter. Whether the complaint be on the online complaint form or in writing, it must be accompanied by the material complained against and copies of the correspondence with the editor. The main thrust of the complaint is to be summarised in approximately 300 words. Any other supporting material may be supplied. Legal submissions are not required.
5. The time limits which will apply on receipt of a complaint are:
  - (a) The Council refers the complaint to the editor of the publication and the editor has 10 working days from receipt of that complaint to reply.
  - (b) On receipt of the editor's reply the Press Council will refer the reply to the complainant. The complainant may within 10 working days of receiving that reply, briefly in approximately 150 words, reply to any new matters raised by the editor in the reply. The complainant should not repeat submissions or material contained in the original complaint.
6. The Executive Director of the Council has the power to extend time limits but will not extend those time limits which are of the essence unless there are exceptional circumstances.
7. In appropriate circumstances, the Council may request further information from one or both of the parties. In obtaining further information the Press Council will adhere to the rules of natural justice.
8. Once submissions have been exchanged in accordance with the above timetable, the Press Council will at its next meeting consider and usually determine the complaint. Most complaints are determined on the papers. However, if a complainant wishes to make personal submissions, the complainant may apply to the Executive Director of the Council for approval to attend and make such submissions. If approval is given, the editor, or a representative of the editor, will also be invited to attend the hearing. No new material may be submitted at the hearing, without the leave of the Council.
9. If a complaint is upheld the publication must publish the adjudication, giving it fair prominence. If the decision is lengthy the Press Council will provide a shortened version for this purpose. If the complaint is not upheld the publication may determine whether to publish the decision.
10. If the complained-about article has been further published on the publication's website, or distributed to other media through NZPA or syndication, the Council requires that:
  - (a) in the instance of a website, the article is flagged as being subject to a ruling by the Press Council and a link to the decision at [www.presscouncil.org.nz](http://www.presscouncil.org.nz) is to be provided.

- (b) in the case of further distribution to hard-copy media, the Council will provide a short statement to be published in each publication known to have published the original item.
- 11. All decisions will also be available on the Council's website and published in its relevant annual report, unless the Council on its own volition or the request of a party agrees to non-publication. Non-publication will only be agreed to in exceptional circumstances.
- 12. In those cases where the circumstances suggest that the complainant may have a legally actionable issue, the complainant will be required to provide a written undertaking that s/he will not take or continue proceedings against the publication or journalist concerned.
- 13. The Council may consider a third party complaint (i.e. from a person who is not personally aggrieved) relating to a published item. However, if the circumstances appear to the Council to require the consent of an individual involved or referred to in the article, it reserves the right to require from such an individual his or her consent in writing to the Council's adjudication on the issue of the complaint.
- 14. The above procedure will apply to all complaints.
- 15. No provision has been made for publications to complain because such complaints are so rare. Complaints will still be considered but each will be dealt with on an individual basis.

New Zealand Press Council  
Statement of Financial Performance  
For the year ended 31 December 2011

	2011 \$	2010 \$
<b>Revenue</b>		
Union	2,700	2,700
NPA Contribution	220,000	220,000
Community Newspapers	5,296	5,474
Magazines Contribution	8,875	8,875
Interest	2,065	1,444
<b>Total operating revenue</b>	<b>238,936</b>	<b>238,493</b>
<b>Expenses</b>		
ACC levy	473	627
Accounting	907	907
Advertising & Promotion	700	-
Audit Fees	850	750
Bank fees	16	48
Cleaning	760	751
Computer	2,100	1,690
Depreciation	623	743
General Expenses & Subscriptions	4,968	6,062
Insurance	2,850	2,850
Internet	60	399
Legal Expenses	2,959	-
Postage & Couriers	2,111	2,252
Power & Telephone	2,302	3,227
Printing & Stationery	8,063	9,386
Reception	348	2,298
Rent & Carparking	16,002	14,556
Salaries & Board Fees	158,336	154,427
Travel & Accommodation	17,319	16,728
Holiday Pay Accrual	3,281	3,380
<b>Total operating expenses</b>	<b>225,028</b>	<b>221,081</b>
 <b>Net surplus / deficit for the year</b>	 <b>13,908</b>	 <b>17,412</b>

The notes on page 88 form an integral part of the financial statements.

New Zealand Press Council  
Statement of Financial Position  
As at 31 December 2011

	2011 \$	2010 \$
<b>Assets</b>		
Current assets		
BNZ Current Account	8,232	7,761
BNZ Call Account	66,584	52,172
Accruals and Receivables	640	644
Taxation	20	
	75,476	60,577
Non-current assets		
Fixed assets	4,412	5,035
<b>Total Assets</b>	<b>79,888</b>	<b>65,612</b>
<b>Liabilities</b>		
Accounts payable	-	5,648
PAYE payable	2,729	2,305
GST payable	7,605	7,983
Accrued Expenses	9,350	3,380
<b>Total liabilities</b>	<b>19,684</b>	<b>19,316</b>
<b>Net Assets</b>	<b>60,204</b>	<b>46,296</b>
<b>Equity</b>		
Opening Balance	46,296	28,884
Net surplus / deficit for the year	13,908	17,412
<b>Closing Balance</b>	<b>60,204</b>	<b>46,296</b>

The notes on page 88 form an integral part of the financial statements.

New Zealand Press Council  
Notes to the Financial Statements  
For the year ended 31 December 2011

## 1. Statement of accounting policies

### Reporting Entity

The New Zealand Press Council is an unincorporated body. The financial statements have been prepared in accordance with Generally Accepted Accounting Practice.

### Differential Reporting

The New Zealand Press Council qualifies for differential reporting as it is not publicly accountable and it is not large as defined in the framework for differential reporting. The organisation has taken advantage of all available differential reporting except for that of GST. The financial statements have been prepared on a GST exclusive basis.

### Measurement Base

The accounting principles recognised as appropriate for the measurement and reporting of earnings and financial position on a historical cost basis have been followed.

### Specific Accounting Policies

The following specific accounting policies which materially affect the measurement of financial performance and position have been applied:

#### *Taxable Income*

The only taxable Non Member income is interest.

#### *Accounts Receivable*

Accounts Receivable are stated at their estimated realisable value.

#### *Fixed Assets*

All fixed assets are recorded at cost.

Depreciation has been calculated using a diminishing value basis as follows:

Furniture and fittings	4-18%
Office Equipment	36%-60%

#### *Changes in Accounting Policies*

There have been no changes in accounting policies in the year under review. All policies have been applied on bases consistent with those used in previous years.

## 2. Fixed Assets

	<b>Net Book Value</b>	
	<b>2011</b>	<b>2010</b>
	\$	\$
Office equipment	18	43
Furniture and fittings	373	454
Office Fit out	4,021	4,538
	<u>4,412</u>	<u>5,035</u>

There were no acquisitions of Fixed Assets during the year ending 31 December 2011.

## 3. Commitments and contingencies

There were no known commitments and contingencies at 31 December 2011 (2010: \$ Nil).



### Independent Auditor's Report

To the Members of the New Zealand Press Council

We have audited the financial report on pages 1 to 5. The financial statements comprise the Statement of Financial Position as at 31 December 2011, and the Statement of Financial Performance for the year then ended, and a summary of significant accounting policies and other explanatory information.

### Officers Responsibility for the Financial Statements

The officers are responsible for the preparation and fair presentation of these financial statements in accordance with generally accepted accounting practice in New Zealand and for such internal control as the officers determine is necessary to enable the preparation of financial statements that are free from material misstatement, whether due to fraud or error.

### Auditor's Responsibilities

Our responsibility is to express to you an opinion on these financial statements based on our audit. We conducted our audit in accordance with International Standards on Auditing (New Zealand). These standards require that we comply with ethical requirements and plan and perform the audit to obtain reasonable assurance about whether the financial statements are free from material misstatement.

An audit involves performing procedures to obtain audit evidence about the amounts and disclosures in the financial statements. The procedures selected depend on the auditor's judgement, including the assessment of the risks of material misstatement of the financial statements, whether due to fraud or error. In making those risk assessments, the auditor considers internal control relevant to the New Zealand Press Council preparation and fair presentation of the financial statements in order to design audit procedures that are appropriate in the circumstances, but not for the purpose of expressing an opinion on the effectiveness of the New Zealand Press Council internal control. An audit also includes evaluating the appropriateness of accounting policies used and the reasonableness of accounting estimates, as well as evaluating the overall presentation of the financial statements.

We believe that the audit evidence we have obtained is sufficient and appropriate to provide a basis for our audit opinion.

Other than in our capacity as auditor we have no relationship with, or interests in, the New Zealand Press Council.

### Unqualified Opinion

In our opinion the financial statements on pages 1 to 5 comply with generally accepted accounting practice in New Zealand, and give a true and fair view of the financial position of the New Zealand Press Council as at 31 December 2011, and of its financial performance for the year then ended.



Parsons Roddick & Co  
29<sup>th</sup> March 2012  
UPPER HUTT

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PRINCIPAL: ALLAN J EVANS, C.A.





