

NEW ZEALAND PRESS COUNCIL

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Chris Darlow Lawyer, Auckland
Sandy Gill Consultant and mother, Lower Hutt
Keith Lees Retired Teacher, Christchurch
Lynn Scott Company Director, Wellington (until May)
Peter Fa'afiu Alternate Member, Waikanae (from June)

Representing the Newspaper Publishers Association (NPA)

John Roughan Assistant Editor *New Zealand Herald*, Auckland
Clive Lind Editorial Development Manager, FairfaxNZ, Wellington

Representing Magazine Publishers

Kate Coughlan Managing Editor, *NZ Life & Leisure* and *NZ House & Garden*

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

Penny Harding Journalist, Wellington
Stephen Stewart Journalist, Wellington



NEW ZEALAND
**PRESS
COUNCIL**

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Chairman's Foreword

By the time that this Annual Report is issued, the final Report of the Law Commission on "The News Media Meets 'New Media'" will have been published. It is understood that its recommendations will closely follow the recommendations in its Issues Paper 27 in that it will recommend one self-regulatory body responsible for both print and broadcast news media. It will be for the Government to determine whether it adopts the recommendation. An article elsewhere in this Report summarises this Council's views on some of the matters raised in the Issues Paper and suggestions it has made to its stakeholders to implement changes. It is understood that most of these suggested changes will be accepted.

A table in this report gives the complaints statistics for the year. There were more decisions made this year than in any other previous year. In 21 of the 76 decisions there were upheld decisions either in full or in part, and two of these decisions were not unanimous. Sixteen other complaints were resolved other than by a decision of the

Council. There is no discernible reason for the increase in the total number of complaints, although the executive director believes that the increase may in part be explained by the fact that the online complaint form now makes it easier to lodge a complaint.

Two articles in the Report refer to decisions given on cartoons and opinion pieces. While cartoons are opinion pieces, decisions of the Council possibly suggest a cartoonist may have a greater license than an opinion writer. However, a cartoon is not immune from a complaint being upheld if the facts on which it is based are inaccurate.

An opinion writer enjoys the right of freedom of expression and thus complaints against such writers are seldom upheld. That an opinion is obnoxious to some people is not a ground for upholding the complaint against it. However, as the article discloses, complaints against two opinion writers were upheld on the grounds that the facts upon which they were based were not accurate.

Details of the various decisions appear later in this report. They disclose the variety of complaints which come



New Zealand Press Council 2012:

Front row: Keith Lees (Christchurch), Liz Brown (Horowhenua), Barry Paterson (Auckland), Mary Major (Porirua), Chris Darlow (Auckland).

Back Row: Pip Bruce Ferguson (Hamilton) John Roughan (Auckland), Kate Coughlan (Auckland), Stephen Stewart (Wellington), Sandy Gill (Lower Hutt), Penny Harding (Wellington), Peter Fa'afiu (Waikanae)
Absent: Clive Lind (Wellington), and Tim Beaglehole (Wellington).

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 Prof Beaglehole. Mr Fa'afiu is the alternate public member. Prof Beaglehole was appointed to the Press Council on the retirement of Lynn Scott in May. Ms Brown was appointed as a public member in 2012, taking up her appointment in February 2013. Mr Lees retired from the Press Council in December 2012.

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.

Mary Major is the Executive Director.

before the Council. It will be noted that the Council also considers and resolves complaints against the websites of newspapers and magazines. A problem can arise where the material against which a person wishes to complain is behind a pay wall on a website. The executive director has an informal arrangement with two publications that allows both the Council and any prospective complainant to have access as required to all the content behind the pay wall. The complainant will be given free access to enable the complaint to proceed. It is hoped to develop this arrangement into a protocol if more news sites adopt pay walls.

Two Council members retired during the year. They were Lynn Scott and Keith Lees, both members representing the public. Their contribution over their two terms was much appreciated and they are to be thanked

for their efforts. They were replaced by Tim Beaglehole, former Chancellor of Victoria University and Liz Brown, former Banking Ombudsman. In addition, Peter Fa'afiu joined the Council as an alternate member under the terms of the Council's Constitution.

As ever, the Council was extremely well served by its executive director, Mary Major. The statistics show the number of complaints she received and the number which are resolved without a decision. She is thanked for her efforts.

Finally, I express my appreciation to the members of the Council for the manner in which they have undertaken their responsibilities during the year.

Barry Paterson
Chairman

The Law Commission Report

The Law Commission Issues Paper entitled “The News Media Meets *New Media*” was issued in December 2011. Submissions on its recommendations closed in early 2012 and at the time of writing the Law Commission has not submitted its final report to Government.

The request to the Law Commission was not motivated by press excesses, as was the Leveson Report in the United Kingdom and, to some extent, the Finkelstein Report in Australia. It is the Press Council’s view that such excesses are not present in this country. The Law Commission was asked to review the adequacy of the regulatory environment in which New Zealand’s media is operating in the digital era. Of relevance to the Press Council, it was asked specifically to deal with:

- how to define “news media” for the purposes of law; and
- whether and to what extent the jurisdiction of the Broadcasting Standards Authority and/or the Press Council should be extended to cover currently unregulated news media and, if so, what legislative changes would be required to achieve to this end.

Two important drivers of the Law Commission’s recommendations were the spread of the internet and bloggers as sources of news and the convergence of news platforms. The spread of the internet has led to many websites providing news which are unregulated, either by statute or self-regulation. While the Press Council has jurisdiction over the websites of traditional newspapers, many of the internet providers are not associated with or owned by a newspaper.

Convergence is where a news provider provides the same news on more than one platform. One platform may be regulated and one not. An example is a radio station which provides news on its website and also over the air waves. The news conveyed by radio is regulated by the Broadcasting Standards Authority but news on its website is not.

The Law Commission underpinned its discussion paper with certain fundamental principles. One is that a free press is critical to a democracy. Further, any news media regulation requires that sanctions be proportionate, that accountability rather than censorship should be the guiding principle, and that any regulation should be free of state control. Another principle is that news media should exercise their freedom responsibly and be accountable when they fall below the appropriate standard. The privileges and exemptions conferred on the news media by law should be conditional on a guarantee that there will be responsibility and accountability. This Council agrees with these fundamental principles.

The Law Commission has suggested a definition of “news media” for the purposes of the law. This definition would include internet news providers provided they fall within the terms of the definition. One of the requirements is that the publisher “must be accountable to a code of ethics and a complaints process”. The Council believes

that its statement of principles and complaints process complies with this requirement.

In addition, the Criminal Procedure Act 2012 is relevant. It defines a member of the media for the purposes of certain privileges available to journalists during a court proceeding. One of the requirements is that a member must be subject to the complaints procedure of either the Broadcasting Standards Authority or the Press Council. This statutory requirement, combined with the recommendation of the Law Commission suggests that the time is now appropriate for the Council to bring within its jurisdiction news media websites that wish to become members. The Council has proposed accordingly to its stakeholders. There will obviously need to be rules relating to the admission of such members and the right for the Council to remove membership if the website does not comply with its statement of principles.

In its report, the Law Commission summarised what it saw as the strengths and weaknesses of this Council. It did so under the headings of Independence, Accessibility, Efficacy and Powers, Powers and Efficiency. The Council, in its submissions on the Law Commission paper, has commented on most of these matters.

If the Law Commission’s conclusions do not change, it will in its final report recommend that an all media standards body should be formed with a significant majority of public members, a transparent appointment process, a former member of the judiciary as its head, a mediation service as an intermediate stage between initial complaint to a media operator and a formal complaint, and meaningful powers of redress.

One aspect on which the Council differs in its views from those of the Law Commission relates to the suggestion that the regulatory body should proactively monitor the media and take action against conduct which it deems unworthy. The Council sees a conflict between this proposed monitoring role and that of adjudicating upon complaints. Further, such a role would lead to a bureaucratic and costly structure as distinct from the present low cost incurred in operating the Council.

The Council does agree that the time has arrived to reconsider its sanctions. It has suggested to its stakeholders that it is appropriate to reconsider the sanctions and, in particular, to have the following powers:

- (a) the right to direct, in certain circumstances, that an offending article be taken down from a website;
- (b) the right to require publication of an apology, correction or retraction; and
- (c) possibly, the power to order that a complainant be given a right of reply in certain circumstances;
- (d) the right to direct the position in a publication where details of an adjudication should appear and the form of the publication of that adjudication.

The Council does not propose that it be given the right to fine or award compensation. It is the Council’s view that if monetary redress is sought, the appropriate forum is that

of a court which has greater powers of investigation and enforcement. To provide for a right to fine or compensate would, the Council believes, make the system very much more complex and costly. It believes it now acts efficiently in a timely manner and at the minimum of expense.

The Council also supports a proposal that it should enter into standard terms of contract with members of the newspapers and magazines, as well as websites that come

within its jurisdiction. These contracts would require an undertaking that members comply with the Complaints Procedure and Statement of Principles. Also such contracts would ensure the ongoing financial support of the Council, as lack of an ongoing financial support is seen as possibly impinging on the Council's independence. However, the Council notes that it has never been denied the funding it requires to operate efficiently.

Freedom of Speech and Gratuitous Reference

The New Zealand Press Council's principles could hardly be clearer: "Freedom of expression and freedom of the media are inextricably bound. There is no more important principle in a democracy than freedom of expression." That freedom particularly applies to the likes of columns, cartoons and letters to the editor where freedom of expression plays its part in the forum that news media provide, as well as a vital role in a democracy.

In its adjudications over four decades, the Council has always upheld the right to publish opinions even when readers have vehemently disagreed with them or considered them abusive, unfair and obnoxious. The licence for such freedom has to be extremely high, so high that most complaints will inevitably fail.

This year, however, the Press Council determined in two cases the threshold over which a complaint could be upheld had been breached. Both were complaints against columns on matters of undoubted public interest, both contained inflammatory, highly-opinionated material. But both, in the Council's view, went too far when they condemned an entire race because of the actions of a comparative few.

In the first instance, Michael Harcourt complained about a column by Michael Laws, a broadcaster, former mayor and member of Parliament, in the *Sunday Star-Times* headed *Cases made it a week for ferals*. It was a forceful and opinionated piece arguing that an increasing number of "feral families" threatened society and, quoting examples of crimes, linked the various factors to "they are all brown, all Maori."

The Council accepted most of what Mr Laws had written as his right as a columnist. But when he went on to say that there was "an anti-social destruct specifically within Maoridom that shows no sign of abating," a majority of Council members thought that was a step too far.

Condemning an entire race without further explaining the thinking behind such a remark meant it fell within the category of gratuitous – uncalled for, unwarranted and lacking good reason. Had Mr Laws criticised "some" Maori and not the entire race, the complaint would not have been upheld.

Principle 6, Discrimination and Diversity, while acknowledging that issues of gender, religion, minority groups, sexual orientation, age, race, colour or physical or mental disability are legitimate subjects for discussion, states there is no place for gratuitous emphasis on any such category.

Nevertheless, two Council members did not agree with an uphold decision, arguing the level of racial commentary had to be insistently insulting, or hate-filled or hateful, which was not the case with the column.

There was, however, no disagreement among Council members with a second case, in which seven people complained about a column by Paul Holmes, broadcaster, in the *Weekend Herald* of February 11 headed *Waitangi Day a complete waste*.

In his equally highly-opinionated column, Mr Holmes wrote inter alia: "Waitangi Day produced its usual hatred, rudeness, and violence against a clearly elected Prime

Minister from a group of hateful, hate-fuelled weirdos who seem to exist in a perfect world of benefit provision . . . I'm over Waitangi Day. It is repugnant. It's a ghastly affair. As I lie in bed on Waitangi morning, I know that later that evening, the news will show us irrational Maori ghastliness with spitting, smugness, self-righteousness and the usual neurotic Maori politics, in which some bizarre new wrong we've never thought about will be lying on the table.

"This, we will have to address and somehow apply these never-defined principles of the Treaty of Waitangi because it is, apparently, the next big resentment. There'll be lengthy discussion, we'll end up paying the usual millions into the hands of the Maori aristocracy and God knows where it'll go from there.

"Well, it's a bullshit day, Waitangi. It's a day of lies. It is loony Maori fringe self-denial day. It's a day when everything is addressed, except the real stuff. Never mind the child stats, never mind the national truancy stats, never mind the hopeless failure of Maori to educate their children and stop them bashing their babies . . .

No, if Maori want Waitangi Day for themselves, let them have it. Let them go and raid a bit more kai moana than they need for the big, and feed themselves silly, speak of the injustices heaped upon them by the greedy Pakeha and work out new ways of bamboozling the Pakeha to come up with a few more millions."

The seven complainants found the column offensive but that was not in itself a reason to uphold their complaints. The Council also did not want to debate whether the column was "hate speech" because that was a legal matter, while the Human Rights Commission had already rejected a complaint from one of the complainants.

The Council asked itself if the opinions expressed were based on fact, or based on facts which had not been established, or were the opinions so extreme that they were unacceptable.

The newspaper argued that Mr Holmes was referring to the Maori protesters on Waitangi Day and not the Maori race as a whole but the Council felt the columnist had gone further than limiting his criticisms to that event and was on several occasions directing his criticisms at Maori in general. What he had written may have been true about some Maori but it was inaccurate to make the claim against Maori as a whole.

The Council also considered the complaint against the New Zealand Bill of Rights Act 1990, which it has endorsed, which under Section 14 guarantees freedom of expression while limiting those freedoms on justifiable grounds under Section 5. The same measurements were present in the Council's own principles and, when these were similarly measured and balanced, the Council found its principles were breached and the complaint had to be upheld.

The decisions do not represent any lowering of the threshold about freedom of expression. The bar remains extremely high, as it should be. But the decisions do mean that columnists need to be precise about what they want to say and how they express themselves.

Cartoons

Cartoonists, it has been suggested, are the court jesters of the modern state. Enjoying a special license to make exaggerated and comic criticisms of public figures and policies they are employed to entertain readers and to provoke thought, to question received opinion and affront the complacent. They are quite clearly, in terms of the Press Council's Principles, providing comment or opinion.

The justification for the freedom cartoonists are generally accorded lies squarely in the western liberal tradition:

‘We can never be sure’, John Stuart Mill wrote, ‘that the opinion we are endeavouring to stifle is a false opinion; and if we were sure stifling it would be an evil still.’

But that license to comment, for all of Mill's grand statement, is not a simple freedom but comes from a complicated mix of social, political, historical and legal factors. What is acceptable, or at least tolerated, has changed over time as is graphically illustrated by comparing the work of the eighteenth century caricaturists with those of today. What might Rowlandson or Gilray have done with Prince Harry's antics in Las Vegas? Those sights and functions of the lower bodily parts in which eighteenth century humour had delighted went out of fashion with the growing fastidiousness of the Victorian age. George IV on coming to the throne (thus ending the Regency period) took steps to buy off the satirists who had treated him so unmercifully, but the change of style was less the result of censorship than of a profound popular change of mood. After the biting and savage caricatures of the eighteenth century the cartoon in Mill's day was characterised by the harmless geniality of the domestic joke and pun. It was the world of *Punch*. It was the era of Britain's unquestioned global supremacy.

The changing world in which cartoonists work also raised, and raises, new questions of what was, and is, appropriate or permissible in an increasingly interconnected world. In this change David Low was an early significant figure. His forthright treatment of the Nazi and Fascist leaders of the 30's led to his cartoons being banned in Germany and Italy. In this century the issue has become more complex with our recognition that in different cultures there can be very different attitudes to the very practice of cartooning. The Indian parliament recently debated whether cartoons should be allowed in school text books – and decided they should not; in Malaysia the Election Commission has banned political caricatures during the next general election campaign, ruling them ‘inappropriate’. When, in September 2012, the French government banned protests against a cartoon that denigrated the Muslim prophet, the leader of the French Muslim Council described such cartoons as ‘acts of aggression’. At the same time Kurt Westergaard, the Danish cartoonist who, seven years earlier, had outraged

Muslims with drawings of the Prophet Mohammed, said that the West cannot let itself be muzzled by fear of offending Islamic sensibilities.

Here is a world where there are no absolutes, where complexities abound and practices change. Where does this leave the cartoonist working in New Zealand in the 21st century? Is there any help for the Press Council when it considers cartoons which have been the subject of a complaint? For a start should the ‘special license’ given to cartoonists, using graphic images and visual humour, give them more freedom when offering comment or opinion than that accorded to those journalists who simply use words? Without explicitly arguing that this should be the case the Press Council's decisions in recent years suggest that it, possibly wisely, holds this view. The law of defamation does not appear to make that distinction but in practice while many cartoons have a defamatory meaning, in that they make the readers think less of the subject depicted, defamation cases have been very rare. The leading case involving a cartoonist was the future prime minister William Massey v *The New Zealand Times* in 1911. Massey accused the newspaper of defaming him in a cartoon that suggested his party, the Reform Party, had distributed ‘scurrilous’ pamphlets. The jury found the cartoon was not defamatory because it was ‘a political cartoon pure and simple’, and an Appeal Court upheld that decision. In practice, while there are several legal defences available to cartoonists, the greatest deterrent to a public figure launching defamation proceedings, apart from the fact that defamation lawsuits are risky, lengthy and expensive, is that such proceedings only draw more attention to the cartoon, and the voter may conclude that the plaintiff simply lacks a sense of humour.

Cartoons, nevertheless, as complaints to the Press Council have shown, can upset the reader. In some cases this is testimony to their success in commenting in a striking way on some public issue, and the complainant may not fully appreciate the distinction the Council draws between factual information and comment or opinion. In making that distinction the Council puts aside, to a greater or lesser extent, the principles of fairness and balance. The principle of accuracy remains. The cartoonist will often use exaggeration, sometimes metaphor, frequently imagination in making a point. But where the cartoon purports to be based on fact there is a valid question as to its truth. Whatever the exaggeration, one would look for a kernel of truth. This is clearly stated in the Council's discussion in case 2269 (see later in this Report): ‘the Council's principle referring to accuracy does not only apply to factual articles. The facts on which opinion or commentary are based also need to be accurate.’

During 2012 the Council considered three complaints about cartoons. Case 2243 was against a Nisbett cartoon published in *The Press* depicting ‘refugees that depict violent crimes in NZ’ being shipped back to where they

came from in a motorised shipping container (this was at the time when containers were being put to a range of new uses in Christchurch in the wake of the earthquake). The second, Case 2261, by Trace Hodgson in *The Dominion Post* showed the Minister of Social Welfare introducing her 'new assistant', the Nazi, Joseph Mengele. The third, Cases 2268 and 2269, dealt with an Evans cartoon in *The Press* dealing with Israeli settlements on the West Bank. All three cartoons were hard hitting, probably on the extremer edge of public opinion or taste, and while the Council recognized that they could cause disquiet to certain communities, or groups, or individuals, it did not uphold any of the complaints.

The sort of issue exemplified by the Danish cartoons of Mohammed is not one that New Zealand cartoonists have yet faced, but New Zealand was drawn in to the controversy in February 2006 when three newspapers, *The Dominion Post*, *The Press* and *The Nelson Mail*, as well as TV1 and TV3, reproduced the cartoons. The editor of *The Dominion Post* (and at that time chairman of the Commonwealth Press Union), Tim Pankhurst, was unequivocal in his

view: 'We do not want to be deliberately provocative, but neither should we allow ourselves to be intimidated.' He argued that the decision to publish was in defense of press freedom and that it was important for readers to make up their own minds. Reactions were strongly expressed. The Prime Minister condemned the actions of the newspapers, and the Race Relations Conciliator convened a meeting between key media executives, the Journalism Training Organisation and leaders of religious faiths, including Islam, to discuss the issue. 'Now that the cartoons had been published', he said, 'it was important to discuss issues of freedom of the press and the need to balance that freedom wisely and with sensitivity.' The storm was short-lived, but the question of how far, in a multicultural world, the use of a form of visual comment, which has evolved in one cultural tradition, is appropriately used in commenting on a very different culture remains and is not entirely straightforward. This, not to mention threats of civil disorder or violence, or issues of our relations with other countries, would raise a whole new set of questions both for editors and for the Press Council.

The Press Council's 40th Anniversary

The Press Council first met in September 1972, and so in September 2012 the 40th anniversary was marked with a public forum *The Press Council at 40: "Looking forward, looking back and the constant immutable truths."*

Barry Paterson, Chairman of the Press Council, welcomed guests, noting that while the event was being held at 40 years it was not certain the Press Council would be around to celebrate 50 years (a reference to the Law Commission's recommendation that the BSA and Press Council should amalgamate). He briefly outlined the political climate that had led to the formation of the Press Council: newspaper proprietors and journalists' union were galvanised to action by the threat of statutory regulation.

Mr Paterson stressed that whatever the eventual outcome of the Law Commission's review, it was vital the press remained free of statutory regulation.

Judge Arthur Tompkins' keynote address started with a woodcut print, the means of disseminating news in the 17th century. This particular woodcut print depicted Martin Luther inscribing on the cathedral door the ideas that became the Reformation. This woodcut print was in effect a mass media rallying call to Protestantism, a 17th century "twitter feed".

He noted that ideas matter and ideas expressed in the mass media matter even more, because of their power and ability to influence events.

Judge Tompkins then drew an example of a young Nelson Mandela being energised in his long struggle against apartheid by newspaper reporting of words from Winston Churchill at the time of the Atlantic Charter that "all the men in all the lands may live out their lives in freedom from fear and want."

This was a clear indication that words matter, and that those words will often have a life beyond that originally intended by their author.

A third truth is that pictures matter. Here Judge Tompkins used Picasso's *Guernica* as an example, noting that its message was such a powerful anti-war statement

that it was hastily covered by a blue curtain rather than allowing it to remain a back-drop for a press conference by Colin Powell on the subject of Iraq's weapons of mass destruction and the United States call to war.

Coming to the present and the future, he presented a clip giving astounding statistics on the reach of social media, the internet and modern means of communication

Noting that the forum was taking place in the shadow of the Law Commission's recently released report that suggested changes to the regulatory environment, Judge Tompkins said: "We should not, and the Press Council should not, abandon the struggle to ensure always that freedom of speech is accompanied by the responsibilities that that hard-won freedom carries, to exercise that freedom responsibly."

Greer McDonald, Social Media Editor, *Stuff* and Jeremy Rees, Editor in Chief, APN Digital engaged in a fascinating and thought-provoking discussion about the impact of social media and digital media on both readers and those who engage, and on traditional media. It was an exciting field to be involved in and was developing at a rate that made prediction difficult.

Mary Major gave a potted history of some of the memorable complaints and issues the Council had dealt with over 40 years, including wrangles with individuals such as Sir Robert Muldoon and Patricia Bartlett. She noted that the Press Council now dealt with complaints against audio and video content of websites; had an informal relationship with publications outside those regarded as "mainstream"; and could work with complainant and editor to achieve a quick resolution of a complaint.

Sir Geoffrey Palmer rounded out the event with a rousing speech on freedom of expression in a democratic society and the media's role in that. He noted that one of the achievements he held most dear was the removal of sedition from the statute books of New Zealand.

Sir Geoffrey did not accept that there was a crisis in journalism. He expressed confidence that any perceived problems could be overcome with innovation and determination.

The Press Council in 2012

Two members of the Press Council, both of whom had served for eight years, retired in 2012.

Lynn Scott had spent a considerable time living in small towns and she frequently put on her “small-town-hat” to remind other members how quickly news travelled through a small community, independently of the mainstream media, but also how devastating it could be to a member of a small community if certain information (sometimes relating to events well-past) became available through the media.

Lynn had previously been a high school principal and so had a special interest in matters affecting young people and school communities. She was an expert at balancing these factors with the public interest requirement many Press Council complaints raise.

Keith Lees retired from his position as head of English at a large high school during his term on the Press Council. Keith, as well as bringing his general all-round good sense to the table, was also our in-house grammarian and apostrophe-nazi (apologies to Bob McLellan, Case 2283). Keith was unfailingly cheerful when faced with leading on a substantial complaint, which earned him the absolute gratitude of the executive director. Keith also kept the Council informed on the state of Christchurch post-quakes.

It is always sad to farewell Council members and particularly so when they have been so willing to go the extra yards for the Council as both Lynn and Keith were. We are very grateful for all their work over the years and wish them both well in their future endeavours.

The appointments panel was convened to select two new public members, and also an alternate public member as decreed in the new Press Council Constitution. To ensure there is always a public-member-majority sitting on each complaint, the alternate member substitutes for any public member not able to attend a meeting.

The Council was fortunate in receiving a large number of applications from candidates of very high standing. The panel of Dame Beverley Wakem, Chief Ombudsman; Barry Paterson; Tim Pankhurst and Brent Edwards selected Tim Beaglehole, former Chancellor of Victoria University, and Liz Brown, former Banking Ombudsman as public members. Peter Fa’afiu, former diplomat and current Government and Community Relations Manager for NZ Post, was selected as the alternate member.

The first Annual General Meeting of New Zealand Press Council Incorporated was held in May 2012, the Press Council having become an Incorporated Society at the end of 2011.

The May Press Council meeting was the 250th meeting of the Council, and September marked the 40th anniversary of its inception (see elsewhere for details).

Mary Major attended the 14th Annual Conference of the Alliance of Independent Press Councils of Europe in Antwerp in October. There were around 75 delegates from 40 countries/organisations present. The papers included media coverage of shocking events (Norway and the Breivic massacre, Belgium and the bus crash that killed 28 school children returning from a skiing holiday, Germany and photos of the capture of Gaddafi); online corrections and regulating online comments; developments in media regulation, including the Leveson Inquiry; recent developments in relation to privacy in the case law from the European Court of Human Rights.

Informal discussion included topics such as having contracts with industry members, greater representation from public members, a less legalistic approach, the use of social media to promote Press Council work, the timeliness of considerations. Funding issues were also discussed.

Mary Major found that while the New Zealand Press Council might be small but it was one of the most adaptive in responding to complaints, and in dealing with the diversification of platform.

We continued to watch the Leveson Inquiry which, at the end of June 2012, had cost the British taxpayer £3.9m.

It is fair to say that the Council was pre-occupied with the Law Commission Review throughout the year, both in supplying the Commission with information, and in discussing possible outcomes. We are grateful that John Burrows was willing to speak to the Council and to keep members apprised of the Commission’s thinking.

We are also grateful to Dame Claudia Orange, who spoke to the Council about the Treaty of Waitangi and Judge Neil MacLean who spoke on suicide and suicide reporting.

We hosted 16 students from Hong Kong who were on a Press Freedom study tour. Penny Harding, Clive Lind, Stephen Stewart, Brent Edwards, Alan Samson and Mary Major discussed with the students the work of the Press Council, and press freedom here, in Hong Kong and in China.

Behind the Scenes at the Press Council in 2012

Not all complaints that come to the Press Council end up being formally adjudicated by the 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 or website.

Some complaints that did not go to formal adjudication in 2012 are included here; several others were resolved by publications agreeing to publish a correction, a clarification, an apology or a letter to the editor.

Note: some of these complaints relate to media organisations that are not formally part of the Press Council membership.

An online news site fell victim to a hoax press release regarding a boycott of goods from the Middle East. This release named certain individuals, including the complainant. The events described in the release were fictitious. When the complaint came to the Press Council the publication had already provided a considerable amount of redress – the editor had apologised; removed the press release from their website; published an apology and retraction; and contacted numerous other sites that were likely to have on-published the material.

The ‘sticking-point’ from the complainant’s point of view was that the retraction by the site did not say that the content of the release was completely untrue, the events did not take place and the statements attributed to the people and organisations named were never made by them.

The Press Council was able to facilitate having these aspects added to the retraction.

A teacher had been the subject of a number of articles concerning a classroom incident where it was said she had taped a child’s mouth shut. Ten months after the allegations were published the Teachers Council Complaints Assessment Committee’s report exonerated the teacher. The teacher came to the Press Council concerned about reports which remained on one website.

First, the publication ran an article publicising the Committee findings. It then annotated each website story that mentioned the incident with the following: *Update: The Complaints Assessment Committee of the Teachers Council has investigated the alleged mouths-taped incident and are satisfied that this did not take place. The allegations are inaccurate. The Committee said further that they are of the view that [teacher’s name] is an exceptional teacher.*

An online news site published a photo of John Banks with the headline *Banks’ drinking problem* over a story about ACT’s youth wing *ACT on Campus* saying it would

disown John Banks if he didn’t vote to keep the drinking age at 18. The complainant said the headline cast John Banks in a bad light.

The editor responded that John Banks was widely-known to be a teetotaler and that the headline would not be read in isolation – a reader would quickly move on to the story. However, in the interests of settling the complaint, she agreed to change the headline to *Booze ultimatum*. Twenty minutes had elapsed between the time the complaint was received to the alteration of the headline – probably the quickest resolution of a Press Council complaint on record.

An online news site published a file photo of a New Zealand ambulance with a story headlined *Paramedic accused of Christmas rape*. The story was sourced from America. By the time the complaint was brought to the attention of the editor a photograph of an American ambulance had been substituted. See also Case 2271 for Press Council comment on use of file photographs.

A complainant advised that a 2003 article, still available online, stated he had been fined \$200 on a charge. In fact, he had been discharged without conviction, but made a voluntary donation to the Salvation Army in lieu of court costs. With confirmation from court records the article was able to be amended and annotated with the correct information.

It can be difficult to establish an inaccuracy so long after publication. In this case, the Court records were able to confirm, but that will not always be the case.

A man charged with careless use of a motor vehicle causing death had been the subject of many articles relating to the incident. Initially his name was suppressed, but later the suppression was lifted.

Six months later, after a full investigation, the police informed the public that the charges were to be withdrawn. The victim’s family’s reaction to this decision was reported. However, the report did not give the reasons for the withdrawal of the charge, which the complainant said was unfair, and also misleading to readers. The initial complaint to the publication seemed to have gone astray, but after the Press Council’s intervention the editor and the complainant were able to come to an agreed outcome.

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.

An Analysis - 2012

Of the 76 complaints that went to adjudication in 2012 16 were upheld in full; two were upheld by a majority; three were part upheld; 50 were not upheld and five were not upheld by a majority. A further 16 complaints were resolved informally.

Fifty complaints were against daily newspapers; 11 were against community newspapers; seven against Sunday newspapers; five against web-based publications; two were against magazines; and one against *National Business Review*. Two complaints were from readers based in USA who had accessed the columns from *Stuff*. The editors of the originating hard-copy publications responded to the complaints so these complaints have been categorised as daily.

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 2012 there were 46 occasions where a member declared an interest and left the room while the complaint was considered.

All complaints are considered by a Council with a majority of public members. In 2012 there were two occasions where an industry member stood down in order to maintain the public majority.

Debate on some complaints can be quite vigorous and while the majority of Council decisions are unanimous, occasionally one or more members might ask that a dissent be simply recorded or written up as a dissenting opinion (Cases 2233, 2241, 2249, 2271, 2272, 2289 and 2230.)

The Statistics

Year ending 31 December	2009	2010	2011	2012
Complaints Determined	51	75	68	92
Decisions issued	44	65	60	76
Upheld	7	20	10	16
Upheld by majority	1	3	4	2
Part upheld	3	2	4	3
Part Upheld by majority		1		
Not Upheld by majority	2	1	3	5
Complaint declined			1	
Not upheld	31	38	38	50
Mediated/resolved	7	10	8	16
Complaints received and not determined	26	74	63	65
Withdrawn	3	9	12	5
Withdrawn at late stage		2	1	1
Not followed through	9	26	22	36
Out of time	1	2	2	
Not accepted	3	14	5	4
Outside jurisdiction	1	6	6	
In action at end of year	9	15	15	19
Total complaints	77	149	131	157

Decisions 2012

<i>Complaint name</i>	<i>Publication</i>	<i>Adjudication</i>	<i>Date</i>	<i>Case No</i>
Erwin Alber	<i>New Zealand Herald</i>	Not Upheld	February	2229
Geoffrey Arnold	<i>The Dominion Post/ Stuff</i>	Not Upheld	February	2230
Darren Mallory	<i>The Press/Stuff</i>	Not Upheld	February	2231
Bert Jackson	<i>Waikato Times</i>	Not Upheld	February	2232
Tomek Pietkiewicz	<i>Waikato Times</i>	Not Upheld by majority	February	2233
Right to Life NZ Inc	<i>Auckland Now</i>	Not Upheld	February	2234
John Shrapnell	<i>Capital Times</i>	Not Upheld	February	2235
Paul Allen	<i>Manukau Courier</i>	Not Upheld	March	2236
Andy Boreham	<i>Waikato Times</i>	Not Upheld	March	2237
Darryl Dawson	<i>Whakatane Beacon</i>	Upheld in part	March	2238
EQC (1)	<i>The Press</i>	Not Upheld	March	2239
EQC (2)	<i>The Press</i>	Not Upheld	March	2240
Peninsula Golf Club	<i>The Aucklander</i>	Not Upheld by majority	March	2241
Bruce Roscoe	<i>New Zealand Herald</i>	Not Upheld	March	2242
Canterbury Refugee Council	<i>The Press</i>	Not Upheld	May	2243
John Cox	<i>New Zealand Herald</i>	Not Upheld	May	2244
Megan Easterbrook-Smith	<i>The Dominion Post</i>	Not Upheld	May	2245
Magdalen Harris	<i>The Dominion Post</i>	Not Upheld	May	2246
Simon Farrell-Green	<i>Denizen</i>	Upheld	May	2247
Lyn Gautier, Chris Morey & Michael Kuttner	<i>New Zealand Herald</i>	Not Upheld	May	2248
Julie and Peter Keast	<i>Southland Times</i>	Not Upheld by majority	May	2249
Hugh Steadman	<i>The Press</i>	Not Upheld	May	2250
Anne Thompson	<i>Selwyn Times</i>	Not Upheld	May	2251
Michael Thorman	<i>Herald on Sunday</i>	Not Upheld	May	2252
Michael Harcourt	<i>Sunday Star-Times</i>	Upheld	May	2253
Cameron Junge	<i>The Weekend Herald</i>	Upheld	May	2254
Theresa Aperehama	<i>The Weekend Herald</i>	Upheld	May	2255
Marinus Ferreira	<i>The Weekend Herald</i>	Upheld	May	2256
Juliana Venning	<i>The Weekend Herald</i>	Upheld	May	2257
Georgia Harrison	<i>The Weekend Herald</i>	Upheld	May	2258
Raukura Waiti	<i>The Weekend Herald</i>	Upheld	May	2259
Diane White	<i>The Weekend Herald</i>	Upheld	May	2260
Richard Hall	<i>The Dominion Post</i>	Not Upheld	June	2261
JVL Prestige Realty	<i>Manawatu Standard</i>	Not Upheld	June	2262
La Leche League	<i>New Zealand Herald</i>	Upheld in part	June	2263
La Leche League	<i>Herald on Sunday</i>	Upheld in part	June	2264
David Small	<i>Herald on Sunday</i>	Not Upheld	June	2265
Kathleen Lauderdale	<i>Taranaki Daily News</i>	Not Upheld	June	2266
Maori Television	<i>New Zealand Herald</i>	Not Upheld	June	2267
Chris Morey	<i>The Press</i>	Not Upheld	June	2268
Peter Bolot	<i>The Press</i>	Not Upheld	June	2269
SOLGM	<i>NBR</i>	Upheld	June	2270
Scott Baker	<i>Hurunui News</i>	Upheld by Majority	August	2271
Campbell family	<i>Manawatu Standard</i>	Upheld by Majority	August	2272
Morgan Constable	<i>Sunday Star-Times</i>	Not Upheld	August	2273
NZ College of Midwives	<i>New Zealand Herald</i>	Not Upheld	August	2274
NZ College of Midwives	<i>Waikato Times & The Dominion Post</i>	Not Upheld	August	2275
Barbara Pike	<i>New Zealand Herald</i>	Not Upheld	August	2276
Philippa Emery	<i>New Zealand Herald</i>	Not Upheld	August	2277
Nick Thomas	<i>Upper Hutt Leader</i>	Not Upheld	August	2278
Benjamin Easton	<i>The Dominion Post</i>	Upheld	September	2279

Susan Fraser	<i>The Dominion Post</i>	Upheld	September	2280
Keith Flint	<i>The Dominion Post</i>	Upheld	September	2281
Tom Reardon	<i>The Dominion Post</i>	Upheld	September	2282
Bob McLellan	<i>Upper Hutt Leader</i>	Not Upheld	September	2283
Palestine HRC	<i>New Zealand Herald</i>	Not Upheld	September	2284
Vladimir Shapkin	<i>nzherald online</i>	Not Upheld	September	2285
Sky Network Television	<i>Manawatu Standard</i>	Not Upheld	September	2286
Rosemary Williams	<i>Stuff</i>	Not Upheld	September	2287
Bruce Aldridge	<i>Stuff</i>	Not Upheld	November	2288
Diane Chandler	<i>Nelson Mail</i>	Not Upheld by Majority	November	2289
Foxton RSA	<i>The Dominion Post</i>	Upheld	November	2290
Allan Golden	<i>The Dominion Post</i>	Not Upheld	November	2291
Genevieve McClean	<i>nzherald online</i>	Not Upheld	November	2292
Lindsay Robinson	<i>Sunday Star-Times</i>	Not Upheld	November	2293
Deborah Ryder	<i>Northern Advocate</i>	Upheld	November	2294
Karen Batchelor	<i>Bay of Plenty Times</i>	Not Upheld	December	2295
Bev Butler	<i>Otago Daily Times</i>	Not Upheld	December	2296
Jeff Dickie	<i>Otago Daily Times</i>	Not Upheld	December	2297
Church of Scientology	<i>New Idea</i>	Not upheld	December	2298
Darryl Dawson	<i>Whakatane Beacon</i>	Not Upheld	December	2299
Foxton RSA	<i>Manawatu Standard</i>	Not Upheld	December	2304
Guy Hallwright	<i>New Zealand Herald</i>	Not Upheld by majority	December	2300
Joanna & Ro Piekarski	<i>Golden Bay Weekly</i>	Not Upheld	December	2301
Victoria Davis				
Rosylin Singh	<i>Herald on Sunday</i>	Not Upheld	December	2302
Titahi Bay Residents Assocn & Graeme Ebbett	<i>Kapi-Mana News</i>	Not Upheld	December	2303

Adjudications 2012

CASE NO: 2229 – ERWIN ALBER AGAINST THE NEW ZEALAND HERALD

Erwin Alber, representing the New Zealand Health Information Network, takes issue with a *New Zealand Herald* editorial on fluoridation of town water supplies. The editorial endorsed the Labour Party's pre-election support for an independent inquiry into fluoridation with a view to developing a national policy. The complaint is not upheld.

Background

On November 11, 2011 the *New Zealand Herald* published its editorial, recording the "undeniable" advantages of fluoridation. It also referred to the "scaremongering, anti-fluoridation brigade". Endorsing the Labour's call for an independent inquiry, it said such an investigation "would not have to waste time debating the pluses and minuses of fluoridation. The advantages are undeniable."

It said the focus of any inquiry should be the authority best suited to make decisions on the fluoridation of water supplies. It said the issue had been highlighted by the New Plymouth District Council's decision to remove the "mineral" from its water. It criticised the New Plymouth councillors who, it said, did not familiarise themselves with the scientific literature on the subject.

It also faulted other council decision making on the subject, saying councillors had "shirked their responsibility" by putting the issue to a referendum.

The editorial said the decision on fluoridation should be vested in District Health Boards, not councils, enabling decisions based on scientific research and "not the emotional and irrational views of a small minority".

It also gave some space to views of Health Minister Tony Ryall, who said fluoridation was a local choice and the Government had no plans to make it compulsory.

The Complaint

Mr Alber considered the editorial breached the New Zealand Journalist Code of Ethics, in particular that journalists should strive to disclose all essential facts and not to suppress relevant, available facts or distort by wrong or improper emphasis.

Mr Alber said, while an opinion piece, the editorial did readers a disservice by omitting easily obtainable facts which would have provided a balanced view.

He was also upset that the editorial made derogatory reference to people concerned about the health risks of fluoridation.

The editorial had also mistakenly asserted that fluoride was a mineral, whereas the hydrochloric acid added to New Zealand drinking water was a "highly toxic" chemical.

His initial complaint to the newspaper on November 16 cited the Code of Ethics. While noting the editorial was an opinion piece, he said it should not promote

information which could be easily disproved. The editor was, wittingly or unwittingly, acting as the mouthpiece for political and commercial interests seeking nationwide fluoridation.

He called the editorial a "gross distortion of the facts", said it failed to present information from both sides of the debate, and denigrated those who had studied scientific literature and who had concluded that fluoridation did more harm than good.

He cited numerous examples of scientific research to back his argument.

He also asked the *New Zealand Herald* to publish a page in which the views of fluoridation advocates and opponents could present their arguments.

The Newspaper's Response

Deputy editor David Hastings said the piece was written as part of the general debate on the election campaign. It was the newspaper's absolute right to express its opinion on this and any other subject.

From previous correspondence with Mr Alber, he noted his opposition to fluoridation and the meningococcal vaccine. He said Mr Alber did not accept the views of the World Health Organisation (WHO), American Dental Association or New Zealand's Ministry of Health.

Mr Alber had a right to his opinion, and the correct way to challenge something in an editorial was by way of a letter to the editor.

Further Comment from the Complainant

In correspondence with the Press Council, Mr Alber said he had lodged his complaint because Mr Hastings' letter was completely dismissive of his concerns.

He noted Mr Hastings' view that an editorial was an expression of opinion, and that the newspaper was entitled to express it. However, Mr Alber said the editorial had engaged in slanderous remarks, had denigrated people concerned about the health hazards of fluoridation, had used information selectively to promote commercial interests and had deliberately ignored readily available information about the ineffectiveness and harm of fluoridation.

Mr Alber attached considerable material to back his assertions and also made some strong allegations about the official organisations on which the *New Zealand Herald* editorial relied.

He said that "voicing a strong opinion in my opinion does not absolve editors from adhering to the Journalist Code of Ethics".

Discussion and Decision

The Press Council had previously endorsed the right of editors to express strong opinions and to express them vigorously, even if some readers are offended and provoked by what they see as ignorant, wrong-headed or blatantly prejudiced remarks.

The fluoridation debate is one in which strong opinions and views are held by both sides, each of which can produce strong scientific evidence to back their case. It is not the role of the Press Council to rule on which has the most credence.

The *New Zealand Herald* relies on official views, such as the WHO and New Zealand's Ministry of Health, and its editorial was published during the election campaign in a commentary on Labour Party policy. It also cited the Government's stance.

Mr Alber has strong contrary views and makes serious allegations about the WHO and New Zealand's Ministry of Health, which evidences his extreme position.

He also says the editor could be seen to be acting as the mouthpiece for political and commercial interests seeking nationwide fluoridation.

The Press Council does not accept that this is so. The editorial was supporting Labour's call for an independent inquiry into fluoridation with a view to developing a national policy. One result, it suggested, could be that District Health Boards would be responsible for decision-making on fluoridation. The editorial did make it clear there were those who opposed fluoridation.

The *New Zealand Herald* editorial was a clearly defined expression of opinion. It was entitled to express that view. 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, Lynn Scott and Stephen Stewart.

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

CASE NO: 2230 – GEOFFREY ARNOLD AGAINST THE DOMINION POST/STUFF

Geoffrey Arnold has complained that an opinion column published by *The Dominion Post* in December 2011 and carried on the *Stuff* website is discriminatory and offensive. The complaint is not upheld.

Background

A column by *Dominion Post* regular columnist Rosemary McLeod that appeared on the *Stuff* website and was also syndicated to *The Press* has been the subject of two complaints to the Press Council.

The column, headlined on *The Dominion Post*'s section of *Stuff*, *Short can be troublesome or seriously dangerous*, discussed the behaviour of small dogs by making comparisons with short men.

Complaint

Mr Arnold, a New York resident, complained to *The Dominion Post* that the columnist was arbitrary and misguided and the column was a degrading assault on a group of individuals. He said it expressed a casual contempt for short people and encouraged prejudice which was demeaning to everyone.

He said the column was not clearly labelled as opinion and its publication was 'reckless'.

Mr Arnold also complained that the column was inaccurate in comparing a high-profile New Zealand personality of small stature who was bankrupt and an American personality who was taller – and successful. He said the American had also filed for bankruptcy twice.

He questioned whether the column would have been published if it had referred to other minority groups, such as Black people or Jews.

The Newspaper's Response

Editor Bernadette Courtney, replying for *The Dominion Post* and also on behalf of Andrew Holden, editor of *The Press*, said they were surprised that the complaint had come from the United States, a country that guarantees its citizens free speech. The columnist and the newspapers' website were simply exercising that freedom.

She said the column appeared in the comment or opinion sections in both cases.

Rosemary McLeod was writing primarily for a New Zealand readership and the word 'bankrupt' had a different meaning in the United States. It was a fact that the New Zealand businessman referred to was bankrupt while the American was not.

The Press Council has previously upheld the right of columnists to provoke and be outrageous.

Ms Courtney said the columnist was not advocating prejudice against short men. "To equate what were light-hearted comments – a style familiar to regular readers – with prejudice against black or Jews is offensive."

The editors reiterated their offer that they would consider publishing a letter to the editor from the complainant.

Further Comment

Mr Arnold said that while the method of filing for bankruptcy may differ between New Zealand and the United States, the word bankruptcy had the same meaning. It was false and misleading to imply that the American personality had never been bankrupt.

Discussion

Two complaints about this column have come to the Press Council; both from the United States and both asserting that the column has encouraged prejudice against short men.

Firstly, the Council notes that any inaccuracy on the bankruptcy issue was not sufficiently material to uphold the complaint.

The column appeared in the comment/opinion sections of the two newspaper's sections on the *Stuff* website, and is clearly the opinion of the columnist.

There are two considerations here – the matter of freedom of expression for writers of opinion pieces and the question of whether the column has encouraged prejudice or discrimination against short men.

In the context of a light-hearted piece, the Press Council does not believe the column promotes widespread contempt for short men. Rosemary McLeod's style is

familiar to her regular readers. Not everyone would have liked it, nor agreed with her. Some readers would have smiled. Some might have even been affronted on behalf of chihuahuas. But it's a step too far to say it should have been banned.

Freedom of expression is one of the Council's guiding principles. The Council notes that both complainants were given the opportunity of expressing their own opinions through a letter to the editor. They declined to do so.

Conclusion

For the reasons outlined above, the Press Council does not uphold the complaint.

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: 2231 – DARREN MALLORY AGAINST THE PRESS/STUFF

Darren Mallory has complained that a column published by *The Press* in December 2011 and carried on the *Stuff* website is gratuitous and discriminatory. The complaint is not upheld.

Background

A syndicated column by Rosemary McLeod published in *The Press*, *The Dominion Post* and appearing also on the *Stuff* website has been the subject of two complaints to the Press Council.

The column, headlined on *The Press* section of *Stuff*, *Short mutts – bad, mad and dangerous to know*, discussed the behaviour of small dogs by making comparisons with short men.

Complaint

Mr Mallory, a Chicago resident, complained to *The Press* that the columnist had used her hatred of short men to draw parallels with the psychology of small dogs.

He complained the column was inaccurate in comparing a high-profile New Zealand personality of small stature who was bankrupt and an American personality who was taller – and successful. He said the American had been bankrupt twice.

He said *The Press* website did not mark the column as opinion and it was important to keep this distinction clear for international readers who were unlikely to be familiar with Rosemary McLeod's reputation.

He said her use of the word 'research' in comparing short men and tall men was bogus and doubted her expertise in making the judgments.

By linking height to someone with an offensive personality, the columnist had shown prejudice and engaged in 'gratuitous stereotyping that serves only to denigrate short men'.

He said no newspaper would ridicule skin colour, female obesity, or sexual orientation.

Mr Mallory criticised *The Press* editor Andrew Holden for failing to recognise the offensiveness of the article and apologise.

The Newspaper's Response

Dominion Post editor Bernadette Courtney, replying on behalf of Andrew Holden, said the columnist and the newspapers' website were exercising freedom of expression.

She said the column appeared in the comment or opinion sections in both cases.

Rosemary McLeod was writing primarily for a New Zealand readership and the word 'bankrupt' had a different meaning in the United States. It was a fact that the New Zealand personality referred to was bankrupt while the American was not.

The Press Council has previously upheld the right of columnists to provoke and be outrageous.

Ms Courtney said the columnist was not advocating prejudice against short men. The editors reiterated their offer to both complainants that they would consider publishing a letter to the editor from them.

Further Comment

Responding to the editors, Mr Mallory said invoking press freedom to defend discriminatory views on short men insulted journalism and those needing protection while investigating matters advancing public interests.

Free speech had limits; "discriminatory vitriol is one".

Discussion

Two complaints about this column have come to the Press Council; both from the United States and both asserting that the column has encouraged prejudice against short men.

Firstly, the Council notes that any inaccuracy on the bankruptcy issue was not sufficiently material to uphold the complaint.

The column appeared in the comment/opinion sections of the two newspaper's sections on the *Stuff* website, and is clearly the opinion of the columnist.

There are two main considerations here – the matter of freedom of expression for writers of opinion pieces and the question of whether the column has encouraged prejudice or discrimination against short men.

In the context of a light-hearted piece, the Press Council does not believe the column promotes widespread contempt for short men. Rosemary McLeod's style is familiar to her regular readers. Not everyone would have liked it, nor agreed with her. Some readers would have smiled. Some might have even been affronted on behalf of chihuahuas. But it's a step too far to say it should have been banned.

Freedom of expression is one of the Council's guiding principles. The Council notes that both complainants were given the opportunity of expressing their own opinions through a letter to the editor. They declined to do so.

Conclusion

For the reasons outlined above, the Press Council does not uphold the complaint.

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: 2232 – BERT JACKSON AGAINST WAIKATO TIMES

Late last year the Hamilton City Council turned down a request to hold an 'Erotica Expo' at the council's Claudelands Arena. Bert Jackson has complained that the *Waikato Times* did not fairly report the council's reasons, causing the decision to be heavily opposed in a public forum on the newspaper's website. The complaint is not upheld.

The Article

The decision was the subject of a brief item in the newspaper and a longer report on the website. The printed story quoted a council member, Maria Westphal, chair of its strategy and policy committee, explaining that members had weighed up the financial needs of their struggling events centre against the risk of "upsetting a large proportion of the community" and decided the expo did not meet Hamilton's "family-friendly values".

The website carried Mrs Westphal's explanation, followed by extensive comment from the only council member who opposed the decision, Ewan Wilson.

Mr Wilson believed the event might have earned significant income for the centre and that an expo with an entry charge and an age restriction was quite different from an indecent public display. People should be able to decide for themselves whether to attend.

Readers who responded on the website were overwhelmingly of a similar view. The newspaper then printed a report of the reaction and an editorial that criticised the council's decision.

The Complaint

Mr Jackson believes the reaction would have been different if the newspaper and website had printed not just Mrs Westphal's explanation but the reasoning and submissions behind the decision.

"The predominant concern shared by most councillors," he said, "was always specifically the Erotica Expo's close association with the pornographer Steve Crow....the hardcore pornography he produces...that would, as always, have been promoted at the expo."

The issue, he said, "was never whether the public should or should not have the opportunity to attend a particular event. It was whether material widely offensive to the public should be promoted at a venue the public own." The council was not trying to "censor" the event,

it was concerned about the likely promotion of very objectionable material, both at the expo and afterwards, and on billboards.

He contends that by omitting this reasoning and extensively reporting the views of the single council member who opposed the decision, the newspaper breached the principle of balance. It did not report comments by other council members attesting to the volume of messages they had received from people opposed to the expo.

Mr Jackson said he was a spokesman for a network called Voice Waikato that lobbies for family life and community values. Its submissions to the council had been ignored by the newspaper, as were 30 messages posted on Voice Waikato's site.

He complained on four grounds: unfairness, lack of balance, a failure to correct errors and he believed the paper had a special duty of care at the time because the Hamilton City Council was under criticism for the city's debt.

The *Waikato Times* was the main source of local information, he said, and it had harmed the democratic process by giving the impression the council wanted to be the people's "moral police".

The Newspaper's Response

The deputy editor believed Mr Jackson was making his own interpretation of the council's motives. But in any case, the anti-pornography message was implicit in the comment by Mrs Westphal that the event did not fit Hamilton's "family-friendly values".

The newspaper's website poll had never been presented as a scientific sample but it was the most overwhelming response the paper had ever received online. He agreed the poll was not representative but added that it was open to Mr Jackson's supporters to take part in it.

The newspaper report of the online reaction had included a strong defence of the council's decision by a council member opposed to the expo.

The *Waikato Times* had not shut out any view. It had published every letter or media release the deputy editor had seen on the subject, for or against the council's decision.

The Decision

The Press Council is not persuaded that reaction to the Hamilton City Council's decision would have been different had the *Waikato Times* reported it in the terms the complainant would have preferred. Steve Crow's promotion of the event is well known and the likely presence of pornography would be assumed by most people.

They would also have been well aware the Claudelands Arena was council-owned - indeed, many criticised the decision as a missed opportunity to cut its losses. They did not seem to think its public ownership made it unsuitable for an exhibition of this sort.

The newspaper concedes that the response on its website was not a scientific poll but there is no suggestion it was blocking anyone from joining the debate.

The Press Council finds no lack of fairness or balance in the newspaper's handling of the story. Both sides

were given a say in its reports. A report on a council's determinations would become unwieldy if the submissions and every councillor's opinion had to be reported.

Mr Jackson takes issue with the deputy editor's claim that every media release he saw was published and cites a Voice Waikato release that was not. The Press Council does not consider this to be a serious lack of balance.

It sees nothing in the newspaper's coverage to warrant correction and does not agree that the newspaper breached a special duty of care because the City Council was facing criticism over its debt. 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, John Roughan Lynn Scott and Stephen Stewart.

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

CASE NO: 2233 – TOMEK PIETKIEWICZ AGAINST WAIKATO TIMES

Introduction

The Press Council has not upheld, by a majority of 8:1, a complaint by Tomek Pietkiewicz against the *Waikato Times* over a news story concerning Fairfield College.

The Article

On November 22, 2011 the *Waikato Times* lead story covered an incident in which a number of Fairfield College students were taken to hospital following what the newspaper speculated was drug-taking involving ecstasy. The headline read: *Drug puts students in hospital* and carried a photograph of Fairfield College entrance showing the name of the school.

The newspaper reported six students of the college were taken to hospital following an overdose of ecstasy and noted that it was another high-profile incident to shed a negative light on the school which had received an 'appalling ERO review'. It quoted a Waikato DHB spokeswoman speculating that the pupils' behaviour led hospital staff to suspect that an illegal drug had been taken. No source was given for the newspaper's identification of the drug as ecstasy. The article also quoted the chairman of the college's board saying the incident rang alarm bells and the college principal saying it was the first time he'd heard of such an event at Fairfield College.

The Complaint

Mr Pietkiewicz complains that the story breaches Press Council principles relating to accuracy, fairness and balance and also breaches the principle of confidentiality. His initial complaint to the editor of the newspaper was diverted by a spam-detecting filter, a fact for which the editor subsequently apologised. Mr Pietkiewicz is the originator of an online petition against "media persecution and sensationalism of Fairfield College" and is a former pupil and a teacher.

His complaint against the principle of accuracy relates to the incorrect identification of the drug involved as ecstasy. He argues that as the drug taken by the pupils was later named as BZP the original article was incorrect.

In relation to the principles of fairness and balance he argues that the article was unbalanced in the negative light it shone upon the school and by revisiting other adverse stories about the school, the newspaper failed to meet the need for balance.

Mr Pietkiewicz supplied a number of examples of positive aspects of the college which could have been used to put a more positive light on it and by which the newspaper might have achieved balance.

Mr Pietkiewicz criticised the "weak" investigative processes behind stories about Fairfield College, argued that social issues plague all schools today and queried the ERO report process. He also asked whether the newspaper had ever been into the school to gather and publish independent views from pupils and the community.

He requested that the newspaper acknowledge the impact of the negative articles on both the college and Waikato communities with a formal apology to the school which he also requested be published in the newspaper.

Newspaper Response

The editor argues that the story was in the public interest and would have been of concern to every parent with a child at the college. He acknowledges that the drug was incorrectly named, a fact that the newspaper addressed as soon as it had that information.

In relation to issues of fairness and balance, the editor supplied a follow-up article which was published two days after the initial article. In this article Mr Pietkiewicz and several pupils of the school drew attention to positive aspects of the college's record and explained why they thought the college deserved more positive reviews.

The editor argued that the school was shown in a bad light because it does not enjoy a good reputation and has featured widely in national media for a variety of previous incidents.

The editor disagreed that the overall coverage of the college was needlessly negative and stated that in the past two years a total of 20 positive letters to the editor and stories had been published.

Discussion and Decision

The drug incident was a genuine news story of significant prominence with relevance to the local community as well as the wider New Zealand public. As a news story it does not require a balance of "good and bad" and therefore it is not reasonable to expect all aspects of the college to be canvassed. The Press Council regularly rules that balance can be achieved over time and often cannot be expected to be achieved within the constraints of a single news story.

The complaint on the grounds of accuracy relates to naming the drug as ecstasy, a Class B drug. Later police confirmed that it was the Class C drug BZP involved in the incident.

The editor says the information that the drug was ecstasy came from a trusted source.

The Council notes that while the intro states “A group of six young students was rushed to hospital after an overdose of the drug ecstasy”, other statements were more equivocal: the subheading “suspected of being high on ecstasy”; “they are believed to have taken” and “Urine samples taken were to be sent away for testing to confirm what they’d taken.”

The Council also notes that as soon as the police confirmed it was the Class C drug BZP *Waikato Times* published the fact.

Under the circumstances, the complaint of inaccuracy is not upheld. The newspaper, finding itself to have reported inaccurately, moved quickly to correct a genuine error.

Mr Pietkiewicz’s complaint on the principle of confidentiality is not upheld as he did not establish the use of any confidential information.

The frustration of the complainant at a seemingly endless series of negative stories about Fairfield College, while understandable, must be balanced against the newspaper’s role in reporting news. Would a newspaper be of any value to its readers if it chose not to report a story such as this one because it might throw a poor light upon a college? The newspaper’s response to the online petition to support the college by running a news story on page two demonstrates that the *Waikato Times* is willing to write good news stories about Fairfield College where it can.

Dissent

Pip Bruce Ferguson would have upheld on accuracy. The *Waikato Times*, on two separate occasions, declared the drug to be ecstasy when it wasn’t, and Dr Bruce Ferguson believed that they should have exercised more caution given the ‘shock value’ of ecstasy being distributed in a high school.

Mr Peitkiewicz’s complaints against *Waikato Times* are not upheld by a majority of 8:1.

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: 2234 – RIGHT TO LIFE NEW ZEALAND INC AGAINST AUCKLAND NOW

A complaint lodged by Ken Orr, on behalf of Right to Life NZ Inc, against *Auckland Now* is not upheld.

Background

An blog written by journalist Richard Boock on abortion entitled “A woman’s right to choose” was published by *Auckland Now*, on stuff.co.nz. The article outlined the journalist’s dislike of comparison of Down syndrome testing with eugenics, by pro-lifers.

Boock argued that the test was optional and offered women information ‘about their own bodies and future’. He stated that most women whose test reveals a Down

syndrome child prefer to terminate. He indicated that pro-lifers suggest the presence of Down syndrome children should be maintained as though they are ‘some sort of endangered species’ but that our world has moved on from celebrating ‘biological bloopers’ rather than wanting to ‘force them on future generations’.

Boock supported the Abortion Law Reform Association of New Zealand’s push to ease restrictions on abortion, stating that women should be able to have a safe abortion ‘more or less on demand’. He criticised pro-lifers for being more concerned with ‘forcing women to carry unwanted babies to full term’ than any concern about children with Down syndrome.

A wide variety of comments were posted, both supportive of and disagreeing with Boock’s opinion.

Ken Orr, secretary for Right to Life NZ Inc., complained to the editor of Fairfax Media. He listed a range of complaints about the article, including Mr Boock’s use of some of the words quoted above. He argued that Mr Boock could not know whether women were pressured to have abortions on receipt of a positive test, whereas his organisation had evidence that this occurred. He requested the editor to make a public apology on the website, or he would lay a complaint with the Human Rights Commissioner and the Press Council.

The editor for *Auckland Now*, Miriyana Alexander, responded indicating that she did not believe an apology was needed. The work was clearly marked as a blog and was clearly an opinion piece. Bloggers frequently expressed views that others will disagree with, and reader comment on these is accepted and published. Dissatisfied, Mr Orr then laid a formal complaint with the Press Council.

The Complaint

Mr Orr claimed that the article contravened Principles 1, 3 and 6. He stated that the journalist’s comments about people with Down syndrome were deeply offensive, eugenic and encouraging of only the ‘perfect’ having the right to be born. Mr Orr linked this attitude with the genocide perpetrated by the Nazis in Germany prior to the Second World War.

He argued that the article was in violation of the NZ Bill of Rights that prohibits discrimination against others, and was also in violation of the government’s Disability Strategy that seeks to encourage a more inclusive society for those with disabilities.

His complaint stated that it was factually incorrect, and also a breach of Principle 4, that the journalist stated there was no suggestion of coercion one way or the other. According to Mr Orr, ‘the sole purpose of early antenatal screening for Down syndrome is to offer abortions to mothers solely on the basis of a diagnosis of Down syndrome’.

The complaint further contended that the article breached Principle 3, on children and young people, as it could result in the development in readers of detrimental attitudes towards people with disabilities. The complaint concluded that while the organisation supports the right of free speech in a democratic society, the article was a ‘gross misuse of free speech’.

The Website’s Response

In her reply to the Council, the editor responded that Mr Boock is engaged to write twice-weekly blogs on a variety of topics, which are clearly opinion. She did not accept

that the blog encouraged people to accept ‘the need for the elimination before birth of those with Down syndrome’. Mr Boock did not state this, nor encourage people to discriminate against anyone with disabilities.

Accordingly, she rejected Mr Orr’s complaint and stood by Mr Boock’s right to express his views.

Mr Orr chose not to respond further.

Discussion

The subject of abortion is clearly one over which people have widely varying and deeply held views. Those who believe it is an issue of a woman’s right to choose are strongly opposed by those who believe that life begins at conception, and are opposed to abortion. The two sides are never likely to agree, and expressions of opinion from either side are encouraged in a democratic society.

The article, as a blog, is clearly opinion, and the Council has supported the right of publications to publish opinion pieces, even when they are particularly controversial. *Auckland Now* did publish comments from readers, responding to Mr Boock’s initial blog, both for and against the article.

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, John Roughan Lynn Scott and Stephen Stewart.

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

CASE NO: 2235 – JOHN SHRAPNELL AGAINST CAPITAL TIMES

John Shrapnell complained about a report which was published in the *Capital Times* on November 16, 2012. He argued that the report lacked accuracy, fairness and balance. His complaint is not upheld. *Capital Times* is a weekly community newspaper, delivered to Wellington’s inner-city suburbs, available at many pick-up points around the city and published online.

Background

The report, under the heading *Whose shed is it anyway*, explained that a rift had developed in the management of a Wellington-based trust, the Menzshed Wellington Charitable Trust (MSW). The Trust administered Menzshed, a place where men could go to have a chat, a cup of tea, and use their trade skills for charitable purposes, such as maintenance work for other community-based groups.

The Trust had been established by a small group, including John Gibbons, the President and Executive Officer of Age Concern Wellington. Now, according to the report, he was being “forcefully challenged” by John Shrapnell.

The rift had developed to the stage where a new trust had been formed, the Wellington City Menzshed Charitable Trust (WCM), with similar aims but providing in a more formal manner for “membership”. This new group wished to continue using the same premises operated by MSW.

The article suggested that John Shrapnell had taken a leading role in the establishment of the new and rival group.

The article was accompanied by a photograph of John Gibbons, on the premises of Menzshed, and Mr Gibbons was also quoted in the report. Mr Shrapnell was not quoted.

It is worth noting that a subsequent report (and subsequent to Mr Shrapnell contacting the newspaper with his concerns) was published by the *Capital Times* on November 23, 2012.

Mr Shrapnell has not formally complained about that report, headed “Grumpy Old Men”, but in follow-up letters to the Press Council he explained that it only “rubbed salt into his wound”.

The Complaint

The nub of Mr Shrapnell’s complaint is that the article was couched as a personal attack.

He argued that Menzshed Wellington (MSW) was not being challenged by John Shrapnell, as the article alleged, but rather by the Wellington City Menzshed Charitable Trust (WCM).

The article had implied that he was a relatively recent attendee at Menzshed’s “Grumpy Men’s Sessions”, but he had been involved from their very start.

He denied that he had posted “vituperative” comments about Gibbons on his Menzshed website.

He stressed that although the report had stated “Shrapnell wants to take the place over” he was, in fact, the Secretary for the WCM, ie only one of a group concerned about “membership” and the subsequent selection/election of trustees.

He denied that he had actively encouraged MSW members to join WCM. He disputed the reported comments that a grant made by the Medibank Community Fund to WCM may have been made on the mistaken belief that the funds were being made to MSW and that the Wellington City Council’s Community Grants Committee was refusing further funding until the “ownership” of Menzshed became clear.

Finally, he complained that he had not been asked for comment on the matters raised in the article, rather, the reporter was only on the phone for “half a minute before he rang off . . . he did not call back”.

The Newspaper’s Response

Managing editor, Alison Franks, argued that John Shrapnell could fairly be described as a “forceful challenger” because he was, for example, a spokesman for the new WCM group, a founding trustee and founding secretary, WCM’s contact person for both the Wellington City Council and the Sisters of Compassion (who own the premises used by Menzshed), and listed as webmaster for the WCM website. Further, WCM group meetings had been held at his home and he had made efforts to get the lease of the premises for WCM.

The editor pointed out that there had been sharply critical comments about Mr Gibbons posted on the WCM website, such as calling him a “Grinch” and a piece of doggerel aimed at Mr Gibbons which included “Damn all those sheddies who won’t let me be boss/I’ll keep the door locked and I won’t give a toss”.

The editor rejected the complainant's view that he had not "encouraged" some of the men to join the new group. Mr Shrapnell had been very involved in setting up the structure for a new group, had discussed the new group at the existing sessions of Menzshed and invited some to join. He was not merely the Secretary for WCM – he was its spokesman and had initiated the efforts to meet the owners of the property in order to gain access for members of WCM.

A spokesperson for Medibank had affirmed that they did not ask about two Menzsheds when they made a grant to Menzshed and the WCC Senior Media Advisor had stated that Menzshed would not be further funded while the situation was unclear.

Above all, she argued that there were no material inaccuracies, only "tendentious points regarding interpretation of word use" from the viewpoint of the complainant. For example, she cited Mr Shrapnell's definition of "membership" in a formal sense rather than loose grouping (for MSW, whoever chose to walk through the door was at once a "member" but for WCM, "membership" was a result of paying a due, albeit token, and "membership" gave the right to elect trustees).

She admitted that the newspaper had erred in not responding more formally to Mr Shrapnell's written complaint but explained that she had telephoned him promptly asking him about his concerns. Mr Shrapnell had declined to discuss the issues he had raised, point by point, instead claiming that he did not trust her to report accurately.

Finally, the editor noted that the newspaper had published all letters received on this subject – in an attempt to ensure fairness and balance.

Discussion and Conclusion

First, this was a story worth covering and worth investigating. Here was an organization that had received some favourable publicity and public funding but was suddenly beset by factionalism and bitterness.

Secondly, most suggested inaccuracies were successfully countered by the newspaper. Some minor details at issue are no doubt caused by different interpretations about the meanings of words and by the difference in point of view between the complainant and the newspaper. In any case, the Press Council is of the view that they are immaterial and the complaint about inaccuracy is not upheld.

The complaint about a lack of fairness and a lack of balance is stronger. In reports where one person is so clearly the subject of criticism, one normally expects the issues to be put directly to that person, for balancing comment. Mr Gibbons is quoted, at some length, in the article, but Mr Shrapnell is not.

The complainant's question, "How can you have fairness and balance if you only interview one party in a story?" is a pertinent one. Further, no other members of WCM were contacted for comment.

However, it is clear that the reporter did approach Mr Shrapnell at least initially. What happened next is unclear and is a matter of dispute between the complainant and the newspaper. Mr Shrapnell maintains that he was not

directly asked for comment on the matters raised in the article and the reporter abruptly finished the conversation after "about half a minute". The newspaper maintains that when phoned for comment, Mr Shrapnell simply referred the reporter to the WCM website for any information and the reporter did use that source.

However, what is clear is that he was later approached by the editor after he had raised his concerns about the initial report. He explains that he had little trust in being reported accurately but it is significant that he declined to give further information – he "was not prepared to give them another story".

The Press Council also noted that the reporter had not based the story on one single source, a variety of people and organisations had been approached, and that the newspaper did subsequently publish all letters received on this subject, both for and against.

An interview with Mr Shrapnell would have been desirable (as the editor herself acknowledged) but a balanced story is not confined to the "he claims but he replies" format.

His complaint about a lack of fairness and balance is also not upheld.

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: 2236 – PAUL ALLEN AGAINST MANUKAU COURIER

The Press Council has not upheld Paul Allen's complaint against the *Manukau Courier* over a report on damage being caused to a park by mountain bikers on "illegal" tracks.

Background

In November 2011 a Parks Sport and Recreation report to the Manurewa Local Board recorded that loop tracks in Totara Park had been subject to vandalism. It also said informal mountain bike tracks had caused damage. The board would be working with members of the Auckland Mountain Bike Club to educate bikers, and gates had been reinstalled to stop bikes entering the loop tracks.

On November 18 the chief reporter of the *Manukau and Papakura Couriers* emailed questions to the Auckland Council based on the report, and asking about mountain bikers creating illegal tracks in the park.

The council emailed answers to the newspaper and on December 20 the *Manukau Courier* published a report based on them, saying illegal mountain bike tracks had caused significant damage to native bush areas in the park. It quoted Mike Bowater, the council's manager of local and sports parks. Additional comment from Manurewa Board member Cr Angela Dalton also featured.

Mr Allen then emailed a complaint to the newspaper about what he said were inaccuracies in the story and its suggestions that mountain bikers were causing damage. He added that \$450,000-worth of purpose built mountain bike tracks had been built and maintained by the council over the last three years. Omission of that fact was "bizarre". "How could they forget this?"

He cc'd the letter to Cr Dalton, who replied to him that the "whole point" of the story had been to point out that purpose built tracks existed, that the council had spent money on them, and that it supported riders who used them legally and respected them. She was disappointed in the story that appeared.

She intended contacting the newspaper to seek a correcting story. (However, she did not do so, the editor later asserted to the Press Council.)

On January 12, after the Christmas break, the newspaper published Mr Allen's letter. However, it omitted a sentence in which he asked for a correcting article and some more explanation.

On January 12 Mr Allen emailed the editor again, upset about the way his letter had been edited and because the newspaper had not published a correcting report. Later he complained to the Press Council.

Manukau Courier response

Editor Judith Tucker accepted that Mr Allen's point of view was different from the story that initially appeared, but she did not accept that the story was wrong. She had edited his letter that appeared in the *Manukau Courier* as she did not accept its assertion that the story was wrong.

The reporter had sourced the story from an Auckland Council report to the Manurewa Local Board meeting, checked the background with Cr Dalton and asked questions of the Auckland Council. She provided those emailed questions and the council's answers to the Press Council.

She had not responded to Mr Allen's second email since he had had his say in the published letter to the editor. She considered his second email incorrect and had not wanted to engage in a "slanging match" over a story she believed to be totally correct.

She had not had an email from Cr Dalton, nor had her chief reporter.

Complainant's response

In reply, Mr Allen told the Press Council that all he wanted, in both letters he wrote to the editor, was a story to state that the park had purpose built mountain bike tracks paid for and built by the council, and which could be ridden lawfully. Claims that there were illegal tracks were wrong, as he had not seen them, still.

He wondered why the editor could not grasp the fact that a network of single tracks was available in Totara Park, constructed by the council for the use of mountain bikers, away from horses and walkers, where mountain bike riders had the right of way.

Discussion and Decision

Mr Allen takes issue with the thrust of the story, wishing instead it was about the \$450,000 worth of purpose built

mountain biking tracks, and the tree planting undertaken by a volunteer group. He notes that he has not seen any illegal tracks, and he says he does not want any future debate on public access for mountain-bikers driven by misinformation.

The Press Council finds no inaccuracy in the *Manukau Courier* article. All the information was sourced from reputable sources. The reporter was alerted to the "illegal tracks" by a report from Parks Sport and Recreation to the Manurewa Local Board. He developed the story by contacting, and quoting, both the local board representative and the Auckland Council.

Both Mr Allen and the *Manukau Courier* have valid points of view. They are not mutually exclusive. The published article was simply a small story about one aspect of the park management, possibly chosen because it was more newsworthy. It did not need to include material about the existing network of trails. Mr Allen's point of view was expressed in the published letter.

The editor has told Mr Allen she is willing to do a follow-up story if and when the volunteer group starts working on extending the existing trails. This seems a positive outcome.

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:2237 – ANDY BOREHAM AGAINST WAIKATO TIMES

Andy Boreham complains about a *Waikato Times* account of the mood and character of a crowd outside the Taupo Youth Court when a teenager appeared on a charge of sexually violating a five-year-old girl. The complaint is not upheld.

Background

The crime, committed at a Turangi motor camp on a child of visitors to New Zealand just before Christmas, 2011, attracted intense national interest before the youth was charged. On the day of his first appearance almost everything about him was suppressed and the *Waikato Times* devoted most of its report to a description of the crowd outside.

The Complaint

Andy Boreham complains that the report contains language and assertions that are clearly matters of opinion but are presented as fact. Specifically, he cites references to the victim's family being surrounded by an "aching love" and to "big corn-fed policemen on the front door". One onlooker was described as "so much like prison he's only lacking a white suit." and "best avoided until he approaches and starts asking questions". A couple were said to be voicing "rumours that can't be repeated but seem plausible."

Mr Boreham accuses the newspaper of presenting opinion as fact, offending standards of accuracy, fairness and balance and making a discriminatory statement that a person looked "like prison" before it reported that he was of the "local Tu Whare Toa Iwi".

Mr Boreham believed the article was endorsing anti-social behaviour and was irresponsible. He cited a reference to one angry onlooker having a camcorder up his sleeve, presumably to post pictures of the accused on a website.

He considered the unattributable views of onlookers had no place in professional, impartial news stories. This one, he believed, suggested the public are entitled to take the law into their own hands.

The Newspaper's Response

The editor not only stood by the story but described it as "a fine piece of journalism". It was in no way inaccurate or unbalanced. He expected his reporters to include some "colour" of significant news events such as this.

"We rely on reporters to be the eyes and ears for our readers," he said. At no time had the reporter expressed a view on the accused or the case. He said, "Mr Boreham mistakes colour for opinion".

The Decision

The best factual reporting is not insensate. The reporter's job is not just to count numbers in a crowd or listen to what might be said. A good reporter can give a reader a sense of what it is like to be there. A well-written story uses acute factual observation to convey what a fair and impartial observer would see, hear and think.

Waikato Times reporter Alistair Bone has achieved all of this exceptionally well, in the Council's view.

The passages that Mr Boreham labels opinion are the reporter's impressions and this would have been evident to readers. There was no risk that comment would be confused for fact.

Mr Boreham finds one particular passage discriminatory. It reads. "One guy looks so much like prison he is only lacking a white paper suit. He seems best avoided until he approaches and starts asking questions." But the rest of the paragraph puts quite a different complexion on that observation. It continues: "He is not about the accused, he is here to support the little girl's family, he's local Tu Whare Toa Iwi and hoping his community is going to be safe over the rest of the holiday."

Mr Boreham sees an anti-social tone in the whole article. The council reads it quite differently. In the passage just quoted the reporter is cleverly using a prejudgment of his own to show how wrong prejudice can be.

Far from suggesting the public are entitled to take the law into their own hands, the article clearly conveys the ugliness of some of the sentiments without losing sympathy for the crowd's horror at the crime.

In the Council's view the article is not only balanced, fair and responsible, it is a fine piece of journalism, a credit to the reporter and his newspaper. 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: 2238 – DARRYL DAWSON AGAINST THE WHAKATANE BEACON

Darryl Dawson, of *Whakatane*, complained to the New Zealand Press Council about coverage in the *Whakatane Beacon* of a police investigation into campaign overspending by the successful mayoral candidate in the district's 2010 local body elections and the paper's refusal to publish his letters on the subject.

His complaint against one of the newspaper's articles is upheld, along with a complaint about the heading over it. A further complaint about the paper's decision not to publish his letters is not upheld.

Background

On October 8, 2010, the day before voting closed, under the heading *Our poll puts Bonne on top*, the *Beacon* reported that a poll it had conducted indicated that candidate Tony Bonne looked set to become Whakatane's new mayor and that five other candidates were well behind. Mr Bonne was duly elected.

Subsequently, it was reported that Mr Bonne had exceeded by \$928 his \$20,000 spending limit under the Local Electoral Act 2001, and five complaints about the over-spending were made to the Electoral Office and investigated by police. Among the complainants was Mr Dawson.

The *Beacon* published two articles, on December 7 and 22, 2010, when news of the overspending broke.

In August, 2011, after an investigation, the police decided not to prosecute Mr Bonne for breaching the act.

On October 21, 2011, under the front-page heading *Complaints by 'Sore Losers'*, the *Beacon* reported that the police investigation into the over-spending "speculates complaints about the breach were lodged by sore losers."

The investigating officer was quoted as saying it was his view the Mayor had taken reasonable steps to ensure he had not intentionally overspent the limit.

The newspaper reported the officer as saying those who complained might have been driven by "questionable motives, given each of them is connected to an unsuccessful candidate." The newspaper reported all five as objecting to any inference their complaints were based on "sour grapes."

The officer had said the law had never been tested, any fine would be small and punishment would most likely be a conviction and discharge.

Advertising costs at the *Beacon* were among the items in the Mayor's campaign expenses. On that issue, the newspaper quoted the officer as saying the Mayor had been, "at worst, 'a little slick.'"

The Complaint

Correspondence provided to the Press Council contains claims and counter-claims by the complainant and the newspaper that are not within the purview of the Council to investigate. It is obvious that the relationship between Mr Dawson and the managing editor, Mark Longley, has been tested by their differences of opinion.

Nevertheless, the complaint involves two levels – the newspaper’s business arrangements with Mr Bonne as an advertiser, both as a candidate and a business owner in Whakatane, and how the newspaper reported the investigation into the overspending. Mr Bonne admitted the overspending from the outset.

In an undated letter to the editor about the October 21 report, Mr Dawson said he saw no reference to police speculation that the complainants were “sore losers” and its selective use of the police report was unbalanced and misleading. The report also made no mention of the *Beacon* discounting the Mayor’s election advertising by intermingling five advertisements with his business account, a reduction of \$600.

Mr Dawson submitted a similar letter on November 9 and met the editor about the same time. The Press Council is not in a position to judge what happened but the meeting went badly and was short.

The letters were not published and Mr Dawson formally complained to the Press Council on November 12, 2012, about the October 21 article, the non-publication of his letters and his treatment by the *Beacon*.

Mr Dawson also believed the *Beacon* could be “seen to be promoting” Mr Bonne as a favourite by publishing the October 8, 2010, story one day before the election.

Subsequently, he complained about a letter published on November 23, 2011, over the nom de plume, Mayoral Supporter, which attacked those who were still “going on” about the over-spending. The letter named and made a derogatory remark about one of the mayoral candidates.

Further Publication

Just over three weeks after its first report on the police inquiry results - on November 16, 2011 - the *Beacon* published a much fuller account of the police investigation of the Mayor’s overspending. The article pointed out mistakes in the police report, and added information that Mr Dawson believed should have been included in the October article.

This included a police recommendation that the Mayor should be let off with a formal warning. The report also noted that while the officer accepted statements from the Mayor that mitigated his position, he gave no weight to the concerns of the five complainants who had said he did not even interview them.

The report said the officer had concluded three complainants supported failed candidates because that was “anecdotally rumoured” to be the case, although he had never asked them. He had also said information he had seen indicated the Mayor took all reasonable steps not to exceed the expenditure cap, but the paper noted he had released none of that information.

The report said the only hint of disapproval in the officer’s report appeared to be a reference to the Mayor’s election advertising and how five advertisements had

attracted a cheaper rate by being charged through his business account. “He also placed Sportsworld advertisements featuring his photograph in newspapers during the campaign, something he has not done since.”

The police officer “sums it up as, at worst, ‘slick’ behaviour,” it said.

The article went on to quote a representative of Local Government New Zealand and an Auckland University law lecturer. It was accompanied by a “vox pop” article giving the views of local residents about the overspending and subsequent publicity.

Editor’s Response

In a response to the Press Council, *Beacon* managing editor Mark Longley said the reference to the “sore losers” remark was within the story in that the police officer linked them to unsuccessful candidates. All of the complainants had been given the opportunity to respond by the paper.

The paper had to keep in mind that the Mayor had been “cleared” by a police investigation and it intended to write two more articles on the subject. This was known by other people, including Mr Dawson.

In his opinion, Mr Dawson’s criticism was more directed at the police and this was something he should take up with them.

He had advised Mr Dawson that he would not be publishing letters about the mayoral overspend or anything related to it given the police had concluded their inquiry, the paper had followed it up and “it was time to move on.”

Discussion

The Press Council can adjudicate only on the information before it and within its areas of responsibility which relate to what was or was not published in the *Beacon’s* editorial columns.

In this case, however, the Council sought a copy of the police documents so that it could adjudicate on Mr Dawson’s complaint in fuller knowledge of what had been said by the police officer and those he interviewed.

On the issue of not publishing Mr Dawson’s letters, the Press Council has repeatedly ruled that editors have a right to decide what they will or will not publish. There are no exceptional circumstances in this instance that would change that view.

Nevertheless, the Council finds it odd that the editor should tell Mr Dawson presumably at their meeting on November 8 that he did not intend to publish any more letters on the topic when the paper published an anonymous letter on November 23 and he was aware further stories about the topic would be published. Printing anonymous letters that directly attack individuals is not a fair practice.

In explanation of this, to a direct question from the Press Council, Mr Longley said some letter writers asked that their names be withheld, and “if it is a decent letter, we publish it.” He did not have the original letter but he believed it would have come with a request not to publish the name. “We had a few letters anti-Tony so I thought in the interest of balance it would be good to publish that.”

This too appears odd. Having told one correspondent the topic was closed and “it was time to move on,” allowing an anonymous correspondent to reopen the debate is inconsistent.

Further, despite the editor's contention that it was time to "move on," the newspaper published further articles on November 16, 2011, which the editor says were always planned. Such knowledge makes the editor's "move on" comment appear strange.

The November article gave readers significant further information not mentioned in the initial October story, information indicating shortcomings in the police investigation and other detail of importance.

The editor has not explained why such detail could not have been included in the October article when it had the 217 pages of police documents at the time. All relevant information should have been in the first article, including a clear explanation of advertising with the newspaper.

Usually, the Council does not uphold complaints where a newspaper corrects itself but the second story would not have had the impact of the first when all the information was available and should have been published.

The editor said the term "sore losers" was implied from the police officer's report. The officer did not use the term, which is a harsh rebuke and casts unnecessary aspersions on a legitimate action. Care needed to be taken with such an implication, particularly when all candidates denied their complaints were the result of sour grapes.

The heading states emphatically that the complaints came from "sore losers" and in the Council's view the paper was not justified in using such a strong heading with words in quotations implying they were said when the police officer never stated as such and his view, given he had not interviewed the complainants, needed to be treated with caution as well.

The newspaper was also in a conflicted position in that it was part of the story because of the advertising connection with the Mayor and his business.

The way a newspaper company undertakes its advertising business does not come within the purview of the Council but exposure of such detail does not leave the newspaper in a comfortable position.

Conclusion

Mr Dawson's complaint about the editor's decision not to publish his letters is not upheld.

His complaint about the October 21 article is upheld. While the November 16 article belatedly added some necessary balance, such details should have been incorporated in the earlier article.

His complaint against the heading in the October article is upheld. Its use of the term "sore losers" was misleading in that the term was never used and should never have been given such emphasis and weight in a front-page headline on what was at best speculation.

Penny Harding dissented from the Council uphold decision in relation to the October 21 article. She was of the view that publication of the second article was sufficient to correct the errors and omissions of the first 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.

Chris Darlow abstained from the discussion as he had not been present at the meeting when the complaint was initially discussed.

CASE NO: 2239 – THE EARTHQUAKE COMMISSION AGAINST THE PRESS

The Earthquake Commission (EQC) complained to the Press Council about an article published in *The Press* on December 28, 2011, and posted on *Stuff* the same day. The complaint is not upheld.

Background

On December 23, 2011, Christchurch suffered further major earthquakes – magnitude 5.8 and 6.0 – which caused extensive damage to land and buildings, although no further loss of life.

The December 28 article, headlined *Latest quakes costly* focussed on the further costs of these shakes to the Christchurch City Council (CCC), and to the EQC, with the government – and therefore the taxpayer – having to meet the shortfall of funds necessary to carry out remediation and rebuilding costs.

These would be considerable and would drain the EQC's natural disaster fund, leaving the shortfall to be funded by government.

The article quoted EQC spokesman, Gordon Irving, as saying it was too early to determine the scale of the shakes compared with the two big 13 June earthquakes.

"The financial impact will depend on the proportion of new damage versus worsened existing damage", he said.

However, many homes hit hard would be in the red zone, where they were already slated for demolition, and the land eventually abandoned.

The article went on to discuss the impact on the CCC which had not been able to reinsure after previous quakes; discussion would be taking place between the CCC and government to determine what should be done.

The article concluded by stating that Nick Bryant, a spokesperson for Earthquake Recovery Minister Gerry Brownlee, would not comment on the possible cost of the quakes, but that the government remained committed to underwriting the EQC.

The Complaint

Iain Butler complained on behalf of the EQC.

He stated that on December 26 *The Press* requested comment on the impact of the December 23 quakes on the EQC repair and claim settlement timeframes.

A statement attributed to Bruce Emson, EQC Customer Services General Manager, was sent that day saying that the EQC would not know the impact of the December 23 quakes until the scale of the damage was better understood, and that this would probably be after the New Year when people came back from holiday and viewed the damage. He also asked that *The Press*, in writing the story, advise readers that the EQC claims centre would be open from 27 December.

Mr Butler complained that the 28 December story incorrectly attributed the EQC's remarks to Gordon Irving (who had left the EQC 3 months previously).

He also complained that the article stated "many homes hard hit on Friday would be in 'the red zone' and

reassessments ‘could disrupt timetables for repairs’”.

The complainant said that the correspondence with *The Press* did not include any line which could reasonably bear either of the above assertions.

Mr Butler informally complained about the article on the day of publication.

A formal complaint was lodged with *The Press* on 19 January 2012.

The Newspaper’s Response

Mr Butler’s complaint is that the story was inaccurate. *The Press* acknowledges that wrongly attributing remarks in the article to Gordon Irving was a mistake, and published a correction on 4 January 2012 and corrected the on-line *Stuff* article (which acknowledged the original mistake).

The EQC maintains that the two statements complained about were not made by the EQC, and provides e-mail correspondence as proof.

However, *The Press* says these comments were made to the reporter in a telephone interview. The editor says that if Mr Butler disputes the accuracy of the material, he should have provided a statement of clarification, or a Letter to the Editor. No evidence to contradict the reporter’s notes has been supplied.

The editor provided evidence of *The Press*’s willingness, on previous occasions, to work cooperatively with the EQC on matters relating to accuracy and balance.

Further Interchange

The EQC agreed that information was exchanged in a telephone discussion between the reporter and the EQC media manager on 26 December. However, this was not an interview.

The editor, in response, stated: “Is the EQC really suggesting that a call from a reporter to one of its communications representatives is not a ‘phone interview’?” This call did produce the information written up in the article. The reporter took notes and wrote the story on the same day. *The Press* stands by the story as it is published.

Discussion and Conclusion

At times of crisis, there sometimes can be significant tension between the need of the news agencies to get the story and get it out, and the concern of agencies charged by the government not to fuel the flames of anxiety and panic.

However, on this occasion *The Press* was dogged in its quest for an accurate story, contacted the appropriate agencies, and followed a written trail of information provided by e-mails and telephone conversations (with notes) with accredited spokespeople for the EQC and the CCC.

The Press did make a mistake in attributing statements to a wrongly named person. However, it corrected that mistake quickly, both in the newspaper and on line.

The December 23 earthquakes were major events affecting large numbers of people. The newspaper had a clear duty to report on the aftermath as quickly and accurately as possible, especially as public holidays intervened, call centres were closed, and it was hard to get news.

The Press Council cannot resolve whether the assertions that many of the affected properties were in the Red Zone and that the repair timetable would be disrupted were made in a phone conversation – *The Press* has declined to make the reporter’s notes available. However, it is difficult to see that these were incorrect statements in view of the December 23 earthquakes – they are probably self-evident. In the circumstances the presence in the article of these assertions does not lead to a finding that the article is unbalanced, inaccurate or unfair.

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: 2240 – THE EARTHQUAKE COMMISSION AGAINST THE PRESS

Introduction

Iain Butler makes the complaint on behalf of the Earthquake Commission (EQC) regarding an article published by *The Press*. Correspondence was also received from Debbie Barber (General Manager, Communications for EQC). The grounds are: accuracy, fairness and balance.

Mr Butler’s complaint is not upheld.

Background

The Press published an article on January 2, 2012 under the heading EQC *claims management criticised*. The article was one in a number of articles relating to the EQC. The article predominantly covered issues relating to EQC claims management and related issues.

The article commenced with reference to an internal report commissioned by EQC and released under the Official Information Act. This report was commissioned by the EQC to make recommendations on improvements to EQC’s reporting of claims performance which it had recognized as a “weakness”.

Complaint

Mr Butler, EQC Media Manager, believes that the article was unfairly critical of the EQC and used information incorrectly. He believes that despite the EQC providing accurate information to *The Press*, the newspaper did not incorporate this in the article.

Mr Butler stated that the information, which would have provided balance, sent to the newspaper was dismissed by the newspaper as “background” and neither the message nor the material appeared in the article.

He goes on to state that the 20% at the end of the article which gave a short, dry, statistical analysis of the claim volume handled by the EQC does not correct the imbalance of the 80% preceding it.

Mr Butler states that while the newspaper used the words “claims management”, the report quoted from was about “claims reporting”.

Mr Butler telephoned the newspaper on 2 January 2012 to make a complaint regarding the article and spoke to the chief reporter who declined to take any action. He then made a complaint on 19 January 2012 to the deputy editor who was standing in for the editor who was away.

The deputy editor responded on 30 January 2012 offering to put a note in the “Putting it right” column and included suggested wording for the note.

This was not accepted by the EQC as it was not considered adequate, both for the time elapsed since the article, and the placement of the correction. EQC believe that “putting it right” is in effect an opinion column for readers to suggest corrections and the EQC believed that the newspaper should make the correction as attributed to itself not the EQC as the article was not accurate.

Mr Butler acknowledges that the difference in wording may appear to be a matter of semantics, but the wording used by the newspaper gave an inaccurate picture.

In response to the newspaper’s comments regarding this complaint, the EQC stood by their premise that the article was not balanced, and that balance is not achieved by the newspaper publishing multiple articles.

The EQC acknowledges, given the information they now know, the initial complaint to the newspaper did not follow the correct process. However the EQC believe this is immaterial as it is not an unusual route to contact the chief reporter to have issues relating to accuracy dealt with.

Response from The Press

The editor for *The Press* does not accept that the article breached the principle cited by Mr Butler.

He went on to say that this was one of a number of articles relating to the work being carried out by the EQC and noted a number of articles since September 3, 2012. He believes that readers of *The Press* are well aware of the difficulties faced by the EQC due to this series of ongoing articles which have included information from EQC CEO, Ian Simpson.

He states that the complaint hinges on a very fine distinction – the difference between the EQC’s claims management system and the internal reporting of its claims management and that Mr Butler himself has conceded that the difference might appear to be semantic.

The editor believes that the reporting of claims management is part of an effective claims management system and the report quoted in the article itself makes the “vital connection” between claims reporting and claims management.

The editor believes the newspaper would have been able to deal with the complaint more effectively if Mr Butler had followed the normal process rather than initially speaking with the acting chief reporter and, when not receiving the outcome he required, taking it straight to the Press Council. The deputy editor was on duty on 2 January 2012 and would have been willing to deal with the complaint if he had known about it.

He believes that had Mr Butler spoken to the deputy editor that day, a mutually acceptable clarification could have been worked through and published very soon afterwards.

The deputy editor did not learn of the complaint until 19 January 2012. He did not believe that the complaint required any correction but was prepared to publish a clarification in the next “putting it right” column.

A clarification was drafted and sent to Mr Butler who responded that it was inadequate and he did not want it published.

Discussion

Neither party provided the Press Council with a copy of the internal report in question. The article is one that covers the EQC handling of the Christchurch earthquake and is one in an ongoing number of articles.

Both parties acknowledge that the wording could be seen as a matter of semantics.

The initial approach by the EQC was to the reporter concerned, and then to the acting- chief reporter who disagreed with the points raised. It would have been useful at that time if Mr Butler had spoken to the deputy editor, and given the fact that Mr Butler was making a complaint, the acting-chief reporter could have provided Mr Butler with information on the newspapers complaints process.

Once a formal complaint was received by the newspaper, efforts were made to accommodate Mr Butler. The newspaper drafted a substantial clarification which stated:

A story headlined “EQC claims management criticised” on January 2 has been challenged by EQC.

It described a report commissioned by EQC, saying it was critical of its “claims management” (in the headline) and “handling of earthquake claims” (in the introductory paragraph), as well as a claim there was “no overarching system for managing claims”.

EQC’s media manager Iain Butler writes: “The impression given by the article is the report was critical of how EQC dealt with customers claims, including how customers’ information was kept, and how they were paid out. In fact, the report released to The Press dealt with EQC’s reporting of claims management.

“This may appear a semantic distinction, but to use a more extreme analogy, if a police department is having trouble reporting crime, it does not necessarily follow that they are having trouble stopping crime.

EQC’s trouble with providing clear information on how it is managing claims is not an indication that the claims themselves are not being managed. In this regard, the Press article is inaccurate.”

Mr Butler declined the publication of a clarification due to the inadequacy of proposed remedy and the time elapsing since the article had been published.

The Council is of the view that this suggested action by the newspaper would have been sufficient to remedy any misapprehension. No doubt to the readers of the newspaper, and to the people of Christchurch, the difference was indeed semantic.

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: 2241 – THE PENINSULA GOLF CLUB AGAINST THE AUCKLANDER

A complaint by Patrick Kennelly, Chairman of the Board of the Peninsula Golf Club, against *The Aucklander* was not upheld, by a majority 8:1. Mr Kennelly had complained that an article breached principles of accuracy, fairness and balance, and of comment and fact.

Background

On February 2 2012 *The Aucklander* published an article headed “Teed off over fairway”. It reported that the Peninsula Golf Course might soon be converted into ‘the site of little boxes on the hillside’ if plans to develop 500 houses on the site went ahead.

The paper had interviewed the CEO of the Hibiscus Hospice, built in 2008, and in their article stated that this was on land purchased from the Golf Club in 2004. The CEO was concerned that such a development would impact negatively on terminally ill people, as well as adding to existing traffic congestion, and that the sights and sounds of construction would ‘destroy the hospice’s peaceful environment’. She stated that the Hospice had not known of plans to sell the course, “and that’s disappointing. It would have been a factor in our decision to buy if we had known”.

A Hibiscus and Bays Local Board member was also cited as being concerned that strong opposition by his board had not been taken into consideration by the Auckland Council’s regional development and operations committee, who have accepted the re-zoning change for notification.

Auckland Council did not respond to requests for information, and the article does not include any information from the Golf Club itself.

Patrick Kennelly wrote to *The Aucklander’s* editor on 5 February claiming that the article published was defamatory of the Club; that the CEO’s quoted comment about non-disclosure was completely untrue, and that the journalist had made no attempt to contact the Club for a response. The Club had been actively involved in supporting the Hospice over the years, and was very disappointed with the article.

The editor responded promptly, saying she would check with her journalist, and meanwhile had added some of his comments to the online version, giving Mr Kennelly’s opinion of the CEO’s comments.

Mr Kennelly replied that the sale of land to the Hospice had started in mid 2002, was signed off in late 2002 with delayed terms to suit Hospice, and was not finalised until 2004. Full payment was not made until May 2005. He

argued that, in not seeking the Club’s input on the article and in publishing, without checking their correctness, the incorrect statements of the CEO (such as that the land was bought in 2004) fell far short of standards of fairness and accuracy, and a complaint to the Press Council would follow. Suggestions that the Club had acted dishonestly were particularly offensive when the Club had worked so hard to support the Hospice.

The editor sent the draft of a follow-up apology, and offered to point readers to Mr Kennelly’s full letter of complaint online if he wished. Mr Kennelly responded with additional wording and a demand that the apology needed to be published on the front page, as the article had been. In its printed apology the paper issued an ‘unreserved apology’ to the Club for any implication that it had acted dishonestly, and acknowledged that comment from the Club should have been included in the article. This was run on February 9, the next printed version of the paper.

The Complaint

Mr Kennelly sent a formal complaint to the Press Council on February 14. It covered the details laid out above, and alleged breaches of the principles of accuracy, fairness and balance; and of comment and fact. Mr Kennelly also signed a waiver against any legal action against the paper or journalist.

The Newspaper’s Response

In her response, the editor acknowledged shortcomings in the article, but suggested that the article did not, *per se*, allege that the Club had acted dishonestly. Regardless, the paper had published an amendment online to include the complainant’s comments and to correct the error regarding the land being sold in 2004, when it was 2002. The paper had dealt with the complaint rapidly, and doubted that the story has caused damage to the Club’s reputation. *The Aucklander* was not ‘creating or stirring’ the story, but reporting on a matter of great interest to local people. The editor reiterated that she had twice offered Mr Kennelly an opportunity to have his full complaint printed, both in print and online, but he had not responded. The paper had printed an apology swiftly.

Further Comment from the Complainant

Mr Kennelly replied, reiterating his previous complaints. Despite having signed a waiver with regard to the publication of the article, his group still felt that the Club had been defamed. He felt that the story as written was one-sided and designed to stir the community’s interest in supporting the hospice’s opposition to the Plan Change Application. He concluded that the Press Council should draw to the journalist’s attention that truth and accuracy are important and that both sides should be considered.

Conclusion

The Council agrees entirely with Mr Kennelly that the published article was unbalanced and contained material inaccuracies. The paper should have sought the Club’s perspective in writing its article. The question is whether the newspaper’s subsequent actions were sufficiently

remedial. The paper has already acknowledged its errors; it ‘unreservedly apologises’ to club members as it did not intend to portray the Club as being dishonest; and it corrected the online version, and published a letter on the matters raised the next time the paper was published in print.

While viewing the imbalance and inaccuracy in the article seriously, the Council believes that the paper’s action, taken promptly and with due concern for the Golf Club’s position, was sufficient to avert the uphold decision that would otherwise have resulted.

On this basis the complaint is not upheld by the majority of the Council.

Dissent

Barry Paterson did not support the decision as, in his view, the correction was inadequate. The comment attributed to the Chief Executive of the hospice inferred that the Golf Club sold land to the hospice knowing that it intended to sell the balance of the golf course for housing purposes and did not disclose such plans to the hospice. This was a false statement about the Golf Club to its discredit. The correction covered this point in a general way and did not identify the statement on which the apology was based. Further a correction, to be effective in the circumstances of this case, needed to be given reasonable prominence. The original article was a full page article and to blunt the effect of the inference the apology should have been given equal prominence and not placed at the end of an article headed “Your feedback: buses, bridges, berms and golf”.

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

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

CASE NO: 2242 – BRUCE ROSCOE AGAINST THE NEW ZEALAND HERALD

Bruce Roscoe claims *The New Zealand Herald* failed to comply with Principle 1 (Accuracy Fairness and Balance) of the Press Council Statement of Principles in reporting as to the pending visit of a 96 year old former nurse to Japan to receive an apology from the Japanese authorities. The nurse had been captured by the Japanese during World War II and had been incarcerated for three years until the war ended. *The New Zealand Herald* reported that the Japanese Government was to apologise to the nurse for the way she and other nurses had been treated during this time.

The article in question is short. It paraphrases a longer piece published by a *Herald* sister publication *The Aucklander*. While Mr Roscoe comments critically about *The Aucklander* article his complaint does not extend to this work.

The Press Council does not uphold the complaint.

Background

On December 1, 2011 the *Herald* ran a brief story about the nurse’s trip to Japan. The article referred to the nurse having been one of 76 Australian prisoner of war nurses taken by the Japanese from Rabaul in Papua New Guinea to Yokohama. The article said the nurses “were imprisoned in Yokohama, forced to knit silk bags and make envelopes. After year, food ran out and they licked the glue off the envelopes to survive. They were frequently beaten”.

The article referred readers to the nurse’s “remarkable story” in *The Aucklander* publication. *The Aucklander* article, which the Council has read, provides more detail as to the nurse’s account of her experiences while in the hands of the Japanese.

The Complaint

Bruce Roscoe claims the *Herald* article is inaccurate, unfair and unbalanced. Mr Roscoe says the historical record does not support the claim the Australian nurses were “frequently beaten”. Mr Roscoe says “the notion that the Japanese military police would “frequently beat” captive nurses for three years and nine months is a “cultural calibration stimulated by stereotypical accounts of Japanese military abuse of male Allied prisoners of war”.

Mr Roscoe points to a manuscript published by an Australian researcher Rod Miller titled “The Lost Women of Rabaul”. Mr Roscoe says Mr Miller’s investigations uncovered “no more than about five recorded instances of violence perpetrated against some of the women during their 45 months of their captivity”. Mr Roscoe says the record does not support the claim the nurses were “frequently beaten”. Rather, Mr Roscoe says, it would have been more accurate for the article to have said that the nurses were “seldom slapped or hit”.

Mr Roscoe also refers to the reference in the *Herald* article to the fact the nurse was telling her story “for the first time”. Mr Roscoe points to the nurse having told her story in interviews previously and to the fact the nurse’s diaries have been widely excerpted.

Mr Roscoe says the nurses were questioned on their treatment soon after their release in 1945 but none of their statements were used in any war crimes tribunal. Mr Roscoe says that had the nurses been frequently beaten then their assailants would surely have been indicted as war criminals as were many guards who did frequently beat their captives. Mr Roscoe says “it is deplorable that even after the passage of 70 years reporting about the Pacific War by a leading New Zealand newspaper should be so governed by popular stereotype”.

The Response

The New Zealand Herald responds by saying the article was based on a face to face interview with the nurse. *The Herald* says the nurse had reported being “slapped on the face on at least two different occasions as well as other times when she was hit across the back and punched”. The *Herald* says this was paraphrased to “frequently beaten”, a reasonable paraphrasing in the circumstances.

The New Zealand Herald maintains its article was fair, accurate and balanced.

The Decision

The New Zealand Herald article was presented as a summary of a much longer piece published in another newspaper. The *Herald* article provided a link to the more detailed story. *The Aucklander* piece, to which Mr Roscoe refers but does not formally complain, expanded on the nurses' treatment by their Japanese captors. While one can argue the toss as to whether the nurses were "frequently beaten" (and the Council is in no position to determine the accuracy of the historical record Mr Roscoe mentions) there is nothing obvious which casts doubt on the nurse's account, an account which *The Aucklander* article was clearly recounting and which the *Herald* article summarised. Leaving aside the semantics the nurses undoubtedly suffered while in Japanese captivity.

The Council cannot establish whether the nurse was telling her story for the first time. Mr Roscoe gives no details as to previous interviews he claims she gave or to where or how her diaries were previously published.

The Council takes the view the underlying tone of *The New Zealand Herald* story was positive. Its theme is one of forgiveness. The Japanese Government was proposing to not only to apologise to the nurse but to fly her to Japan so the apology could be conveyed to her in person. If Mr Roscoe is motivated by a concern the Japanese people have been unfairly maligned by the story then the Council believes such concern is unfounded.

It follows the Council does not agree with Mr Roscoe and 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: 2243 – THE CANTERBURY REFUGEE COUNCIL AGAINST THE PRESS

Ahmed Tani, Chairperson of the Canterbury Refugee Council, complained to the Press Council about a Nisbet cartoon published in *The Press*. The complaint is not upheld.

Background

On March 17, 2012 *The Press* published on its opinion page a colour cartoon which depicted three kiwis (representative of New Zealanders) on a beach enthusiastically farewelling a motorised shipping container with hands protruding through the casing of the container. These hands represented departing migrants enclosed in the container. The hands grasped bombs, knives, daggers and other offensive weapons through the casing of the container. The container had a slogan on the side: "Refugees that commit violent crimes in New Zealand". A buoy at the side of the shipping container had a flag: "Back where ya came from".

The major headline on the cartoon was "Another use for shipping containers?..." a reference to the range of new uses for containers in Christchurch following the earthquakes.

The overall message conveyed by the cartoon was that violent migrants should be sent away from New Zealand.

The cartoon had been published in the wake of a kidnapping and stabbing incident in which the person arrested was alleged to be a refugee.

The Complaint and the Editor's Response

Complaining initially to the editor the Refugee Council said the cartoon promoted racial discrimination and demonised a unique part of our New Zealand society. "We are refugees and we are Kiwis – this is our home" the Council said.

Further they noted that the man involved in the violent incident had significant mental health issues and this tragic incident was a terrible consequence of his illness.

In his response to the initial complaint, the editor had pointed out that this cartoon, like others, highlighted concerns that do exist in our society whether we like it or not.

The editor acknowledged that this particular cartoon might be upsetting to refugee communities, but it is in the nature of a free press that strong opinions can be expressed from time to time, and that these opinions will upset some people.

The Press had taken up the issue of mental health support for refugees in several stories subsequent to the publication of this cartoon. These stories added balance to the cartoon.

Mr Tani and his Council responded to this letter by complaining to the Press Council. They said that there were very few serious offences caused by refugees, and that those individuals had mental health issues. It was these mental health issues that were the major factor in the offending, not their refugee origins. The publication of the cartoon, not only caused distress to the refugee community, but could be seen as bullying by the newspaper.

The Refugee Council felt that the cartoon, published shortly after a stabbing incident in Christchurch by a former refugee, was poorly timed, and added angst to high feelings already evident in Christchurch towards refugees.

The mental health stories published subsequently did not balance the cartoon. The complaint was based on the principles of accuracy, fairness and balance; comment and fact; and discrimination and diversity.

Responding to the Press Council, the editor pointed out that the cartoonist had been careful to have the arms of the refugees depicted to be of different colours so that no one racial group was referred to by the drawing.

An editor would only with extreme reluctance suppress a cartoon, which is clearly opinion and published on the op-ed page.

The incident leading to this cartoon was a significant news story.

Discussion and Decision

The Press Council has, in a number of decisions, upheld the right of newspapers to publish cartoons which represent an extreme edge of public opinion.

Cartoons are the work of one cartoonist, can express strong opinions, and frequently cause disquiet to certain communities, or groups, or individuals.

The cartoon did not discriminate against any race or minority and was clearly comment.

The Press Council acknowledges that some people have been distressed by this cartoon, but upholds the right of *The Press* to publish it. 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: 2244 – JOHN COX AGAINST THE NEW ZEALAND HERALD

John Cox complains against the *New Zealand Herald* for a Comment piece about the value of the British royal family.

The complaint is not upheld.

Complaint

Mr Cox argues the article is stridently hostile, immoderate and employs insulting terms misrepresenting facts and is, therefore, in breach of the following Press Council Principles:

1. Accuracy, Fairness and Balance
4. Comment and Fact
6. Discrimination and Diversity

The article, by Yasmin Alibhai-Brown a columnist for *The Independent* newspaper in Britain and reproduced in the *New Zealand Herald*, questions the value of the British monarchy and suggests an election for head of state might establish the capabilities of candidates more accurately than the current credential of a royal birth.

She canvasses a number of aspects of the monarchical system and quotes specific examples of recent royal activities which do not sit within the expected parameters of regal behaviour. She observes that Diamond Jubilee Britain feels, to her, like North Korea-lite in its national sycophancy and mandatory adulation. She questions whether the Queen is a feminist icon and suggests she passes out medals to her children even when poorly behaved. She states that royalty today dominates “celebrity culture” and questions its irresistible nature even to the smartest of Britons.

Mr Cox does not believe that the article can be protected as an opinion piece and says it is one of the worst attacks on the royal family published for some time. He believes it is defamatory and would have contravened sedition laws were they still on the statute books.

He finds it unthinkable the newspaper would publish such an attack on anyone other than the royal family and claims that even dictators and murderers have been getting fairer press than the monarchy.

The Newspaper’s Response

The *New Zealand Herald* responds that the article is clearly marked as an opinion piece and is based on the writer’s

observations of recent events. It defends the article as a well-written, forthright commentary leaving the reader in no doubt as to the writer’s position. Additionally, the newspaper invokes the principle of free speech and the right of newspaper columnists to express their opinions freely and provocatively.

The complainant was invited to submit his views either as a letter to the editor or a comment piece for consideration for publication.

Discussion and Conclusion

This article is clearly marked ‘COMMENT’ and attracts the protection afforded to columnists to express without fear their opinions whether they be strong, abrasive or challenging. It is not surprising that Ms Alibhai-Brown’s irreverent assessment of the value of the royal family and the Commonwealth provokes a strong response in some readers. However, the Press Council does uphold the right of a columnist to express opinion without fear. Principles state: 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. This was the case here.

As an opinion piece we find nothing that is in breach of the Council’s principles and 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, Lynn Scott and Stephen Stewart.

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

CASES NO: 2245 and 2246 – MEGAN EASTERBROOK-SMITH AND MAGDALEN HARRIS AGAINST THE DOMINION POST

Megan Easterbrook-Smith and Magdalen Harris complained about a column by Rosemary McLeod published in *The Dominion Post* on February 23, 2012.

Both claimed that the column breached Principle 6 (Discrimination and Diversity) of the New Zealand Press Council Statement of Principles. Ms Harris also cited Principle 1 (Accuracy fairness and balance.)

Their complaints are not upheld.

Background

The column was headed “Why I feel for the kids of ego trippers” and included comments on an American transgender father, previously a female, who had given birth to his third child. The column also included discussion about an American male sperm donor, a “proud 36-year-old virgin” who fathered a number of children “via an age-old but usually uncelebrated manual art” and an English story about a man who has supposedly given birth.

It discussed what the columnist saw as people believing they would somehow live on through their amazingly gifted and beautiful descendants and publicising how they

could have children despite living a life different from what the columnist saw as the norm.

The columnist felt that publicising the unusual circumstances of the parents' lives could rebound against the children of these parents in the future.

The first word in the first paragraph of the column was "OPINION" and the column clearly expressed as the opinion of the writer.

The Complaints

The complainants believe that the column was transphobic and encouraged hatred towards, and discrimination against transgender people.

They believed that the use of he/she in relation to the transgender father deliberately ignored the father's gender and was discriminatory. They also felt that the article mocked transgender people.

While the columnist had the right to hold such views they were not appropriate for paid publication in a newspaper. Profiting from such bigotry showed a lack of understanding of what transgendered people face, and saw their pain and anger as unimportant

The complainants believed that the newspaper should not have published the article and should apologise.

The Newspaper's Response

The editor replied that the column was clearly identified as an opinion piece. She noted that there was no claim that Ms McLeod had made any factual error. Rather the disagreement was with her view of those facts.

The columnist did not denigrate transgendered people in general. The column commented on one transgendered person only who identified as a male giving birth, but also included other examples of different lifestyles.

While one complainant alleged that the columnist said that transgender people did not have the right to a family, this is not correct.

Others who disagreed with the columnist's views were offered the opportunity to put their case at the same length as the columnist and had provided views which were also published.

Discussion and Decision

The preamble to the Press Council's Statement of Principles states that "there is no more important principle in a democracy than freedom of expression" and also that "in dealing with complaints, the Council will give primary consideration to freedom of expression . . .".

It is clear to anyone reading the article that it is an opinion piece and the column clearly identifies that it is the opinion of the columnist expressed in an article under her name.

The article was about the possible future impact on the children of people who lead lives that the columnist saw as different and used their lifestyle to gain publicity.

The newspaper did give those with opposing views the right of reply and published them.

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, John Roughan, Lynn Scott and Stephen Stewart.

CASE NO: 2247 – SIMON FARRELL-GREEN AGAINST DENIZEN

Simon Farrell-Green publishes a food reviewing website called Eat Here Now. He complains that *Denizen*, a lifestyle magazine, has used information and an image from his website without attribution or permission. His complaint is upheld.

Background

In March last year the website carried a review of a Waiheke foodcart called El Sizzling Chorizo. It was illustrated with three photographs. In January this year *Denizen* published an item on El Sizzling Chorizo using one of the website's photographs and a paragraph of text that closely resembled the website item in its composition and phrases, and offered no additional information.

The Complaint

Mr Farrell-Green complains that the magazine has breached a copyright that is clearly asserted at the end of all reviews on the website and elaborated on on a page on the site that explains its policy for giving permission for reprints.

He notes *Denizen* has used an image without payment, permission or attribution to the photographer, David Straight, who had been commissioned by the website.

He cites passages in the magazine item that he considered were clearly based on the website's review "with some light reworking".

"The magazine," he alleges, "has failed to maintain even the most basic standards of journalistic professionalism and ethics, and has breached copyright law."

The Editor's Response

The editor advised the Press Council that when she received Mr Farrell-Green's initial complaint she had treated it very seriously and an apology to the website would appear in the next issue of *Denizen*.

The issue published on April 23 contained a publisher's note that read, "In issue two of *Denizen* influence was taken from food website www.eatherenow.co.nz on the review of El Sizzling Chorizo, including the use of David Straight's photography for which we apologise."

The Complainant's Response

Mr Farrell-Green welcomed the editor's acknowledgement and that the magazine had credited the photographer, "albeit in a part of the magazine that is easily missed".

He remained concerned that plagiarism had not been admitted. The apology used the word "influenced" which he did not consider accurate. "It is clear that the review was cut and pasted and then rearranged from mine." he said.

The Decision

The Press Council does not normally uphold complaints after a publication has published an admission of its error, particularly when the admission includes an apology.

But in this case the belated acknowledgement of the website and its photographer was published on the title page of the magazine, below its listing of staff and contact information. The admission consisted of two lines in smaller type below a paragraph that contained a warning that "no part of the magazine may be reproduced without the written permission of the publisher".

The correcting item ought to have carried its own heading, perhaps simply 'Apology', to draw fair attention to the matter, and deserved a distinct place on a page more likely to be read. It was not given due prominence and was not explicit.

The publication of what amounted to a précis of the website's review and the use of its commissioned photograph, both without attribution, was seriously unprofessional.

It is not for the Council to say whether *Denizen's* conduct meets the law's tests of a breach of copyright but the text was clearly plagiarism and unfair to the website.

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: 2248 – LYN GAUTIER, CHRIS MOREY AND MICHAEL KUTTNER AGAINST NZ HERALD

Lyn Gautier, Chris Morey and Michael Kuttner complained about a *New Zealand Herald* feature published on December 22, 2011 concerning maltreatment of donkeys in Israel and the Middle East. The complaint is not upheld.

Background

The date of publication is significant, as it was just before Christmas. Indeed, the introductory paragraph refers to a Christmas card on the mantelpiece of the author, a British veterinarian, depicting a donkey outside a snow-covered stable in a classic nativity image. The feature contrasts the popular image with reality, describing the cruelties inflicted on modern-day donkeys in the Middle East. Israel is its particular focus.

Written in emotional, first-person feature style, it cites eyewitness accounts and describes the efforts of those trying to save the abused animals and prevent more cruelty. The headline is "Heavy burden of abuse for donkeys in the Holy Land".

The story originally came from Britain's Telegraph Group, but the *Herald* version was attributed to the *Independent*. The original story's final paragraph was edited out in the *Herald* version.

The Complaint

The complainants said the story was unfairly focused on Israel and Jerusalem; inaccurately suggested that Israelis were responsible for the cruelty; had an inaccurate "Holy Land" headline and sub-heads; and criticised the picture of Jerusalem and its caption. (Jerusalem was only referred to in

the caption, it was not mentioned in the body of the story at all.) Their central concern was that the story's repeated use of the "Holy Land" description immediately conjured up an image of Israel, and then Jews, in readers' minds. However, the story applied to the Middle East, not just Israel.

They said that the way the story was written suggested that the cruelty was perpetrated by Jews whereas most donkeys were owned by Palestinian Arabs.

The complainants also said it was the "fault" of the *Herald* that they chose to complain, because it printed "volumes of anti-Israel articles, and letters detrimental to Israel, while never printing anything favourable".

They said the report was inaccurate by omission of various salient facts, contained "intruded opinion", and featured inaccuracies and misrepresentation. Jerusalem was depicted as a place where people were too poor to use anything other than donkeys as transport. One complainant had lived there for 20 years and had never seen donkeys there, although some could be used in the narrow streets of Arab east Jerusalem.

"If the article means to refer only to east Jerusalem, it failed to make that clear..."The report had failed to mention that the donkey rescue charity featured was an Israeli charity. However, changes to the original report by the *Herald* conveyed a negative impression of Israelis.

One complainant said the "bottom line is that the *NZH* version differed in its headline, its photo and caption and the way the article was edited."

The Newspaper's Response

Weekend Herald editor David Hastings said it was a first-person feature about the good work of a man who rescued ill-treated donkeys in Israel.

"The complaint is paradoxical. It concludes by saying 'It is not our intention to blacken the reputation of Palestinian Arabs, many of whom no doubt treat their livestock humanely' yet the body of the complaint sets out to do just that."

He contended that all the points raised in the complaint were irrelevant. The article did not set out to apportion blame on cultural or ethnic lines, but focused on the good work of the charity man. It also made the point that donkeys had become increasingly important to poor people around the world, not just Palestinian Arabs or Israelis, as fuel became more expensive.

"In other words, it is a story about global poverty, animal cruelty and one man's battle to do something about it in one place."

Press Council View

The complainants take an extreme view of motives behind this story and the way it was edited, instanced particularly by their Jerusalem references. Its publication was timed to contrast idealistic images of Christmas nativity scenes with present-day cruel realities. The complainants accuse the *Herald* of deliberate use of the term "Holy Land" to further what they say is its anti-Israeli stance. However, at Christmas time use of the Holy Land term in a headline is particularly appropriate for a story such as this, while its "heavy burden of abuse for donkeys" is also a clever hook to the story's content.

The complainants ascribe motives to the *Herald* which go far beyond the story's exposure of cruelty. Although the story focuses on Israel, and the work of the group dedicated to protecting horses and donkeys there, the feature extends to WSPA – the World Society for the Protection of Animals which works in more than 160 countries.

It is unclear whether the original story appeared in the *Independent* (as noted by the *Herald*) or the *Telegraph Group* (as noted by the complainants). The Council notes that the *Herald* version omitted the last paragraph of the original story which had more detail about the WSPA's need for more resources and how readers could contact it to help.

But the *Herald* is free to edit and display a contributed story as it sees fit, by abbreviating and illustrating, and contributing its own headlines and captions. In this case the *Herald's* concluding paragraph was emotional and abrupt, but in keeping with the rest of the feature. New Zealand's newspapers do not need to give a free "plug" to a charity, especially an overseas one.

The feature was emotive and effective. Ascribing darker, more far-reaching motives to it is a stretch too far. 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, Lynn Scott and Stephen Stewart.

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

CASE NO:2249 – JULIE AND PETER KEAST AGAINST THE SOUTHLAND TIMES

In a partially split decision the Press Council has not upheld a complaint from Julie and Peter Keast against *The Southland Times*.

Background

On November 16, 2011 *The Southland Times* published an article reporting on the death of a young man in a car crash. The young man's name was provided despite the reporter noting that "Police had not named the dead man, but a memorial page has been set up on Facebook for William Keast". A photograph showed the wrecked car on the riverbank, along with a squashed box that had been used to store alcohol.

There was no reference in the article to possible use of alcohol; a range of comments (14) on *The Southland Times'* website by people who knew the young man complained both of the photograph's showing of a Woodstock box, and the publishing of the victim's name before it had been released by police.

The parents of the young man wrote to the editor of *The Southland Times* on 9 February complaining that the paper had been published and delivered before they had even been able to see their son, let alone formally identify him; that they understood the police had asked that William's name not be published until the police had

released it; that the photograph was suggestive of alcohol involvement in the crash; and that the photograph of the car was available on the Stuff website before the young man's father had been notified of his death (however there was no mention in their complaint about the website, of his name being published there).

The editor replied eleven days later, acknowledging that the coverage had caused distress; rebutting the suggestion that a police request had been received requesting that the name not be published before their formal release of it; that the name had been circulated on Facebook and Twitter and was widely known by the time of publication; and that the photograph was selected because it showed the difficulties that rescuers faced in retrieving the young man's body. The editor stated that the alcohol carton was simply "the rubbish that littered the riverbank at the crash scene". The editor's response concluded by defending the paper's "professional and responsible way [of] reporting the accident both in print and online".

The Complaint

Dissatisfied with this response, the parents laid a complaint with the Press Council. They claimed that the reporting was morally wrong; the photograph 'suggestive' and the timing on the website was unfair; also that William's name had been published prior to police release.

The parents felt that the photographer would not have been 'ushered through' to the site as claimed by the editor, when William's mother had been denied access.

They wondered whether items had been "arranged for the photograph as they were in the boot of the car" whilst stating that the photograph was misleading and distressing – the boys had not been drinking, but people had taken this implication from the photograph.

Finally, William's father had not been informed of the death by the time that Stuff ran the photograph of the car.

The Newspaper's Response

The editor replied to the Press Council, stating that it took seriously its responsibility not to cause unnecessary distress to family and friends in situations such as this, while striving to provide balance with the public's right to know. He felt they had got the balance right.

The paper had waited until the following day before naming the dead youth, and his name had been widely known on the Facebook tribute page as well as on Facebook and Twitter.

With regard to the photograph, the editor reiterated that his photographer and reporter *had* been "ushered through" to the site by police on duty, and that nothing in the photographs had been staged. That was the scene as encountered by the paper's staff. He recognised the parents' distress but believed that the impact of this had to be balanced against the newspaper's responsibility to inform readers quickly and fully of events of interest.

The Keasts replied that the response was 'glib', that their concerns with the photograph and naming of their son remained, and that the editor's claim about 'events of interest' was sensationalist. The paper had also subsequently reported on a Coronial inquest, naming the other passenger of the car, and the Keasts felt this, too, was inappropriate.

Discussion

In its Principle 2, the Council states that people suffering from trauma or grief call for special consideration. Newspapers have agreed they should give special consideration to people in this situation. Mr and Mrs Keast felt *The Southland Times* was insensitive in publishing a photograph of their son William's car, which they thought may have been posted on the newspaper's website within hours of the accident. They complained that the photo showed a Woodstock carton at the crash scene, and that their son's name was published before police had released it to the media.

In the Council's view the obligation to exercise special care does not preclude publishing a photograph of a crashed vehicle and any debris around it. On no account should a news photo be "doctored" to change anything at the scene. Likewise, the Council has no way of determining whether the Police had or had not requested an embargo of the name until they had formally notified this.

The duty of care does not mean that media must never publish a deceased's name until the police release it, though editors should be mindful that police might not have been able to notify all of the deceased's immediate family.

The Council was of the view that *The Southland Times* was entitled to identify William in the newspaper, published around 22 hours after the accident. That interval seemed sufficient to satisfy the special consideration required.

However, the Council was divided on whether the photograph of the car should have been posted on the website, possibly within hours of the crash. The complainants said they "understand" the photograph was on the website at about 11am that day and they were not able to make contact with Mr Keast until about 11.30a.m.

The Council also noted that some caution should be exercised in accepting Facebook as an authoritative source, as it was not unknown for people to be mistakenly reported there, to have died. But in this case, in a small community, the word of the accident and the knowledge of who had died would have spread very quickly. Even without the instant reach of the web, news travels fast by word of mouth in a small community and its news media cannot appear to be lagging.

The Council concluded that the newspaper was entitled to publish William's name, and the majority the Council supported the paper's right to publish the photograph of the accident when it did. However four of the nine-member Council thought that the early publication of the scene of the accident did not meet the Council's special consideration requirement. But while the complaint was not upheld, the case underlines the sensitivity and care expected of websites as well as newspapers when their readers include the bereaved.

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.

Council members dissenting on the early website publication of the photograph were Pip Bruce Ferguson, Keith Lees, Lynn Scott and Stephen Stewart.

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

CASE NO: 2250 – HUGH STEADMAN AGAINST THE PRESS

Hugh Steadman complained to the Press Council about articles relating to a friend and business partner, Harmon Wilfred, which had been published in *The Press* between March 2005 and November 2011. He cited the Council's Principles which refer to accuracy, fairness and balance, and to a newspaper's obligation to take reasonable steps to ensure that "sources are well-informed and that the information they provide is reliable".

The complaint is not upheld.

It should be noted that several of the articles date back some years and were well beyond the time frame for complaints, but the Council accepted that they could be included as background to Mr Steadman's complaint about the last two articles which appeared in November 2011.

It should also be noted that the Council has Mr Wilfred's authority to consider this third party complaint.

Background

Three articles (December 2005, August 2008, February 2009) outlined the unusual immigration case and progress (or lack of it) of a Christchurch resident, Harmon Wilfred, who had arrived in New Zealand in 2001, formally renounced his American citizenship in March 2005, and then applied for permission to remain in New Zealand.

Mr Wilfred claimed that various charges he faced in North America were a "personal vendetta" resulting from his alleged knowledge of the details of several massive scams. Mr Wilfred claimed that he knew about such matters from his time as a CIA operative.

While pursuing his case with Immigration NZ and before the Removal Review Authority, the High Court and the Refugee Status Appeals Authority (without success) he was also pursuing various business interests and living with his third wife, a wealthy Canadian heiress, Carolyn Dare-Wilfred.

He referred to himself as a "stateless" person and had appealed to the United Nations Human Rights Committee.

He and his wife were key players in the establishment of La Famia Foundation, a charitable trust, which aimed to provide a range of social services. *The Press* reported that a fellow trustee and one of La Famia's employees had both been previously discredited for their roles in social service agencies.

A fourth article (April 2010) reported that the Prenzel Distilling Company which was half-owned by La Famia was selling off its gin and vodka brands. The CEO of Prenzel, Hugh Steadman, explained that La Famia did not want to be linked with the selling of "hard liquor".

A fifth article (14 November 2011) was headed "Overstayer gets funds". It reported that Work and Income NZ was contracting services from "a Christchurch charity run by an American overstayer" ie Harmon Wilfred. The report also explained that four former staff of the various branches of La Famia were taking personal grievances against the charity after they had been dismissed and the foundation seemed to be "in disarray".

The sixth article (and the final one in the series that Mr Steadman complains about) was published 19 November 2011. It was headed “Minister guest of overstayer” and reported that Associate Minister of Immigration (Kate Wilkinson) had made a guest appearance on Radio La Famia, a station “run by one of Christchurch’s most high-profile overstayers”. According to the report, “Immigration NZ has tried for many years to deport Wilfred” but it included Wilfred’s counter-comment that “his application for citizenship was still pending and Immigration had made no attempt to deport him”.

The Complaint

Mr Steadman made a lengthy submission to the Press Council. He accused the newspaper of “acting as a bully to gain cheap cheers”. He accused the newspaper of “irresponsible abuse of its power” in carrying out a sustained campaign against Mr Wilfred.

In his initial complaint to the editor, he stressed that it was the sixth article about the Wilfreds (19 November 2011) which had finally moved him to try to bring to an end the persecution and bullying of two victims by “slurs . . . innuendo . . . sloppy reporting . . . ad hominem attacks.”

More specifically, he explained that Mr Wilfred was not an “overstayer” but a “stateless” person. He argued that an “overstayer” had no rights to remain in New Zealand but in Mr Wilfred’s case, he could not be deported as there was nowhere he could be sent. Deporting him could mean illegal rendition and so he had every right to remain.

He further noted that at first, Mr Wilfred had been referred to accurately ie “Stateless American bids to stay” but this had been replaced by the harsher and more emotive term. “overstayer”.

He pointed out that the newspaper’s reporters had not met with Mr Wilfred nor visited his charitable and business operations and so had failed to meet the journalistic standards of providing fairness and balance in their reporting.

Finally, he stressed that instead of making certain that information provided by sources was honest and reliable, the newspaper had given credence to the views of a highly disaffected ex-employee, an employee who was the subject of a current police investigation.

The Newspaper’s Response

The editor countered that far from a vindictive campaign against Mr Wilfred, the newspaper had simply covered developments in an ongoing story that was both of interest to the public and in the public interest. For example, how the Immigration Department reacted to someone who renounced their US citizenship and then sought NZ citizenship.

Further, the foundation which he had helped to establish had some access to government funding and was also seeking private donations. It was in the public interest to apply some scrutiny.

He argued that “overstayer” was used accurately and noted that Immigration NZ used that term in its Record of Personal Circumstance form (eg “Why have you overstayed in NZ?”)

He accepted that the reporter had not met with Mr Wilfred, nor visited the La Famia Foundation premises but explained that two scheduled meetings had both been cancelled by Mr Wilfred, almost at the last minute. In any case, Mr Wilfred had been approached for his comments and point of view.

Despite Mr Steadman’s view that their sources were unreliable, staff had spent considerable time on the matter and were satisfied the sources were genuine and truthful. Further, the editor claimed that the police investigation had been concluded and no charges had been laid.

He suggested that the complainant had accused the newspaper of many inaccuracies but had failed to pinpoint such issues, while continuing to blame the newspaper for harassment.

Discussion and Decision

On the face of it, it is somewhat surprising that no reporter had met with Mr Wilfred when seeking information – over a series of six articles, spanning nearly eight years. Nevertheless, by e-mail and telephone, he had usually been approached for his side of the story. Further, the Council notes that Mr Wilfred had cancelled meetings that had been timetabled (on legal advice, according to the complainant). Both parties blame the other for not having achieved a meeting, but *The Press* can hardly be criticized for failing to seek some balance and counter-point from the subject of the newspaper’s scrutiny.

The “unreliable sources” are only of minor importance in one of the articles and the Council notes that the newspaper had acknowledged that the former employees were taking personal grievance proceedings and readers could have worked out for themselves that they might have a grudge against their former employer. It also notes that readers were informed that police were investigating allegations that had been made against them. Mr Steadman advised the police investigation is on-going, and subsequently the Council has been advised that charges have been laid.

The Press Council notes the distinction Mr Steadman draws between “stateless” and the more sharply critical “overstayer” but “overstayer” is hardly a gross inaccuracy, especially given its use in official documents such as the Record of Personal Circumstances form completed by Mr Wilfred (though it must also be noted that he rejects that term – he answers the question “Why have you overstayed in New Zealand ?” with “As a stateless person, I don’t believe that I am an overstayer.”)

Finally, and most importantly, the Press Council stresses that this was indeed a story in the public interest. Readers were entitled to know what was happening to Mr Wilfred’s request for citizenship, still unresolved after nearly eight years, and entitled to be informed about La Famia and the results of its attempts to gain private and public funding for its activities. Given such a lengthy battle to gain NZ citizenship, readers might also have been curious about the Associate Minister of Immigration making a guest appearance on the La Famia radio station.

The Press may have treated Mr Wilfred with some scepticism but the Council does not see a campaign of vilification and harassment. 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: 2251 – ANNE THOMPSON AGAINST SELWYN TIMES

The Press Council has not upheld a complaint against the *Selwyn Times* concerning a story on a leading llama breeder, Anne Thompson.

Background

On January 31, 2012 *Selwyn Times* published a story on Mrs Thompson, a llama enthusiast who had emigrated from Britain and set up a farm initially in Yaldhurst, before moving to a bigger farm in Weedons. The story was part of the newspaper's "5 minutes with" series, and featured chatty comment with the subject about her passion for llamas, how the animals behave, development of her farm as a business and tourist attraction, and the impact of the Christchurch earthquakes on her business.

The Complaint

Mrs Thompson was approached for an interview by the newspaper, which had already featured a story on a neighbour. The reporter who arranged the interview had to cancel, and was replaced by another reporter who visited Mrs Thompson. The visit took about an hour, and involved a farm inspection. The reporter did not take any notes. Mrs Thompson assumed the interview was being recorded, but later found it was not. She gave the reporter written biographical details, following advice from her neighbour who had already featured.

About 10 days later the reporter called and said the story would be published, but that her computer had crashed and the story had not been saved. She asked if Mrs Thompson would agree to some of the biography material being published. Mrs Thompson agreed, but was puzzled by this as the reporter had not made any notes when they met. The story which appeared was a "rehash" of the biography with some "strange comments" attributed to her. There was also a typographical mistake in the published story ("sextremely"). The reporter had also led her to believe she would see a copy of the story before it appeared. She did not get that opportunity.

She considered the story had plagiarised her biography, used words that she would not have used, and had ended on a negative – rather than positive – note.

The newspaper had also missed out on an opportunity to capitalise on the fact that a previous *Selwyn Times* story helped her successfully re-home a herd of neglected llamas. She had told the reporter how extremely grateful she was to the *Selwyn Times* – but that was not in the biographical details and did not appear in the newspaper.

She considered the story was not an honest report of the interview she gave.

The Newspaper's Response

Editor Barry Clarke said the story was written by a competent university student who was filling in for another reporter. On February 3 Mrs Thompson called him about the story, complaining about its tone, the amount of space allocated to it, the wording on the front page pointer box, the story's use of the word "sextremely" and that the reporter had broken her word by not letting Mrs Thompson vet the story before publication.

He apologised for the typographical mistake and asked her to email her concerns plus any specific inaccuracies. When he got her email no specific mistakes were pointed out, other than the word "sextremely".

He spoke to the reporter, who said she had not taken notes and that the farm tour had taken longer than she expected. Mrs Thompson might have assumed a feature article would result.

Mrs Thompson had given the reporter her biographical details. The reporter later had a computer problem, and asked Mrs Thompson if she could use those details in the story. She agreed. The editor did not accept that they were "plagiarised".

Reporters were not allowed to let interview subjects "vet" a report before it was published. Mrs Thompson had not supplied proof that this promise was made. Concerning the disputed words attributed to Mrs Thompson, Mr Clarke said the reporter was sure she used the words, but did not have notes.

He had offered Mrs Thompson the chance to spell out any specific inaccuracies, so he could consider acting on or correcting them. He would happily correct any factual inaccuracies.

Press Council Decision

The newspaper sent an inexperienced reporter to meet Mrs Thompson. The reporter should have taken notes during the tour/interview. Without them, it is difficult to know if the words complained of were in fact uttered. The typographical mistake has been acknowledged by the newspaper, which has also offered to correct any specific inaccuracies but says it has not been given any, apart from the offending word.

Mrs Thompson supplied the biographical details on which the reporter relied for her story; therefore the claim of plagiarism does not stack up. Also, most newspapers do not allow interview subjects to "vet" their stories, although reporters are encouraged to check anything they are uncertain about.

The newspaper also missed a golden opportunity to capitalise on its previous story, with Mrs Thompson telling its reporter she was extremely grateful for its help in re-homing llamas.

Mrs Thompson is passionate about her llamas, and sensitive about how she was portrayed. However, the resultant story was deliberately "chatty" in style and not negative in tone, despite her assertion. The newspaper also has the freedom to report a story as it sees it, provided it is accurate. On balance, despite faults on the newspaper's side, 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: 2252 – MICHAEL THORMAN AGAINST THE HERALD ON SUNDAY

Michael Thorman, representing In2Herbs Ltd, claims the *Herald on Sunday* failed to comply with Principle 1 (Accuracy Fairness and Balance) and Principle 8 (Subterfuge) of the Press Council Statement of Principles in reporting as to a herb-based product distributed by In2Herbs.

The Press Council does not uphold the complaints.

Background

On January 22, 2012 the *Herald on Sunday* ran a story titled *Latest herbal high warnings*. The story opened with the paragraph;

“An ingredient in a new herbal product that experts suspect may be smoked in New Zealand has been shown to cause tumours in rats and liver failure, says a toxicologist”

The story went on to refer to a new herbal product, called “Sky” and “which looked like cannabis”, having become available in Auckland. The article claimed the product’s active ingredient was “tussilago farfara, or coltsfoot”. The article referred to synthetic cannabis products such as “Kronic” as having been recently banned. New “herbal high” products were now reaching the market instead. The *Herald on Sunday* quoted a National Poisons Centre spokesperson as saying that “coltsfoot was toxic if used over a prolonged period and it had been banned overseas”. The spokesperson was also quoted as saying “I strongly advise people do not smoke this product – it contains alkaloids which can lead to liver damage”.

The article then referred to Sky product packaging notes which made it clear the product is intended for “potpourri or aromatherapy”. The notes warned “against human consumption”. The article quoted Mr Thorman as saying “he did not advocate people smoked the product but said he knew people who did”. Mr Thorman was quoted as saying there was nothing dangerous about the product he sold but admitted it had not been tested in New Zealand.

The Complaint

Michael Thorman claims the *Herald on Sunday* article is inaccurate, unfair and unbalanced. Mr Thorman says the article should not have linked the Sky product, which was clearly labeled as being “not for human consumption”, with the controversy over the Kronic and similar commodities. This comparison was misleading.

Mr Thorman also claimed the article to have wrongly described the coltsfoot element as being toxic or hazardous. Mr Thorman refers to coltsfoot as being an ancient herbal remedy.

Mr Thorman also says while the Sky product has not been tested in New Zealand the United States manufacturer “knows the laws and standards they have to meet here”. Further the product had been imported into New Zealand

with appropriate Customs declarations. It would not have been allowed in had it been illegal.

Essentially Mr Thorman says the Sky product is safe when used correctly. The *Herald on Sunday* was wrong to have referred to the product in the context it did.

Mr Thorman also claims his response to the proposed story was obtained by subterfuge, the *Herald on Sunday* reporter not having identified herself when she called him for comment.

The Response

Herald on Sunday responds by saying the article referred to topical public interest and safety issues. While the Sky product was undoubtedly labeled as not being for human consumption it was apparently being distributed by at least one retailer as a “trial of a new herbal high”.

Research indicated products incorporating coltsfoot were smoked around the world. There were still concerns as to the toxicity of coltsfoot despite Mr Thorman’s reference to “new” research showing the particular coltsfoot variant used in the Sky product being safe. The *Herald on Sunday* offered to publish a letter from Mr Thorman substantiating his claim the coltsfoot variant was not harmful. This offer was not accepted.

Herald on Sunday maintains its article was fair, accurate and balanced

Herald on Sunday denies its reporter failed to identify herself when she called Mr Thorman for comment. The newspaper says the reporter did identify herself. Further the matters to be covered in the article were not of a kind as to justify subterfuge.

The Decision

The Council does not agree with Mr Thorman in relation to his claim the article is not accurate, balanced or fair.

The story can be divided into two parts. The first section deals with product safety issues, issues which are currently attracting public attention. The article refers to the Sky product as containing an element in the form of coltsfoot which may be potentially harmful should the product be smoked. The second part refers though to the Sky product as being marketed as potpourri or aromatherapy with warnings against human consumption. The second section refers to Mr Thorman himself as advocating that people not smoke the product. If Mr Thorman is concerned the article casts improper aspersions on the product or his company then this concern is unfounded. The article does not claim or imply the product is harmful if used as recommended.

The Council is unable to determine whether the *Herald on Sunday* obtained Mr Thorman’s remarks by subterfuge, and anyway the issue is of no materiality to the complaint. The article accurately reported Mr Thorman’s sentiments. In2Herbs and Mr Thorman never recommended the product be smoked. They ensured the Sky product was distributed with appropriate written health warnings. This aspect was emphasised in the article. In deciding not to deal with the subterfuge claim the Council is not suggesting either Mr Thorman or the *Herald on Sunday*’s reporter acted improperly in any way.

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: 2253 – MICHAEL HARCOURT AGAINST SUNDAY STAR-TIMES

Michael Harcourt complained about a column by Michael Laws which was published in the *Sunday Star-Times* on January 15, 2012. He claimed that the column contained examples of racial stereotyping and transgressed the Press Council's principles relating to accuracy, fairness and balance; to comment and fact; and to discrimination and diversity.

His complaint is upheld, with two members of the Press Council dissenting.

Background

Laws' column was headed *Cases made it a week for the ferals*. It was firmly captioned "Michael Laws – Viewpoint"

In the piece, Laws traversed various crime stories that had been widely reported in the media over the previous week. He linked the stories to a theme he has often argued – that the increasing number of "feral families" poses a real danger to New Zealand society.

He cited examples: a "Maori kid" arrested for burglary and violent sexual assault on a five year old girl, "Maori mamas" caught in the act of shoplifting, and the "Featherston ferals" – a group of kids reported to be robbing, vandalizing and intimidating the residents of that town. He suggested that one factor that linked these various images is that "they are all brown, all Maori".

The column was in Laws' typical style: forceful, punchy, opinionated.

The Complaint

Mr Harcourt complained first to the newspaper, but dissatisfied with the editor's response, made a formal complaint to the Press Council.

He acknowledged that newspapers represent a wide range of viewpoints and that Mr Laws "usually gives voice to a perspective that should find an outlet in mainstream media".

However, he argued that this particular column crossed the line beyond what was acceptable and became "deeply offensive bigotry". For example, Laws had taken some trouble to find and collect stories that linked violence with Maori and had deliberately created a link in readers' minds between "feral" and Maori.

He took particular exception to the references to the Featherston children because in other media reports Mr Harcourt had seen no description of the children's ethnicity. He claimed that Laws seemed to have assumed that they were Maori simply because they were a group of young trouble makers. Such an assumption was a clear example of prejudice and stereotyping.

If there were no factual evidence that the Featherston children were Maori, then the principles of the Press Council relating to accuracy (and, consequently, fairness), to the need for a clear distinction to be maintained between comment and fact, and to discrimination had all been broken.

Finally, he stressed that he was not complaining about Mr Laws, he was complaining about the newspaper for publishing a piece of "racial stereotyping".

The Newspaper's Response

The editor acknowledged the thoughtful tone of the complainant's criticism, especially the recognition that newspapers give voice to a range of different views. He also readily accepted that Laws' views were unacceptable to many.

However, he could not accept that the column breached Press Council principles, as the comment about the Featherston children was Laws' genuine opinion and based on information available to the columnist.

He had raised the matter with Mr Laws and had been assured that "the composition of the teen Featherston ferals was overwhelmingly Maori".

Later, when the complainant continued to argue to the Press Council that accusing a specific ethnic group on the basis of "honestly held opinion" rather than substantiated evidence was racial stereotyping, the editor decided to make some checks himself.

He told the Press Council that he had contacted the Featherston community and made calls to police, neighbours and community leaders and had concluded that "Mr Laws is correct" ie in his claim that the group were predominantly Maori.

He also pointed out that the newspaper had published many letters hostile to the opinions expressed by Mr Laws.

Discussion and Decision

The preamble to the Press Council's Statement of Principles states that "there is no more important principle in a democracy than freedom of expression" and also that "in dealing with complaints, the Council will give primary consideration to freedom of expression . . .".

Further, the Council has previously defended the right of Mr Laws to express his views. On that occasion (ruling No 1078), the Council noted that "it is a columnist's right to express an opinion in print, however provocative, and it is part of the function of newspapers to provide social and political commentary and a forum to debate issues".

The complainant himself acknowledges that the "presentation of contrasting views is a critical aspect of democracy", yet, as Mr Harcourt also argues, "freedom of speech does not mean that absolutely everything goes".

The Council concurs. A writer, even of an opinion piece, cannot deliberately mislead readers, perhaps by ignoring or omitting known facts, or by wilfully misrepresenting the facts.

If Mr Laws had claimed that the Featherston group were Maori without any evidence for such a claim, or worse, claimed that the group were Maori when he knew they were not, then the complainant would have a very strong case, especially in regard to the Council's first

principle, “publications . . . should not deliberately mislead or misinform readers either by commission or omission”.

Here, the Council accepts the assurance of the editor that his personal checks have shown that Mr Laws was substantially correct in his comments about the Featherston group and there is consequently nothing to suggest that the columnist has deliberately misled readers in that regard.

But Mr Laws went further than making provocative comments. He also wrote that "there is an antisocial destruct specifically within Maoridom that shows no sign of abating."

Condemning an entire race for the misbehaviour of the comparative few mentioned in his column is a considerable stretch.

In Principle 6, the Council says “Issues such as race . . . are legitimate subjects for discussion if 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.”

Gratuitous means in that sense uncalled for, unwarranted and lacking good reason. Mr Laws' thinking goes no further than his assertion that Maoridom suffers from an "antisocial destruct". He offers no reason for such a statement and common sense and the indisputable fact that Maori are not all as he describes means the comment is unwarranted and uncalled for. Had he said "there is an antisocial destruct within some in Maoridom," the complaint could not have been upheld.

He didn't. Accordingly, the complaint of discrimination is upheld.

Dissent

Two members of the Council, Keith Lees and Stephen Stewart, considered that the single comment “there is an antisocial destruct specifically within Maoridom that shows no sign of abating” fails to reach the threshold to breach the principle relating to discrimination. It is, of course, a sweeping generalization, but it could also be read that Laws means there is an “antisocial” thread somewhere among the many interwoven strands that make up the greater Maori realm and that is far from expressing vilification or denigration of an entire race.

There is a clear tension between the principle that stresses the right to freedom of expression and the principle that affirms that various minority groups should not have to suffer from discrimination. Those voting for a not uphold on this complaint prefer that freedom of expression is maintained, unless the level of racial commentary becomes insistently insulting or even hate-filled and hateful.

That is not the case here and if there is a perceived intolerance and lack of compassion in Laws' writing, the dissenters believe that is best countered by writers opposed to Laws who might argue with more sympathy and more tolerance. Laws should be rebutted certainly, but not banned.

In short, those reading Mr Laws' column are best left to decide how much (or how little) credibility they give it.

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: 2254, 2255, 2256, 2257, 2258, 2259 and 2260 –

CAMERON JUNGE; THERESA APEREHAMA; MARINUS FERREIRA; JULIANA VENNING; GEORGIA HARRISON; RAUKURA WAITI AND DIANE WHITE AGAINST THE WEEKEND HERALD

Introduction

1. The New Zealand Press Council has received seven complaints against a Paul Holmes column published in *The Weekend Herald* of February 11, 2012 headed *Waitangi Day a complete waste*. The standfirst was: “It’s time to cancel our repugnant national holiday”. While some of the complaints refer to other principles, the complaints in the main are based on the Council’s Principle 1 (accuracy, fairness and balance) and Principle 6 (discrimination and diversity).
2. The complaints are upheld.

The Column

3. To give the complaints context, it is necessary to set out in full some of the paragraphs from the column. The relevant paragraphs read:

Waitangi Day produced its usual hatred, rudeness, and violence against a clearly elected Prime Minister from a group of hateful, hate-fuelled weirdos who seem to exist in a perfect world of benefit provision. This enables them to blissfully continue to believe that New Zealand is the centre of the world, no one has to have a job and the Treaty is all that matters.

I’m over Waitangi Day. It is repugnant. It’s a ghastly affair. As I lie in bed on Waitangi morning, I know that later that evening, the news will show us irrational Maori ghastliness with spitting, smugness, self-righteousness and the usual neurotic Maori politics, in which some bizarre new wrong we’ve never thought about will be lying on the table.

This, we will have to address and somehow apply these never-defined principles of the Treaty of Waitangi because it is, apparently, the next big resentment. There’ll be lengthy discussion, we’ll end up paying the usual millions into the hands of the Maori aristocracy and God knows where it’ll go from there.

Well, it’s a bullshit day, Waitangi. It’s a day of lies. It is loony Maori fringe self-denial day. It’s a day when everything is addressed, except the real stuff. Never mind the child stats, never mind the

national truancy stats, never mind the hopeless failure of Maori to educate their children and stop them bashing their babies. No, it's all the Pakeha's fault. It's all about hating whitey. Believe me, that's what it looked like the other day.

...

No, if Maori want Waitangi Day for themselves, let them have it. Let them go and raid a bit more kai moana than they need for the big, and feed themselves silly, speak of the injustices heaped upon them by the greedy Pakeha and work out new ways of bamboozling the Pakeha to come up with a few more millions.

The Complaints

4. The complainants – Cameron Junge, Marinus Ferreira, Theresa Aperehama, Juliana Venning, Georgia Harrison, Raukura Waiti and Diane White - expressed their complaints in a variety of ways but a summary of their comments is:

- (a) I find the racist, bigoted comments by Paul Holmes to be offensive. They are hate speech, not just an opinion. They are not countered by an opposing view to bring perspective, and have incited further hate speech in the comments.
- (b) The article does not recognise the sacrifices that Maori have made including deaths and injuries in the name of the New Zealand we have today. It belittles and ridicules Maori as a people, and the Treaty that is a foundation document of New Zealand society.
- (c) Holmes straightforwardly makes inflammatory remarks aimed at Maori ... There is no way to read this passage other than in the obvious way, as an attempt to alienate Maori from Pakeha.
- (d) I find this type of journalism insulting and offensive.
- (e) An editor by allowing this ignorant “rant” to appear in print, disrespects our foundation document.
- (f) It is offensive and disgusting, and it promotes inaccurate racial stereotypes.
- (g) The column raises a discussion of race and minority groups in a way that is neither relevant nor in the public interest; and places gratuitous emphasis on race and a minority group.

The Weekend Herald's Response

5. The editor of *The Weekend Herald*, David Hastings, has responded acknowledging that while some people found the column offensive, it did not breach any law or the Council's principles. In referring to particular aspects of the complaints, the editor stated:

- (a) The column was a contribution to a debate about Waitangi Day and its place in New Zealand society. That debate had started the previous week and included other editorials and contributions from other columnists in the sister paper, the *New Zealand Herald*.

- (b) The columnist argued in strong language that Waitangi Day could not be the national day for him because of what he regarded as the abhorrent behaviour and attitudes of protestors, including their blaming of Maori social problems on the Pakeha and demands for compensation.
- (c) One complainant erroneously read the column as an attack on all Maori rather than just on the activists.
- (d) A sentence which contained no reference to protestors should be read in context and when considered in context the column was not a criticism of Maori generally but an attack on the fringe, namely the protestors, the “hate-fuelled weirdos” of the column's introduction.
- (e) The columnist is highly critical of the Maori activists who disrupt proceedings at Waitangi, not on the grounds of their race, but because he sees them as being hateful, rude and violent and their politics as irrational and neurotic.

6. When the Council's principles are applied, *The Weekend Herald's* position is:

- (a) The Council in dealing with complaints gives primary consideration to freedom of expression in the public interest.
- (b) Under the principles expressions of opinion to do with issues such as race and gender are acceptable provided they are relevant and in the public interest.
- (c) Reliance was placed on a statement of a former Chair of the Press Council, given on World Press Freedom Day in 2001, namely:
New Zealanders have a highly developed sense of fairness but some encounter difficulties with the publication of full blown views that might range from the mildly offensive to a deeply shocking attack on some treasured documents current in our society ... It is ... part of the free and unfettered exchange of opinion in an open society that offensive expression will find a place, even where distortions or extreme views are integral to such expressions.
- (d) Several previous decisions of the Council were referred to but these have been read and in the Council's view do not alter the principles which apply in this case.

Discussion

7. If *The Weekend Herald's* view is accepted, then an opinion piece is immune from the upholding of a complaint. This is not the Council's view. Freedom of expression does give a very generous licence in an opinion piece but that licence is not unlimited.
8. It is the Council's view, supported by its previous decisions, that the correct application of the relevant principles is in summary:
 - (a) An opinion column does not usually require

- balance. The Council has held in one case that a newspaper had an obligation when reporting on a long-running dispute that the opinion piece had to be fair and balanced.
- (b) The material facts on which the opinion is based need to be accurate.
 - (c) An opinion piece is entitled to take a strong position on issues that it addresses. This however does not legitimise gratuitous emphasis on dehumanising racial stereotypes or fear-mongering.
 - (d) The Council will not uphold complaints against expressions of opinion that are extreme, provocative and offensive, and even abusive. However, if the opinion is so extreme in substance or tone as to go beyond what is acceptable as opinion, a complaint can be upheld. It would take extreme circumstances to do with risks to the public or gratuitous offence to a particular group for the Council to uphold a complaint in those circumstances.
9. There is no issue of balance in this case. Balance may be required in some circumstances where there is an ongoing controversy but this is not one of those cases and even if it were, the *Herald* in its several columns and editorials on the Waitangi Day issue has been fair and balanced.
 10. The Council accepts that the complainants and others would have found the article insulting, offensive and even disgusting. This in itself is not sufficient to uphold the complaints. It is not proposed to refer to the complaint that the column contained “hate speech” as that is a legal matter and one of the complainants has unsuccessfully taken the matter to the Human Rights Commission.
 11. In the Council’s view the issues in this complaint are:
 - (a) Have any of the opinions expressed been based on facts which are inaccurate or have not been established?
 - (b) Are the opinions so extreme that they go beyond what is acceptable?
 - (c) If the opinions go beyond what is acceptable, is it because of the gratuitous offence to Maori?
 12. The Council does not accept *The Weekend Herald’s* view that it is erroneous to read the column as an attack on all Maori rather than just on the activists. Clearly Mr Holmes made very strong statements against the protestors and in an opinion piece he is entitled to do this. However, on an ordinary reading of the column he went far further. His reference to “except the real stuff” before the reference to child and national truancy statistics, the “hopeless failure of Maori to educate their children and stop them bashing their babies,” following the reference to the “loony Maori fringe self-denial day” is clearly pointing the finger at Maori generally rather than the protestors.
 13. The reference to Maori generally is reinforced with his reference to “a bit more kai moana than they need for the big, and feed themselves silly, speak of the injustices heaped upon them by the greedy

Pakeha and work out new ways of bamboozling the Pakeha to come up with a few more millions.” This is preceded by reference to Maori wanting Waitangi Day for themselves rather than the protestors wanting Waitangi Day for themselves. “Usual neurotic Maori politics” can be seen in the same context. Likewise the reference to paying millions to the Maori aristocracy is a reference to Maori generally.

14. When the statements are considered in context, a reasonable reader would assume they are referring to Maori as a race rather than to just the protestors at Waitangi. While there may be truth in the “hopeless failure” of some Maori to educate their children and stop bashing their babies, it is inaccurate to make the allegation against Maori as a race.
15. The inaccuracies upon which some of the opinions are based also make the opinions so extreme that in the Council’s view they go beyond what is acceptable and become a gratuitous offence to Maori as a race.
16. It is because the allegations against Maori as a race are inaccurate, and the opinions are extreme to the extent of being a gratuitous offence to Maori, that the complaints are upheld.

Bill of Rights Act

The New Zealand Press Council is an independent self-regulatory body that determines complaints according to ethical principles. It is not constituted by statute, and so it might be considered that the provisions of the New Zealand Bill of Rights Act 1990 do not apply.

However, the Press Council does perform a public function and has formally endorsed both the principles and spirit of the Bill of Rights Act. Thus the Council does consider and balance both section 14 (freedom of expression) and section 5 (justified limitations on the rights and freedoms contained within the Act) when making its determinations.

Editors who have agreed to put their publications under the jurisdiction of the Press Council have determined that their decisions should be measured against an agreed set of binding principles – the Council’s Statement of Principles. These Principles can be said to impose reasonable limits, if demonstrably justified, which may curtail the section 14 rights.

So, in determining the complaints against the Holmes’ Waitangi Day column, while the Council affirms Mr Holmes’ right to hold his opinions, it also has to measure and balance the newspaper’s decision to publish those opinions against the agreed Statement of Principles. The Council finds the column to have breached its Principles and it is on this basis that 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, Lynn Scott and Stephen Stewart.

John Roughan took no part on the consideration of this complaint.

CASE NO: 2261 – RICHARD HALL AGAINST THE DOMINION POST

Richard Hall was upset at *The Dominion Post*'s publication of a cartoon on May 14 2012 depicting Social Development Minister Paula Bennett with notorious Nazi concentration camp doctor Jozef Mengele. The complaint is not upheld.

Background

The minister had just announced Government plans to offer free long term contraception to women beneficiaries and their teenage daughters. Controversy followed, and later led to Government denials about the possibility of forced sterilisations.

The Trace Hodgson cartoon was published in *The Dominion Post* in this context. It appeared on the Opinion page, in the space allocated to regular *Dominion Post* cartoonist Tom Scott. It depicted Paula Bennett in a dress emblazoned with skulls, introducing her "new consultant" Dr Mengele. He also featured, in Nazi uniform with blood dripping from a knife and a saw in each hand, saying he was looking forward to "cutting costs with some social development experiments". In the background, mothers and children were shown fleeing, under sinister flying black birds. One perched on a sign saying "Big Plans for Beneficiaries".

The Complaint

Mr Hall emailed his complaint to *The Dominion Post* on the day the cartoon appeared. In the email he said "one may not like Paula Bennett and the policies she pursues. However, this is no warrant to draw any parallel with her or her policies and the monstrosities perpetrated by Dr Mengele, whose activities resulted in numerous hideous deaths.

"The cartoon is often used to exaggerate, but this one is unclever, unfair, distasteful and highly offensive."

On May 29 he complained to the Press Council, saying he had not had any response from The Dominion Post. His complaint cited NZPC principles about accuracy, fairness and balance. "No comparisons can legitimately be drawn between any policies the minister may pursue and the monstrosities perpetrated by Dr Mengele. Mengele was involved in the agonising deaths of thousands in German concentration camps."

Dominion Post Response

Editor Bernadette Courtney replied to the Press Council on June 5, saying cartoons were an important part of any newspaper and used widely for social and political comment. Many were scathing and critical, and used to illustrate the cartoonist's viewpoint. "Our cartoons are opinion and sit in a section clearly marked 'opinion'.

"Not everyone agrees with them, of course. Our mailbag about this particular Trace Hodgson cartoon is an indication of that. Letter-writers' points were noted.

"Though I am sorry Mr Hall and others were offended, free speech incorporates the freedom to be cutting and unkind. I know that, for some people, Hodgson's cartoon

was cutting and unkind. Some agreed with it. We therefore ensured that our letters columns reflected all views."

Complainant Comment

Mr Hall was dissatisfied with the editor's "it's merely opinion" response.

"Arguments about cartoons having a warrant to be 'scathing', 'cutting' or 'unkind' simply do not give warrant to ignore the dictate that there is a requirement for papers to be 'fair and balanced'."

Later he said he could see no warrant for the Hodgson cartoon about Paula Bennett. "No one can legitimately defend the comparison between Bennett's policies and the wanton monstrosities perpetrated by Dr Mengele. To claim otherwise is to display deep ignorance and dimness of thought."

Dominion Post's Final Comment

Ms Courtney said a strong distinction existed between news coverage which should be fair and balanced, and expressions of opinion which need not be.

"This is well recognised by the Press Council, which has delivered a string of rulings supporting this view, especially with regard to cartoons, including as recently as May this year (Case Number 2243, Canterbury Refugee Council against *The Press*).

"In that decision the Press Council again 'upheld the right of newspapers to publish cartoons which represent an extreme edge of public opinion' and noted 'cartoons are the work of one cartoonist, can express strong opinions and frequently cause disquiet to certain communities, or groups, or individuals'."

Mr Hall was entitled to his view, which others shared by writing to the *Dominion Post* letters column, but so was Hodgson who believed the comparison he drew was warranted.

Discussion and Decision

As noted by the editor, the Press Council has strongly supported the right of newspaper cartoonists to express their views, particularly when their work features on a page clearly labelled "Opinion". They can be provocative, thought-provoking, amusing, unkind or indeed offensive. Columnists have similar licence. Some in the Council considered that drawing a parallel with the work of Dr Mengele was nearly a step too far, given that cartoons should be based, at least, on a kernel of truth. The majority, however, felt that there were sufficient parallels in social and reproductive engineering to warrant the reference.

The NZPC's Statement of Principles notes that there is no more important principle in a democracy than freedom of expression, and that in dealing with complaints the Council will give "primary consideration" to freedom of expression and the public interest. However, that does not mean *carte blanche* in all cases. As noted in recent Press Council rulings concerning a Paul Holmes column, if the opinion is so extreme in substance or tone as to go beyond what is acceptable as opinion, a complaint can be upheld. This cartoon did not cross that threshold.

The Council's Principle 4 (Comment and Fact) notes that a clear distinction should be drawn between factual

information and comment and opinion. “Cartoons are understood to be opinion”.

Mr Hall’s complaint cites another Council Principle, about the need for fairness and balance. However, as *The Dominion Post* editor correctly notes, that applies to news coverage and not cartoons, which are clearly labelled as “opinion”.

The complaint is not upheld.

Press Council members considering this complaint were Barry Paterson, Tim Beaglehole, Kate Coughlan, Chris Darlow, Peter Fa’afiu, Sandy Gill, Penny Harding, Keith Lees, John Roughan, and Stephen Stewart.

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

CASE NO: 2262 – JVL PRESTIGE REALTY AND MARK FERGUSON AGAINST MANAWATU STANDARD

JVL Prestige Realty of Palmerston North employed an agent, Mark Ferguson, who had not made a payment ordered by a Disputes Tribunal when he previously had an agency in Inglewood, Taranaki. JVL and Mr Ferguson complained that the *Manawatu Standard’s* reporting of his unpaid debt was unfair to him and his new employers. The complaint was not upheld.

Michelle van Lienen appeared before the Press Council to speak to the JVL case. The editor was invited to attend, but chose not to.

Background

On April 13 the newspaper reported that a Palmerston North real estate agent “with a checkered professional past” had not paid a former client \$12,600 awarded by the Disputes Tribunal nearly a year before. It said Mr Ferguson was “an owner of a real estate company in Inglewood but now works for JVL Real Estate in Palmerston North”.

The former client said he was not responding to her efforts to contact him. The paper had also spoken to Mr Ferguson who said he had sent email to the woman but she had not replied.

A week later a follow-up story reported the debt was still unpaid and JVL had placed an advertisement in the Property Press using the logo of the Real Estate Agents Authority without permission. The advertisement defended JVL’s integrity and stated that a formal complaint had been laid over the *Manawatu Standard’s* previous story.

On May 1 the newspaper reported that Mr Ferguson had left the industry and was facing bankruptcy.

The Complaint

JVL and Mr Ferguson complained to the editor of subterfuge, a lack of accuracy, fairness and balance and breaches of privacy. They claimed the reporter had not identified himself when he called Mr Ferguson who thought he was from a court.

They said quotations of Mr Ferguson were “a deliberate lie” and misleading.

They considered the story unfair because the newspaper was not interested in Mr Ferguson’s case but only in whether the money had been paid. It had breached Mr Ferguson’s right to privacy on a matter they believed was not of significant public interest. The paper had published a one-sided account based on a former client’s “personal vendetta”. The report had damaged JVL Prestige when the firm had nothing to do with the dispute. The paper had not exercised care and discretion in accord with the Press Council’s privacy principle. They asked for an apology to be printed.

The Response

The editor of the *Manawatu Standard* said the reporter had properly identified himself and a colleague overheard him do so. There was no subterfuge.

He noted the complainants had not said what was inaccurate in the quotations.

Issues of fairness and balance did not arise because the facts of the story were not in dispute. The debt was acknowledged, it had not been paid. The story was not about the past dealings between Mr Ferguson and his client.

The newspaper believed the story was a significant matter of public interest. It was important the public was informed about the integrity of real estate salesmen working in the region.

The obligation of special care in matters of privacy applied to relatives of people convicted or accused of a crime and did not apply in this case.

The Complainant’s Response

Michelle and John van Lienen, directors of JVL Prestige Realty supplied SMS messages to the Press Council to support the claim of subterfuge. The first message recorded only the reporter’s name and phone number.

They repeated the complaints of inaccuracy and fairness and wondered why the report referred to Mr Ferguson’s “checkered professional past” if it was not interested in the background to the unpaid debt.

Had the paper interviewed him properly it would have discovered he had appealed against the Tribunal’s decision. The appeal had been withdrawn on February 15 and he had been waiting for a “process of payment” to be issued when the *Manawatu Standard* got onto the story.

The editor could not claim it was important the public were fully informed on this matter when his paper’s reports gave readers only the former client’s account.

After the *Manawatu Standard* alleged JVL made improper use of the Real Estate Agents Authority logo, the complainants had spoken to the REAA’s chief executive and discovered he had not spoken to them as their report claimed, they had spoken to his secretary.

The final story had an inaccurate headline, “JVL Agent faces bankruptcy threat”. By then, the newspaper knew Mr Ferguson was no longer working for JVL.

The Newspaper’s Response

The editor said the newspaper was not responsible for the information an SMS message service relays to its client.

This was the first the paper knew that Mr Ferguson had

appealed against the ruling. If correct, and the appeal was not withdrawn until February, the paper would question his claim that the reason he had not paid the debt was his inability to contact the former client.

The editor accepted his reporter had not spoken to the chief executive of the REAA. The reporter had spoken to its communications and marketing manager who had asked that her comments be attributed to the CEO. The editor also accepted that the headline on the final story suggested Mr Ferguson was still employed by JVL but the first paragraph made it clear he had left the industry. The paper altered its online heading after receiving the complaint and published a clarification in its next print edition.

The Decision

This was a story of genuine public interest. A house is most people's only substantial asset. They have a valid interest in matters that reflect on the reliability of real estate agents and agencies offering services in their region.

The Palmerston North agency, JVL Prestige, considered it unfair of the *Manawatu Standard* to have highlighted the company when disclosing Mr Ferguson's previous difficulties. The Council disagreed. It was JVL's employment of Mr Ferguson that made the story of interest in Manawatu.

Nor did the Council agree that the newspaper ought to have reported Mr Ferguson's Inglewood case in more detail. The Disputes Tribunal had made a decision almost a year earlier and Mr Ferguson had not complied with its order. Those were the facts of most interest. As the editor pointed out, these facts were not in dispute. There appeared to be no material inaccuracies in the *Standard's* account.

The newspaper had not known, until the complainants told the Press Council, that Mr Ferguson had filed an appeal which he had withdrawn just two months before the stories were published, and that since then he had been waiting for a "process for payment" to be ordered. The Council found it strange that Mr Ferguson did not mention this when he spoke to the reporter, particularly since he said in his complaint he thought he was speaking to someone from the courts.

The evidence available did not allow the Council to rule on the allegation of subterfuge. It notes however that newspaper ethics generally require reporters to identify themselves unless there is no other way of obtaining an item of information of over-riding public interest. In this case the reporter had the story and it seemed unlikely he would resort to subterfuge when seeking Mr Ferguson's response.

Privacy issues did not arise. The stories concerned a business of public interest. The particular "care and discretion" obligations the complainant raises apply to relatives of people charged with a crime.

The complainants cited two inaccuracies in subsequent stories: a quotation attributed to the chief executive of the Real Estate Agents Authority when the reporter had not spoken to him, and the headline on the final story described Mr Ferguson as "JVL agent" when the newspaper knew the company no longer employed him.

The Council has no reason to dispute that the first "inaccuracy" was at the request of REAA's communications manager who asked that comment be attributed to the chief executive. The second error was corrected as soon as the company complained. Overall, the Council finds the *Manawatu Standard's* reports to be accurate and of interest to its community.

The complaint is not upheld.

Press Council members considering this complaint were Barry Paterson, Tim Beaglehole, Kate Coughlan, Chris Darlow, Peter Fa'afiu, Penny Harding, Keith Lees, John Roughan, and Stephen Stewart.

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

CASE NO: 2263 – LA LECHE LEAGUE NEW ZEALAND AGAINST THE NEW ZEALAND HERALD

La Leche League (NZ) complained about the *New Zealand Herald's* coverage of its role in encouraging the Health Sponsorship Council to remove a short clip of All Black Piri Weepu bottle-feeding his baby daughter from an anti-smoking advertisement. La Leche claimed that several of the Press Council's Principles had been broken, especially accuracy and a subsequent lack of fairness and balance, and it submitted a very wide range of published material and general commentary as examples in support.

The complaints related to 23 articles or items published between February 5 and February 19 of which 10 were published in the *Herald on Sunday* and 13 were published in the *New Zealand Herald*. A March 18 article in the *Herald on Sunday* was added later.

The League noted that some articles included with their complaint were unobjectionable, but were included to provide an accurate perception of context.

Complaints about coverage in the *Herald on Sunday* are the subject of a separate ruling.

The complaint is upheld in part.

Background

The Health Sponsorship Council (HSC) commissioned a 30 second anti-smoking commercial which was to be shown on television. It featured Piri Weepu explaining how having a smoke free house and a smoke free car was important to him and his children.

The commercial included a brief shot (2 seconds) of Weepu bottle-feeding his daughter.

The HSC forewarned the La Leche League (LLL) about the bottle-feeding and sent a copy to LLL.

Once Alison Stanton, the Director of LLLNZ, had viewed the commercial, she wrote (31/1/2012) to the HSC pointing out that "images of bottle-feeding strongly negate messages promoting breast-feeding", and suggested that there were other ways "a father can be portrayed interacting with his baby", in order not to undermine an important health message – the normality of breast-feeding.

She recommended that the short segment at issue be removed.

There was no criticism in her letter of Weepu or his fathering practice, neither explicit nor implied.

Stanton also consulted with various people and groups about how to reply to the HSC.

One contact was the Coordinator of the Canterbury Breastfeeding Advocacy Service. The co-ordinator circulated an e-mail message to organisations likely to take a keen interest in the matter, such as the Infant Feeding Association and the NZ College of Midwives, suggesting that HSC should be contacted to request removal of the bottle-feeding clip.

It seems that 67 such e-mails were sent within a very short time, possibly 24 hours.

The next day (1/2/2012) the HSC CEO, Iain Potter, wrote to LLL (and others) stating that the commercial would be re-edited to replace the bottle shot with other footage of Weepu interacting with his children. He was very critical of the role played by some members of LLL.

On 5/2/2012 the *Herald's* "sister" paper, the weekly *Herald On Sunday*, reported the late decision to cut that segment with a front page pointer "Piri's bottle ban – All Black dad warned: Breast is best"; an article headed "Piri's baby bottle ad ban"; and an editorial headed "Too much fuss over a bottle boob".

The *NZ Herald* carried a report on 6/2/12 which compared the story with Facebook's ban on hundreds of breastfeeding photographs and a section entitled "Best of the Web" requested readers to send their opinions. A sample of readers' views was accompanied by a cheek-to-cheek photograph of Weepu and his baby, captioned "La Leche's complaint led to Piri Weepu's tender moment being cut".

Over the following two weeks both newspapers featured extensive coverage, especially in regard to the pressure exerted by LLL and its supporters to have the bottle-feeding clip removed. The growing controversy was further sustained by comment in other media, including television, radio talkback and the blogging community.

The Complaint

In summary, LLL argued that the subsequent publicity had been particularly damaging to La Leche and that this media storm of criticism was largely created by the newspapers' antagonistic approach to LLL.

As examples of the strident criticism the complainant forwarded letters to the Editor, editorials and opinion pieces published in the *Herald*, which contained emotive language such as "breastfeeding Nazis", " 'breast only' fanatics" and "The looniest crowd in this country, the most irrational and bullying, the breast feeding fanatics . . . "

The complaint focused on several alleged inaccuracies, including errors of fact and misleading content.

For example, the *Herald* stated that "La Leche's complaint led to Piri Weepu's tender moment being cut" (6/2/12/) but many individuals and groups had suggested to HSC that the clip be removed. Here, LLL had been singled out incorrectly and unfairly. Its position had been misrepresented.

Further, the columnist, Paul Holmes, had described the LLL request to HSC . . . "Take it off," screamed LLL. (11/2/12) He also referred to LLL as "the hysterics" But

LLL point out that analysis of the e-mails sent to HSC (* *at this stage only a sample 8 e-mails have been released – there is an OIA request for the rest of them*) immediately show there was no "screaming", instead the e-mails were courteous, calm, reasoned. The complainant also cites her own brief letter to HSC which after noting "the image in this ad could undo much of the work of the Ministry of Health's national breastfeeding campaign", concludes simply "LLLNZ recommends that this segment of the commercial is removed."

The newspaper had repeatedly stressed the role played by LLL in pressuring HSC but the complainant argues that the e-mail campaign had been initiated by the co-ordinator of the Canterbury Breastfeeding Advocacy Service who was a member of the LLL Consultancy Board but not in fact a LLL Board member and therefore someone who could not have any authority to act or speak for the LLL. Again it was the LLL which had been singled out for criticism and this was not deserved.

The complaint contends that there are errors of fact in the *Herald's* editorial of 10/2/12.

First, it states that "LLL and Plunket have apologized for impugning Weepu's fathering abilities" but LLL claims they have not apologized and see no need for any apology when they have never passed any comment about his qualities as a father.

Further, the editorial continues "in judging a young, popular Maori man who is a devoted dad" but the LLL question how the *Herald* can conclude they have "judged" Piri Weepu. The complainant notes the LLL response to the HSC does not mention Weepu at all. Nor is Weepu criticized in the co-ordinator's letter to breast feeding supporters. And none of the sample e-mails sent to HSC reveal unfavourable comment about Weepu as a dad.

The complainant also claims that LLL was unfairly singled out for critical comment in several opinion pieces. The Holmes column mentioned above is cited along with comments such as "breastfeeding Nazis" (in an opinion piece by Dita De Boni) and "The La Leche League is rife with ideologues who believe there is only one way – their way" (Darrell Carlin).

LLL argue that given the controversy generated by the story, it was incumbent on the *NZ Herald* to give some reasonable prominence to LLL's views.

The LLL agreed to be interviewed by the *Herald's* health reporter for a feature which they believed would tell their side of the story. However, the "promised" feature did not eventuate, although a report did appear under the negative headline "Fanatical bullies? Not us, say La Leche".

The LLL object to the use of the word "censorship" and its frequent use to describe the removal of the bottle-feeding shot. They argue that LLL could not have censored the advertisement, because they did not have such power. They gave the HSC an opinion and then the HSC made an internal decision to re-edit ie it was an editorial matter not the result of some outside group imposing its will on the HSC.

The complainant took issue with some headlines and captions.

The derogatory "'Breast-only' fanatics hurt own

cause” was again cited along with “Fanatical bullies, not us say La Leche”. The LLL contend that such headlines only served to perpetuate the view of LLL that it was an extremist organization and one prepared to bully and intimidate to get its own way.

The caption under the Your Views section, “La Leche’s complaint led to Weepu’s tender moment being cut” was a further example, where LLL was having to take all the responsibility for suggesting the “moment” be removed, although many groups and individuals had asked the HSC to make that decision.

It was made worse by the accompanying photograph, of Weepu and baby nestling cheek-to-cheek, because readers could assume that particular image was the one LLL had caused to be cut, but it was an image of Weepu bottle feeding which had concerned LLL. In fact, LLL had suggested images such as the one chosen as illustration here could be used to replace the bottle feeding shot.

The Editor’s Response

The editor described the Holmes column as “strong commentary” but it was clearly denoted as an opinion column and opinion writers had the right not just to criticize but also to be unsympathetic to the LLL cause if they so wished.

In any case, it was true that the campaign had been initiated by LLL. It had been started by a person who might claim to be representing the Canterbury Breastfeeding Advocacy Group but her information about the HSC ad could only have come from LLL. Moreover, she was a member of the LLL Board.

Further, not all the opinion pieces had been as negative about LLL as the complaint might suggest. For example, the Dita De Boni piece was supportive of the work of LLL and Scott Kara had written a “measured and gentle” examination of the issue.

As far as the *Herald’s* editorial was concerned the newspaper had been unaware that LLL had not apologized until this complaint was brought. The newspaper also now understands that LLL does not believe it has impugned Weepu’s fathering. The online version of the editorial is now accompanied by a correction, and a correction would be printed in the newspaper when the LLL complaint is settled.

However, he rejected the complaint against “in judging a young, popular Maori man . . . they (LLL and Plunket) infringed on another cause, for fathers to bond lovingly with their children”.

First, because the LLL letter to HSC outlining its position on the bottle feeding shot was “not in the public arena” when the editorial was written. Second, because the LLL had “inspired” the implication that Weepu was “engaging in something with his child that was less than ideal”.

The editor countered the claim that “censorship” had been used frequently and incorrectly. He could only find three examples of the word being used in covering this story.

One was within a news story and someone was quoted as urging the HSC “to retain the benefits of the censored footage”.

The next was in background comment to a piece in which LLL was given space to put its point of view – “the LLL has rejected its portrayal as a group of fanatics who bullied a government agency into censoring a clip of All Black Piri Weepu bottle-feeding.” Here, the use of the word does not say that LLL was the censor.

The third reference occurs in the *Herald* editorial. “The censoring of Weepu’s bottle-feeding moment brought to the surface . . .” Here, the editor pointed out that it had been made abundantly clear that it was not just LLL who was held responsible, for just three lines above it explained “The scene was deleted at the urging of LLL, Plunket and others.”

The editor rebutted the claim that balancing comment had not been sought from LLL. Its view had been put in every *New Zealand Herald* report that was relevant.

Further, no “promise” had been made about a feature article, but the director of the LLL and one of its board members had been interviewed and LLL had been given extensive space to explain its role in the affair.

He rejected the complaint about headlines and captions.

The headline “‘Breast-only’ fanatics hurt own cause” on the editorial was a fair summation of the editorial expressed below the heading. He pointed out that “fanatic” did not mean religious maniac but someone with an obsessive enthusiasm or zeal.

The headline “Fanatical bullies, Not us” was drawing attention to LLL having its say in response to the often expressed view during that week that it was a bullying organization.

Finally, the photograph of Weepu and his daughter used in the Your Views segment was the only one available at the time and it was never intended to suggest that this was the photo objected to by LLL – any reasonable reader would have realized it was not the image at the centre of the furore.

Discussion and Decision

The Press Council accepts the editor’s view that it was reasonable to suggest that LLL had led the campaign. Alison Stanton, the Director of LLL New Zealand had contacted the co-ordinator of the Canterbury Breastfeeding Advocacy Service who then forwarded the message asking for support in urging HSC to remove the clip. The co-ordinator was not a member of the controlling Board of LLL as the newspaper contended in response to the complaint, but she was on the Board of the Consultancy Group to LLL. The links with LLL at a high level were clear.

The Council also accepts the rejection of the claims about the unfair treatment in opinion pieces. Some criticism was clearly harsh but other pieces were moderate and even, at times, supportive of LLL. Moreover, there is no need for a balanced view in opinion pieces (and that was recognized by LLL in its complaint).

The LLL complain that they were given little opportunity to give their side of the story and the lack of balance meant that the league was treated unfairly. However, for news reports, the LLL had been approached for comment and had been quoted, through Alison Stanton.

Further, although there is a dispute about the kind of

feature or report that had been “promised”, there is no doubt that considerable space had been given to an article in which both the Director and a Board member of LLL had been interviewed and quoted extensively.

However, the Council was concerned about the *Herald’s* editorial, especially the comment that “LLL and Plunket have apologized for impugning Weepu’s fathering abilities”. The Council notes that the newspaper is now willing to make a correction, but the claim as published was a serious one, it did cast a slur on LLL, and the Council finds no evidence that LLL called Weepu’s role as a dad into question. Throughout messages to supporters, the e-mails to HSC and Stanton’s own letter to HSC, the focus was constant – the inappropriateness of including a clip showing bottle feeding in an ad funded by a government health body, when such bodies were committed to promoting breast feeding.

The Council was also concerned about “in judging a young, popular Maori man”. The same point arises. LLL had not “judged” Weepu. The Council found the editor’s response that LLL could be blamed because it had “inspired” the implication that Weepu was “engaging in something with his child that was less than ideal” unconvincing.

The headline to the editorial also seems overly emotive. It leads “‘Breast only’ fanatics . . .” which might lead some readers to surmise that LLL argues that all babies must be breast fed. That would misrepresent La Leche. Moreover, in this case LLL was simply advising HSC that images of bottle feeding strongly negate messages promoting breast feeding, work the Ministry of Health was promoting. Their concern was restricted to the mixed messages being sent.

Also, the words ‘breast only’ are marked off in the headline by quote marks, usually denoting that someone is being quoted. It is not at all clear who is being quoted or where the *Herald* gathered this phrase. It does not appear in the letters by either Stanton or the co-ordinator.

The Council does not believe that the use of the word censorship is warranted. The League made a suggestion, the HSC considered the suggestion and willingly removed the image from their own advertisement. This is not censorship.

The complaint about the Your Views segment is not as serious yet the Council can see the complainant’s point. First, it was not LLL’s complaint that led to Piri Weepu’s “tender moment being cut”, rather, it was the result of many voices from several organisations putting pressure on HSC.

And further, the cheek-to-cheek photograph of Weepu and baby daughter may perhaps have led some readers to assume that this was indeed the kind of image that LLL wanted to cut from the ad. That this was not the image at the centre of the controversy should have been made clear to readers.

The complainant stresses that “Criticising us for the position that bottle-feeding imagery should not feature in publicly funded health messages is fair game” and this perhaps recognizes that LLL’s position would always seem an extreme one to the public – especially when the clip in question was a mere 2 seconds of a much longer ad. That the criticism would be vehement when the clip showed a

loving moment between a popular All Black and his baby is also completely unsurprising.

However, the complaint argues that while such comment is fair game, “Putting words in our mouth -- criticizing us for things we did not say or believe – is not.”

It did seem to the Council that at times the La Leche League was being pilloried for things they did not say nor believe.

Because of the inaccuracies noted above, this complaint is partly upheld, on the grounds of inaccuracies that led to unfairness.

Press Council members considering this complaint were Barry Paterson, Tim Beaglehole, Kate Coughlan, Chris Darlow, Peter Fa’afiu, Sandy Gill, Penny Harding, Keith Lees, Clive Lind and Stephen Stewart.

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

CASE NO: 2264 – LA LECHE LEAGUE NEW ZEALAND AGAINST THE HERALD ON SUNDAY

The breast-feeding advocacy group, La Leche League New Zealand, complained to the New Zealand Press Council that articles, headlines, editorials and other material published in the *Herald on Sunday* in relation to the League’s position on a television commercial that was to have shown All Black Piri Weepu bottle-feeding his baby, were inaccurate, unbalanced, unfair and failed to distinguish fact from opinion.

The complaints related to 23 articles or items published between February 5 and February 19 of which 10 were published in the *Herald on Sunday* and 13 were published in the *New Zealand Herald*. A March 18 article in the *Herald on Sunday* was added later.

The League noted that some articles included with their complaint were unobjectionable, but were included to provide an accurate perception of context.

Complaints about coverage in the *New Zealand Herald* are the subject of a separate ruling.

The complaints about accuracy and unfairness are upheld in part.

Background

On February 5, 2012, highlighted by a page one skybox featuring Piri Weepu holding a baby and the heading, *Piri’s Bottle Ban – All Black dad warned: Breast is best*, the newspaper reported how images of the All Black bottle-feeding his baby had been cut after protests from “breast-feeding crusaders.”

The newspaper reported how the League had taken offence at a few seconds of film showing the All Black feeding his child with a bottle of milk.

The paper reported the Health Sponsorship Council advertisement was part of an anti-smoking campaign, and quoted the council’s chief executive, Iain Potter, as saying La Leche and Plunket had been consulted about the clip.

He was reported as saying people associated with the League had initiated an email campaign against the

advertisement. “He happened to feed the 6-month-old briefly while we were there. It was a nice little poignant moment but we understand the sensitivities around it,” the newspaper reported.

The article also quoted the League’s director, Alison Stanton, who said the trouble wasn’t with Weepu bottle-feeding but the overall message.

The article included the paragraph: “Asked what was wrong with Weepu cuddling and feeding a baby, she said: ‘You’ve got the healthy eating message, exercise, breastfeeding, smoke-free environment, wearing safety belts and this is about giving consistent health messages.’”

The newspaper also wrote an editorial headed *Too much fuss over a bottle boob*, describing a “furious response from breast-feeding advocacy groups, led by La Leche League and the New Zealand College of Midwives” because it undermined campaigns to promote and support breastfeeding, particularly among Maori.

The editorial among other things said: “But the naysayers’ reaction has a rather distasteful whiff of patch-protection about it” and argued that if the groups hadn’t spoken up, nobody else would have noticed.

“The substantive message that viewers would have taken away from the sequence that has been edited out is of a tough-guy father showing tenderness – an image rich in beneficial implication, in an age when men’s physical abuse of children is a constant heartache. No one who does not spend all day worrying about breast-feeding, would have seen it as undermining of the idea that breast is best.”

The newspaper returned to the story the following week, February 12, with a still picture from the clip, somewhat confusingly claiming to reveal for the first time the image La Leche “didn’t want you to see” – an image the newspaper conceded was already on Facebook.

The article went on to say that the League had encouraged supporters to bombard the council with hundreds of emails – “many of which were vitriolically worded.”

Another headlined *Natural born killjoys* wrote of the “tyranny of childbirth” and said of the image: “For the La Leche League, it will confirm all its worst fears. It shows a gorgeous, healthy baby girl in the embrace of a loving dad. To La Leche, this image glorifies bottle-feeding.

“We, the public, were deemed too silly to watch the clip in an anti-smoking ad without wanting to make a beeline to the nearest supermarket to stock up on evil baby formula.”

There was another editorial pointing out how the league’s “crude attempt at censorship” had come back and spattered them in their faces. And in the most perverse manner.”

Subsequently, columnists and letter-writers weighed in on the topic, and there were further articles, including one which reported the total number of emails received by the council was 67. The *Herald on Sunday* did not point out it had previously reported there had been hundreds.

One such article published on March 18 quoted Mr Potter as saying there had been a “hysterical response from some La Leche members.”

The Complaint

In its complaint, the League said some of the coverage in the *Herald on Sunday* and other items in its sister *Herald* publications concerned the real issue of whether images of bottle-feeding undermined efforts to promote breast-feeding. But much of the coverage gave the erroneous impression the League had criticised Weepu and his parenting, which provoked great outcry.

The public’s impression of the League’s role in the HSC’s editing decision and of the League’s beliefs and practices about broader issues were very inaccurate.

The League said it had been asked to comment on the shot of Weepu bottle-feeding by the HSC and recommended it be removed. Ms Stanton had based that view on the issue of inconsistent health messages.

A subsequent email from a HSC representative was taken to indicate the campaign had been finalised and would not take into account Ms Stanton’s concerns.

Subsequently a co-ordinator of the Canterbury Breastfeeding Advocacy Service, whom Ms Stanton had consulted while considering a response to the HSC, had circulated a message suggesting recipients write to the HSC suggesting removal of the clip, and that message had been forwarded to other groups. The co-ordinator did not represent the League, however.

Some 67 emails had been sent to the HSC, and a subsequent email from Mr Potter saying the council had decided to re-edit the advertisement had been very critical of some La Leche members.

The subsequent publicity had been damaging to the League’s image. The organisation had been criticised for things it had not said and did not believe.

In various items, the emails to the HSC had been inaccurately and negatively characterised as furious, vitriolic, intimidating, shouting and hysterical but the eight emails released publicly by the council showed this was not the case. (Official Information Act requests for the remaining emails have been made.) The criticism of the proposed advertisement was never disrespectful or impolite.

Of those released, none of the emails was identified as being from a representative or member of the League.

The League had also been characterised as attacking Weepu’s parenting and a column by Paul Little on February 12 had been headed *Breast-feeding zealots lose the plot*.

The League had never judged Weepu’s parenting. It had encouraged the council to replace the bottle shot with footage of cuddling, holding, bathing or playing with his baby.

The League did not dispute parents’ right to bottle-feed or women’s ability to make choices during labour or delivery, and it acknowledged there were situations where bottle-feeding and infant formula should and would be used.

Disapproving of the bottle-feeding shot was not the same as disapproving of bottle-feeding.

It had not launched the email campaign and it was not a “breast-feeding lobbyist” as it had been described. Its primary focus was on helping mothers who wished to breast-feed to do so by providing information and support.

The League also said that challenging the clip in an advertisement and recommending it be edited out did not constitute censorship. The point of suggesting the commercial be re-edited was not to prevent people from knowing that Weepu bottle-fed his child but to aid normalising breast-feeding by not showing bottle-feeding.

The complaint detailed what it said were other examples of misrepresentation of the League's position in articles, letters, columns and the *Herald's* Facebook page.

Editor's Response

Bryce Johns, editor of the *Herald on Sunday*, responded to the Press Council that the League could not dissociate itself from the email campaign because the co-ordinator of the Canterbury Breastfeeding Advocacy Service was linked to the La Leche League on its website and her letter mentioned Ms Stanton's initial involvement with the council over the advertisement.

He believed the initial news story was accurate and measured and included comments from the League, the College of Midwives and the Health Sponsorship Council.

The editor also argued that the heading's use of the word "ban" was correct because it stopped the use of the image. "Our information is that the player was told by the production company that the image of him feeding his child by bottle was not acceptable and would no longer be used. We did not suggest LLL had warned Weepu directly or indirectly."

The newspaper in breaking the story had not suggested the objection to the commercial was "vitriolic." It had used the description, "furious," which was justified.

The editor acknowledged that the news story erred in referring to hundreds of emails but that was corrected on March 18 when the actual number, 67, became available.

On February 12, the paper had reported many of the emails were "vitriolically worded" and that may have been the wrong word to use. However, neither the paper nor the League had yet seen the rest of the emails.

The use of the word "hysterical" was justified in the March 18 article because it had been used by the Health Sponsorship Council's director in an email to the League.

The editor also said that one of the League's statements in its complaint "summed up the difficulty in answering its grievances. It says 'Disapproving of use of the bottle shot in a public health TVC is not the same thing as disapproving of bottle-feeding, or trying to remove parents' choice to bottle-feed.' But we argue, then and now, that it is the same as disapproving of bottle feeding and was logically taken that way by all who learned of it."

Discussion

The League complained about articles in not just the *Herald on Sunday* but also the daily *New Zealand Herald*. The editor-in-chief, Tim Murphy, asked that the complaints be considered separately against the individual newspapers as they were run by separate staffs as separate operations.

A difficulty in the consideration of this case was the wide-ranging nature of the complaint. The League drew in supportive references from outside media sources as justification for its beliefs.

The Press Council has to base its deliberations on what was actually reported. The reactions of readers to articles or comments made as a consequence of a publication may be worthy of note, particularly if inaccurate reporting leads to an adverse reader response, but deliberation about a complaint has to centre on what was actually said.

The *Herald on Sunday* broke the story about the Weepu advertisement and the first article was a reasonable account of what had transpired. There were some small variations in detail but the article was not inaccurate.

The League complained that Ms Stanton had been placed at disadvantage by the question about what was "wrong" with a picture of Weepu cuddling his baby but she was given the opportunity to respond and she could have said then what she was to say later.

The front page skybox mentioned the word "ban" and said Weepu had been "warned that breast is best." The heading over the story also used the word, and it was mentioned in a latter article.

Ban usually means forbidden and that is too strong a meaning for what transpired. Nor is there a strong case for saying that Piri Weepu had been "warned that breast is best." The editor's reference to what the production company might have discussed with Weepu about what transpired is not a convincing case that the All Black was "warned."

It seems clear the email campaign – and it could be described as such - to get the clip removed was successful but that does not justify the use of "ban" when the decision was made by the HSC which acknowledged it had a duty to ensure health messages did not become confused.

Neither does the Council believe that the use of the word censorship is warranted. The League made a suggestion, the HSC considered the suggestion and removed the image from its own advertisement. This is not censorship.

The Press Council believes the newspaper's editorials come within the range of fair comment, as do the subsequent columns. The column by Paul Little was tough but he also included reference to his conflict of interest and readers could judge for themselves.

The League denies it instigated the email campaign to the Health Sponsorship Council and that the newspaper was mistaken in reporting that. Nevertheless, the co-ordinator of the Canterbury Breastfeeding Advocacy Service did write the letter that started the campaign and she did so after discussing the matter with Ms Stanton. Further, her name is on the league's website and the Press Council believes the newspaper was entitled to associate her as a League representative.

The issue of how many people responded to the campaign was resolved with the newspaper reporting the 67 emails received. The fact that it has previously reported there had been "hundreds" might have been mentioned in the subsequent article for clarity but it was more important that the correct figure was published.

A central plank of the complaint is that the League's position on bottle-feeding was misrepresented by the *Herald on Sunday*.

The editor says the newspaper was forwarded a copy of the open letter seeking support for the email campaign to the HSC and that led to the February 5 article.

He also said in his response to the Press Council that

the League's disapproval of a bottle-feeding shot in a commercial is the same as disapproving of bottle feeding "and was logically taken that way by all who learned of it."

That belief is, however, suspect. The co-ordinator's open letter, which the editor says the paper had seen, makes it clear that was not her intention. She states: "This is not about being unsupportive of bottle-feeding parents as infant health advocates and breast-feeding supporters are committed to supporting all parents."

Given what the *Herald on Sunday* should have known about the League and the co-ordinator's position, it was therefore extreme to say in the February 12 article when referring to the image removed: "For the La Leche League, it will confirm all its worst fears. It shows a gorgeous, healthy embrace of a loving dad. To La Leche, this image glorifies bottle-feeding."

The unattributed comments were part of what appears to be a justifiable feature article, but mixing comment with fact without giving the League a chance to respond at that time was unfair.

Decision

The complaint about the page one heading on February 5 is upheld on the grounds of inaccuracy.

The February 12 article mixed comment and fact and was unfair in that it misrepresented the league's position.

Complaints about the other articles including columns, editorials and letters are not upheld.

Press Council members considering this complaint were Barry Paterson, Tim Beaglehole, Kate Coughlan, Chris Darlow, Peter Fa'afiu, Sandy Gill, Penny Harding, Keith Lees, Clive Lind and Stephen Stewart.

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

CASE NO: 2265 – DAVID SMALL AGAINST THE HERALD ON SUNDAY

Dr David Small, senior lecturer in education at the University of Canterbury, complained to the New Zealand Press Council that an editorial in the *Herald on Sunday* critical of breast-feeding advocacy groups including La Leche League was inaccurate.

The complaint is not upheld.

Background

On February 5, 2012, the *Herald on Sunday* reported that a short clip of All Black Piri Weepu bottle-feeding his baby which was to be part of an anti-smoking television commercial had been removed.

The clip was edited out after the organisation behind the commercial, the Health Sponsorship Council, sought the views of two parties, including the La Leche League, to ensure health messages were not mixed.

The League had raised concerns about the bottle-feeding image and subsequently, a petition instigated by a woman associated with the League drew 67 emails of complaint to the HSC.

The newspaper also wrote an editorial published that day headlined *Too much fuss over a bottle boob* which is the subject of Dr Small's complaint.

The editorial argued breast-feeding advocacy groups including the League had over-reacted, and if they had not raised the issue, nobody would have noticed. The advertisement had been re-edited after a "furious response" from the groups.

It also said "the naysayers' reaction has a rather distasteful whiff of patch protection about it" and concluded: "No one who does not spend all day worrying about breastfeeding, would have seen it as undermining of the idea that breast is best."

The Complaint

Dr Small said the concluding remark was not an opinion but statement of fact and inaccurate and the organisations did not deserve the opprobrium the newspaper had heaped on them. All groups had acting properly within their areas of expertise.

It was not accurate to say that people viewing the clip would not see it as undermining the idea that breast was best, and it was inaccurate to describe the reaction as furious.

He believed the editorial was a thinly-veiled attack on the organisations and they had been subjected to unprecedented barrages of hate mail as a result.

The Editor's Response

The editor of the *Herald on Sunday*, Bryce Johns, said in his response to Dr Small that the newspaper had reported on people being influenced at least subconsciously by the sort of clip that was to be shown, and the newspaper held no bias against the League.

Further, the editorial was the newspaper's honestly-held opinion and it was entitled to its opinion. The League itself could have expressed its opinion in the letters column.

Discussion

The editorial was clearly marked as such and was the newspaper's opinion. The concluding sentence, in the view of the Press Council, is clearly an opinion.

Further, the Council has said that opinions can be expressed vigorously, even offensively, as long as they are based on facts. While there might be evidence that people can be influenced by such advertisements, the newspaper was still entitled to hold the opinion that broadcasting of the small clip would not have undermined advocacy of the promotion and supporting of breast-feeding.

The word "furious" can mean anger or rage but it is also capable of meaning rapid and in this context, the newspaper was entitled to use it. The use of the word "noise" in the editorial could also be justified based on the number of emails sent to the HSC.

Decision

The complaint is not upheld.

Press Council members considering this complaint were Barry Paterson, Tim Beaglehole, Kate Coughlan,

Chris Darlow, Peter Fa’afiu, Sandy Gill, Penny Harding, Keith Lees, Clive Lind and Stephen Stewart.

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

CASE NO: 2266 – KATHLEEN LAUDERDALE AGAINST TARANAKI DAILY NEWS

Kathleen Lauderdale claims *Taranaki Daily News* failed to comply with Principles 1 (Accuracy, Fairness and Balance) and Principle 6 (Discrimination and Diversity) of the Press Council Statement of Principles in relation to an opinion piece published on April 17, 2012 headed *Paying the bill for another’s pregnant pause*. The same online pointer headline read *Pregnant bludgers, why should we pay?*

The Press Council does not uphold the complaint.

Background

The piece in question, written by contributor Gordon Brown, opened with the line “It’s a funny old world at times”. The piece began with observations as to the appropriateness of a private member’s bill, selected in Parliament’s ballot, which had the aim of increasing the period for paid parental leave from 14 weeks to 6 months. The author proceeded to express firm views opposing a woman’s right to State support after having a child.

The piece included the following:

“Ultimately though, this debate comes down to the highly flawed concept that somehow, the rest of us have to pay for women having babies. It’s their choice surely. It seems not. Once again, we are being flogged by some for not doing enough for working women”;

“... The poor dear [a journalism graduate] was complaining that the entry level pay wasn’t enough to make it worth her while to actually get a job, what with the cost of child care”;

“... Naturally there was no mention of a dad or partner – she was “on her own””;

“She also said she got pregnant (despite the free contraception we supply) ... Maybe there could be a work scheme for the unemployed so that someone could actually get the pill from the packet, get a glass of water and administer it to those poor dears who can’t manage it for themselves?”

“...I’m not anti women. In fact I think every man should have one at least”;

“But I am anti bludging. Let’s call it what it is.”;

... [couples, and women, who went without to give their children a good upbringing], like us, never received a cent from the Government (or us) for childcare;

“Just why we should pick up the tab and somehow be jointly responsible for anyone else’s child... is a symptom of a reluctantly indulgent society, which simply can’t afford such profligacy, that allows others who abdicate their own responsibilities to bludge off the rest of us”.

The Complaint

Kathleen Lauderdale essentially claims the piece is discriminatory against women. It demeans women, mothers in particular, and disregards their importance to our society.

Ms Lauderdale says Mr Brown was wrong in saying mothers formerly had had no state support when in fact the Government had for many years paid the family benefit and assisted with home ownership.

Ms Lauderdale takes special exception to the extracts noted above. Ms Lauderdale says that:

“In any case “gratuitous” misogynistic exploitation of information about women and their circumstances and support they receive by means of inaccurate and rude commentary and reporting rationalised by claims of it being a discussion or healthy debate enjoyed by the public at large and without right of reply or opposing viewpoint should be beneath a reputable regional newspaper owned by a large media corporation like Fairfax...The tone and content is derogatory, inaccurate and offensive about women and mothers”.

8. Ms Lauderdale says, further, that;

“This piece, in my view, encourages unhealthy views about women and children by someone who holds a position of privilege and power within the community, making it all the more damaging”.

The Response

The *Taranaki Daily News* said the piece dealt with several issues notably the private members bill itself and the author’s disagreement with the idea that society should pay for women to have babies. The newspaper says:

“Mr Brown’s columns are challenging and invariably spark healthy debate in the Daily News. This was no different”.

The Decision

The Council does not agree with Ms Lauderdale in relation to her claim the article is discriminatory.

Two Press Council Principles are relevant. The first, Principle 6, provides that

“Issues of gender... [and] ... minority groups... 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.

The second is Principle 4. Principle 4 provides that

“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”.

The piece Ms Lauderdale complains about is clearly opinion. It is headed as such. Mr Brown is undoubtedly forthright in his views. His opinions are controversial. There will be those who agree with the opinions. Equally there will be many who do not. Opinion pieces do not offend the Press Council Principles simply because they engender strong opposing reactions.

The Council in previous decisions has said it will not uphold complaints against expressions of opinion that are

extreme, provocative and offensive, and even abusive. However, if the opinion is so extreme in substance or tone as to go beyond what is acceptable as opinion, a complaint can be upheld. It would take extreme circumstances to do with risks to the public or gratuitous offence to a particular group for the Council to uphold a complaint in those circumstances.

The Council does not regard the piece in question to be so extreme as to violate the Principles. It expresses a legitimate, albeit, disputed opinion. While fully respecting Ms Lauderdale's views it cannot agree that the piece involves a gratuitous misogynistic exploitation of information as Ms Lauderdale claims.

In saying this the Council recognises the validity of Ms Lauderdale's observation about State support for mothers with children. Mr Brown was wrong when he said people like him who had raised families never received "a cent" for childcare. Nonetheless this error is not in the Council's view sufficiently material for Ms Lauderdale's complaint to be upheld.

The Council notes *Taranaki Daily News'* offer to Ms Lauderdale to publish a letter from her setting out her opinions on the issues. The Council understands Ms Lauderdale did not accept this offer.

The complaint is not upheld.

Press Council members considering this complaint were Barry Paterson, Tim Beaglehole, Kate Coughlan, Chris Darlow, Peter Fa'afiu, Sandy Gill, Penny Harding, Keith Lees, Clive Lind, John Roughan and Stephen Stewart.

CASE NO: 2267 – MAORI TELEVISION AGAINST THE NZ HERALD

Introduction

The Press Council has not upheld a complaint by Maori Television against the *New Zealand Herald* for stories about employees attending a World Indigenous Television Broadcasters Network conference in Norway.

The Articles

The first article, by the newspaper's media reporter, reported that five Maori Television executives were at an international conference of indigenous broadcasters in the Arctic highlands. The headline – *Five Maori TV executives sent on expedition to Arctic* with the sub-head *Team at indigenous network meeting in Norway; channel declines to reveal cost* – indicated that the articles would question the cost and value of the conference. While observing that times are tough for public broadcasters, the article noted that Maori TV staff would be flying economy, staying in hotels for the conference, that costs for two delegation members were paid for by the organisers, quoted Maori TV that it was keeping costs down but declining 'to spell out the costs to taxpayers flying staff to the isolated Sami community with a population of 2925.', and refusing to name the five delegates. It also raised the issue of bonus payments to

150 staff following the Rugby World Cup, speculated that Maori TV was interested in taking over some TVNZ7 functions and outlined the salary earned by Maori TV chief executive last year.

The second article, *TV staff a-Twitter over trip* was accompanied by a republished image of Maori TV broadcaster Julian Wilcox who'd tweeted a self-portrait with sleds and reindeer, identified the five Maori TV employees at the conference, repeated the statement that Maori TV would not reveal the cost of the trip and repeated tweets from an employee regarding their conference schedule and mention of having a shot in the icebar.

Maori TV responded to the articles by releasing, on March 30, a press release giving the cost of the attendance, and clarifying which staff attended.

On 31 March, the *Herald* ran a brief giving the details of cost and noting Maori TV's stated pride in "fiscal prudence and willingness to be accountable for public funding."

The Complaint

Maori TV chief executive Jim Mather complained that the two articles breached Principle One (Accuracy, Fairness and Balance), Principle Four (Comment and Fact) and Principle Five (Headlines and Captions). Specifically:

Article One

The headline was misleading and reinforced the general tone of the article suggesting the Arctic trip was not a legitimate one.

The sub-heading was misleading because the original *NZ Herald* deadline for requiring costs was too early to allow them to be determined accurately. This was made clear and the information was disclosed as soon as possible.

Maori TV did not send five "executives" but three executives and two programme producers to the conference.

The reference to tough times inferred that Maori TV had been fiscally imprudent with taxpayer funds, which was incorrect and devoid of context thus blurring the distinction between comment and fact.

A reference to the main industry of the Sami people (reindeer herding and husbandry) was offensive and gratuitous and caused offence to the representatives at the conference including the official hosts.

Two employees were incorrectly identified as to their jobs.

It was inaccurate to say Maori TV had been lobbying to take over some functions of TVNZ7 claiming this was a false statement unsubstantiated and without attribution.

Article Two

One employee was incorrectly named and the BBC Scotland did not attend the conference.

General tone and context

The articles served to depict Maori TV management as irresponsible with taxpayer funds and implied the journey was futile and/or frivolous.

The Newspaper's Response

As a result of the complaint a correction/clarification was run on 24 April clarifying who had attended, their roles in the organisation, and confirming that \$24,500 had been budgeted.

The headline was reasonable and covered Maori TV reasons for attending.

The subhead was accurate as the reporter had requested costs but was told there was no guarantee the full cost would be released. The newspaper offered to run a clarification once the cost had been supplied.

As Maori TV had refused to give names it was not possible for the newspaper to be clear about the roles of the employees but it was able to once they began tweeting.

The newspaper confirmed that the context for the story was "tight times for public service broadcasting". And that Maori TV was drawing unwarranted inferences regarding the activities of the Sami people.

The newspaper stood by the speculation over a future role for Maori TV in TVNZ7 saying it had been discussed with the reporter and noted that the media are expected to examine the financial practices of publicly funded organisations.

Final submissions

The complainant repeated the view that the headline was inaccurate and inflammatory, designed to attract and misled readers into thinking Maori TV employees were on an Arctic expedition rather than attending an international conference.

The complainant reiterated that Maori TV had not refused to give the costs but had stated "it was too soon to reveal cost".

In general, the complainant argues that the article was not a fair summary of facts but, through sensationalised and inaccurate reporting, inferred wasteful expenditure.

Discussion

There is no more legitimate subject for the news media than expenditure of public money and when it is being spent by another media organisation, the coverage can be predictably intense.

The newspaper accepted factual inaccuracy about the names and titles of the employees attending the conference. Maori TV does not accept, as asserted by the newspaper, that this was corrected in the second article and neither does the Press Council. However this is not a significant enough issue on which to find the complaint upheld, particularly in light of the refusal of Maori TV to disclose all the names.

The main headline, "expedition to the Arctic" uses a pair of words commonly used together which would not, for every reader, conjure images of frivolous waste. For some, the notion of an expedition to the Arctic would provoke thoughts of deprivation and hardship.

The latter part of the sub-heading is what sets the tone for the article and the complaint: *Channel declines to reveal cost*.

It is not possible to determine whether the media reporter's request for costs was met with "it is too early to tell but it will be revealed", as stated by Maori TV, or

by "we decline to reveal it" as stated by the newspaper. Or "get in an OIA request" as stated by the newspaper in another response. Both sides maintain the other is wrong.

The purpose of the article was to question the value of attending the conference and the issue of cost was crucial.

The article reported on the use of economy class airfares, the sponsorship of two employees by the conference organisers and that costs were being kept down. It reported in detail the statements of the Maori TV spokeswoman about the value of the employees attending the conference.

There was a sarcastic tone to the information about the Sami people. This, and the curious comment that Maori TV employees would be staying in hotels reinforced the mean-spirited (petty) tone. However readers are not foolish and, like the Maori TV chief executive in his response, would be well aware that sub-zero temperatures in Norway made camping outdoors foolhardy if not fatal. It is also not clear how the conference delegates were offended by the article as it is not likely would have known about it without the Maori TV executives drawing attention to it.

In relation to the second article, once Maori TV delegates began tweeting, there was no reason for the newspaper not to use the material. The issue of whether Maori TV did lobby to take over some part of the TVNZ7 broadcast functions also remains in dispute with the reporter claiming a discussion has taken place and Maori TV that it has not. It is not possible to determine this.

Decision

The complaint is not upheld. Overall, balance was achieved through the sum of the three articles. A clarification/correction was published as soon as the cost of the delegation was made known. However the Council notes that while the two main articles remain on the *Herald* website, neither the brief nor the clarification appear. The Council recommends that this is remedied, and that the additional information be linked to the articles.

Press Council members considering this complaint were Barry Paterson, Tim Beaglehole, Kate Coughlan, Chris Darlow, Peter Fa'afiu, Sandy Gill, Penny Harding, Keith Lees, Clive Lind and Stephen Stewart.

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

CASE NO: 2268 – CHRIS MOREY AGAINST THE PRESS

A complaint from Chris Morey argues that a cartoon published in *The Press* on April 9, 2012 is anti-Semitic and inaccurate. The Press Council disagrees and does not uphold the complaint.

Background

The cartoon deals with the expansion of Jewish settlements on the West Bank. Playing with the word 'settlement' the cartoonist has US President Obama telling Israeli Prime Minister Netanyahu that he doubts whether Israel

is committed to a [peace] settlement, and Netanyahu disagrees, showing him a map of all the [housing] settlements they are committed to. Obama's response is "Men are from Mars – Zionists are from Uranus". This line is the crux of Mr Morey's complaint, and one of two complaints about the cartoon received by the Press Council.

Complaint

Mr Morey complained that the cartoon was anti-Semitic because it compared Jews with human excrement or flatulence. He argued that the word 'Zionist' was a pejorative synonym for 'Jew', and the term had been used to give the appearance that criticism was politically rather than racially inspired. However, he believed the cartoon to be racial in content, not political.

He said there were many Israeli Jews opposed to the extension of settlements, but the cartoon called them all Zionists "and hence as excrement, regardless".

He also claimed the cartoon was inaccurate in questioning Israel's commitment to a peace settlement, saying "both sides in the Israel/Palestine dispute have offered to negotiate, but on terms that the other side will not accept".

The Newspaper's Response

The Press editor Andrew Holden said there had been a number of complaints to the newspaper about the cartoon, but disputed that the cartoon was anti-Semitic and a thinly veiled attack on the Jewish people. "While the humour is clearly scatological, the most that could be read into it is that the US President Obama 'thinks' that Netanyahu and his political supporters are assholes."

Mr Holden agreed that while the term Zionist was generally used to describe those who support the creation and existence of the state of Israel, more recently it had come to be used to describe those who want to expand the borders of Israel. In this context, this was the intended meaning of Zionist. The cartoon was a comment on the aggressive expansion of settlements on the West Bank in defiance of strong advice from the United States and many other allies. "If any other meaning is adopted the cartoon does not make sense."

Further Comment

In further correspondence with the Press Council, Mr Morey challenged Mr Holden's use of the word 'aggressive' in referring to Israel's settlement policy. "To describe such a policy as 'aggressive' is to express a view strongly hostile to settlements."

Mr Holden also expressed the view that the Council's principle 1 concerning accuracy, fairness and balance referred primarily to factual articles. Mr Morey sought clarification from the Council about that.

Discussion

Mr Morey believes the cartoonist to be anti-Semitic and he sees this cartoon as evidence of that. He argues that the use of the word Zionist is a pejorative term for Jew and, therefore, the cartoon is critical of the whole Jewish people and not simply those who support the expansion of

settlements. And, further, the comparison Men from Mars with Zionists from Uranus was offensive.

This complaint has raised issues in relation to two of the Council's principles: 1 (Accuracy) and 6 (Discrimination). The Council does not uphold the complaint on the grounds of accuracy. It cannot rule on whether or not it is accurate to say Israel is committed to a peace settlement. That is a matter for conjecture. Likewise it is difficult to rule on a single definition of Zionist, when the meaning of the term varies according to who is using it, and in what circumstances. It is clear in this cartoon 'Zionist' refers to those supporting the extension of settlements in the occupied territories.

The Council's principle relating to discrimination does not restrict content that refers to religion or race. These are legitimate topics where they are relevant and in the public interest, and as long as there is no gratuitous reference. In recent adjudications the Council has set a high bar in this respect to protect freedom of expression.

The Council's principles give scope to cartoonists to express very strong, even unpopular viewpoints.

To clarify, the Council's principle referring to accuracy does not only apply to factual articles. The facts on which opinion or commentary is based also need to be accurate.

Conclusion

For the reasons outlined above, the Press Council does not uphold the complaint.

Press Council members considering this complaint were Barry Paterson, Tim Beaglehole, Kate Coughlan, Peter Fa'afiu, Sandy Gill, Penny Harding, Keith Lees, John Roughan and Stephen Stewart.

Chris Darlow took no part in the consideration of this complaint.

CASE NO: 2269 – PETER BOLOT AGAINST THE PRESS

A complaint from Peter Bolot argues that a cartoon published in *The Press* on April 9, 2012 is anti-Semitic. The Press Council disagrees and does not uphold the complaint.

Background

The cartoon deals with the expansion of Jewish settlements on the West Bank. Playing with the word 'settlement' the cartoonist has US President Obama telling Israeli Prime Minister Netanyahu that he doubts whether Israel is committed to a [peace] settlement, and Netanyahu disagrees, showing him a map of all the [housing] settlements they are committed to. Obama's response is "Men are from Mars – Zionists are from Uranus". This is one of two complaints about the cartoon received by the Press Council.

Complaint

Mr Bolot complained to the Council that *The Press* had published a "disgusting" cartoon that was racist and prejudiced. He saw it as evidence of an "open season" on Israel in the newspaper.

In an earlier letter to *The Press* editor Andrew Holden, he said the newspaper had chosen to pillory Israel using anti-Israel news sources. Its decision to add cartoons of this kind had revealed its “real thinking”.

He questioned why Israel was singled out for criticism and not the Syrian regime or Hamas’ rule in Gaza.

The Newspaper’s Response

Mr Holden said the newspaper had been unequivocal in its criticism of the policies and actions of all three regimes.

Given the public tension between Obama and Netanyahu, he did not think the cartoon was unfair in what it depicted in the relationship between them. “While the humour is clearly scatological, the most that could be read into it is that the US President Obama ‘thinks’ that Netanyahu and his political supporters are assholes.”

Mr Holden said that while the term Zionist was generally used to describe those who support the creation and existence of the state of Israel, more recently it had come to be used to describe those who want to expand the borders of Israel. In this context, this was the intended meaning of Zionist. The cartoon was a comment on the aggressive expansion of settlements on the West Bank in defiance of strong advice from the United States and many other allies. “If any other meaning is adopted the cartoon does not make sense.”

Further Comment

In further correspondence with the Press Council, Mr Bolot said Mr Holden had made up his own definition of Zionism. He said the newspaper failed the test of accuracy, fairness and balance in its treatment of Israel. He asked the Council to rule that the cartoon was in breach of its discrimination principle.

Mr Holden did not agree that the cartoon was fear-mongering or that it placed a gratuitous emphasis on dehumanising racial stereotypes.

Discussion

This complaint has raised issues mainly in relation to two of the Council’s principles: 1 (Accuracy) and 6 (Discrimination). Mr Bolot argues the newspaper’s treatment of Israel generally is in breach of the first principle. This adjudication, however, is restricted to considering the cartoon which is the subject of the complaint. He has also disputed the use of the term Zionist. It is difficult to rule on a single definition of Zionist, when the meaning of the term varies according to who is using it, and in what circumstances.

The Council’s principle relating to discrimination does not restrict content which refers to religion or race. These are legitimate topics where they are relevant and in the public interest, and as long as there is no gratuitous reference. In recent adjudications the Council has set a high bar in this respect to protect freedom of expression.

The Council’s principles give scope to cartoonists to express very strong, even unpopular viewpoints. Mr Bolot has questioned the impartiality of Press Council newspaper industry representative and *NZ Herald* columnist John Roughan and requested he take no part in this adjudication. The Press Council stands by the

impartiality of all its members and has confidence they will withdraw from any complaint with which they have a conflict.

Conclusion

For the reasons outlined above, the Press Council does not uphold the complaint.

Press Council members considering this complaint were Barry Paterson, Tim Beaglehole, Kate Coughlan, Peter Fa’afiu, Sandy Gill, Penny Harding, Keith Lees, John Roughan and Stephen Stewart.

Chris Darlow took no part in the consideration of this complaint.

CASE NO: 2270 – NEW ZEALAND SOCIETY OF LOCAL GOVERNMENT MANAGERS AGAINST NATIONAL BUSINESS REVIEW

Introduction

The New Zealand Society of Local Government Managers (the Society) complains against an online article on the *National Business Review* (NBR) headed *Old boys’ club hikes council bosses’ pay*. The complaint alleges that the article is not accurate, is unfair and unbalanced and therefore it breaches Principle 1 of the Council’s Statement of Principles.

The complaint is upheld.

The Article

The first sentence of the article read:

An old boy’s club is behind the huge salary packages being offered to many of the 78 local government CEOs in New Zealand, according to a highly placed insider source.

The allegation made by the source and noted in the article as emanating from the source included:

- a) The Society is an old boys club that controls and determines the appointments of CEOs to local authorities;
- b) The Society is behind the huge salary packages offered to many local government CEOs; and

The Complaint

The complaint noted:

- a) The Society is a professional body whose members include all levels of local government managers. As a group, CEOs only make up around 1/6th of the society’s membership, and not all local government CEOs are members. It also noted that the club could not be an old boys’ club as the president and chief executive are both female.
- b) The Society does not have, and never has had, any role in determining the remuneration of CEOs. Remuneration and other conditions of employment are determined by the employing local authority. Nor does the Society provide advice to local government regarding CEOs remuneration.
- c) The Society has no role in the appointment of

local government chief executives. Under the Local Government Act, the decision as to whom to employ is in the hands of the elected council members. The councils decide how and where to advertise, and what goes in the advertisement and the Society has no role in these matters.

The complaint that the publication was unfair and unbalanced is based on:

- a) There was no attempt to contact the Society for its view and response to the allegation; and
- b) The matter was not urgent. The allegations could have been put to the Society and it should have been given an opportunity to respond before any publication.

The *NBR* Response

The *NBR* stands by the story and the credibility of its source. It says that it is based on the views and opinions of a person well-versed in local government whose word *NBR* had no reason to doubt.

NBR states that it reserves the right to publish robust items, without necessarily having to seek out the response of other parties who may or may not have some interest in the story topic.

Finally, *NBR* notes that the Society could have had a right of reply but did not seek it.

Discussion

The article made it clear that it was the views of a highly placed insider source. The Society in its complaint says that the views were inaccurate and it gave plausible reasons for the inaccuracies. The Council is not in a position to rule on the accuracy. However, it is clear that *NBR* did not make any attempt to check the accuracy before publication. In the Council's view, it should have done.

Fairness and balance is another issue. As stated in Principle 1 of the Council's Statement of Principles; "In articles of controversy or disagreement, a fair voice must be given to the opposition view." This comment applies equally to serious criticism of an organisation, as will be noted below.

The Council has in many decisions held that where there are serious allegations made against an organisation, a response must be sought, and if possible, published both immediately and with reasonable prominence: see Walsh v. Dominion Post (Case 916). In Real Management v. NZ Herald (Case 806), the Council called the right to have serious allegations put to an organisation before publication an entitlement. This principle applies regardless of the source of the information.

Here there was no urgency in the story and the *NBR* breached Principle 1 by not putting the allegations to the Society and seeking its response and publishing that response alongside the allegation. If the Society had declined to respond, *NBR* would have then been entitled to publish the allegations, noting that the Society had declined to respond.

Decision

The complaint is therefore upheld on the grounds of failure to seek and give a fair voice to the Society's view.

Press Council members considering this complaint were Barry Paterson, Tim Beaglehole, Chris Darlow, Sandy Gill, Penny Harding, Keith Lees, Clive Lind, John Roughan and Stephen Stewart.

Peter Fa'afiu took no part in the consideration of this complaint.

CASE NO: 2271 - SCOTT BAKER AGAINST HURUNUI NEWS

Scott Baker says a picture in the *Hurunui* News on June 21 2012 conveyed a misleading impression of a proposed large irrigation pond, described in the accompanying story. He said the tranquil picture was akin to a low-lying duck-shooting pond, whereas dam walls up to 13 metres high and 1000 metres long were being proposed. Many local people feared the North Canterbury project could be a major flooding risk.

The complaint about the photograph is upheld by a majority of 9:2. The complaint about lack of balance in the report is not upheld.

The Complaint

Mr Baker objected on the Press Council principles of Accuracy, Fairness and Balance; and Photographs and Graphics.

He supplied information, from Waimakariri Irrigation Ltd's website, which showed the height of the proposed dam as well as graphics of how it could look. The newspaper story identified the website by name but did not publish the pictures.

Writing to the newspaper after its story appeared, Mr Baker also supplied an image of what an actual pond storage dam could look like, to try to correct the impression conveyed by the published picture. He stressed that his image was of a *similar* but smaller dam structure.

As well, contrasting what was proposed with the newspaper's picture, Mr Baker said there was a "very real concern" of risks among people living near a 13-metre wall that had 10 metres of water behind it covering one kilometre square.

"If it was a tranquil lake set low to the surrounding area, then no such risk is perceived."

He was also concerned about "balance" in the story's reported comments, since it had not provided a detailed description of the size of the structure from the WIL website. This information could have been obtained easily, with a bit of research. Moreover, only one party had been referred to in the story.

In his complaint to the Press Council, Mr Baker said the picture used in the newspaper did not fairly portray the nature of the project being discussed in the article. "It misleads readers into believing that the project is smaller than what is really planned."

Editor's Response

Editor Robyn Bristow said the image used was a file photograph to attract readers to the story. The accompanying caption merely said Waimakariri Irrigation Ltd "is getting set to apply for consents for its proposed

storage ponds.” The caption did not say the picture was showing the actual ponds.

Use of the phrase “proposed storage ponds” suggested they had not been built, which also suggested the photograph was not of the proposed ponds. The picture was never intended to portray the extent of the project.

She had not seen the resource consent application yet, as it had not been filed at the time the story was published, so did not have details of the proposed dam’s structure.

The story was well balanced. As well as reporting WIL’s plans, the story had detailed opposition from landowners. The report noted their concerns about the potential flooding risk to lives and the region’s social, economic, financial and environmental wellbeing.

In a subsequent report, on July 5, the newspaper showed how the landowners in the first report were part of a wider group called Dam-Wrights. The later story reported the group’s concern that the proposal was not merely for storage ponds but for “genuine dams”.

The website to which Mr Baker referred no longer had any photographs on it. The picture supplied by Mr Baker was not similar to what was proposed - it was much smaller.

Press Council Decision

The majority of the Council thought the picture published was misleading, and the editor admits it was a file photograph. Pictures supplied by Mr Baker give a completely different impression of what is proposed. It was remiss of the newspaper not to probe a bit deeper, especially as it reported the website’s address in the story accompanying the offending picture.

The Council notes the increasing use of stock images and cautions against their indiscriminate use. If a stock image is to be used it must be of direct relevance to the accompanying story, and must not mislead. It should also be suitably ascribed.

The Press Council must assume that the website contained the artist’s impressions of the proposed development at the time the story was published.

The Council notes there is some confusion about whether the consent applications had been lodged, as the story said WIL was to lodge consent applications in a few weeks, whereas landowners opposed to the project said the consents had already been lodged.

Mr Baker’s complaint about the picture is upheld, by a majority. His complaint about lack of balance is not upheld.

Two Council members, Penny Harding and Clive Lind, did not uphold the complaint about the picture. They said the article and headline made it clear that consents for the project had yet to be applied for and the picture showed a completed pond. It could not possibly represent the as-yet-unapproved project itself and was clearly there for illustrative purposes only. The caption did not offer any identifying information and while the complainant showed diagrams of what the project would look like, the dissenters said it was an editor’s prerogative to illustrate the article as she saw fit. Readers of a community paper would also likely be aware of the project’s progress and wouldn’t be misled.

Press Council members upholding the complaint about the photo were Barry Paterson, Tim Beaglehole, Pip Bruce Ferguson, Kate Coughlan, Peter Fa’afiu, Sandy Gill, Keith Lees, John Roughan and Stephen Stewart.

Press Council members who would not uphold the complaint about the photo were Penny Harding and Clive Lind.

CASE NO: 2272 – MORGAN CONSTABLE AGAINST SUNDAY STAR-TIMES

Morgan Constable complained that a report on the website *Stuff.co.nz*, giving the findings of recent research into driving under the influence of drugs, was biased against cannabis, inaccurate and unfair. The complaint was not upheld.

The news item, originated by the *Sunday Star-Times*, comprised just 10 paragraphs on the website. It reported that research had shown cannabis use could double the risk of a serious or fatal crash. It included figures for the number of New Zealand drivers found “under the influence” of cannabis since roadside drug testing was introduced at the end of 2009 and cited Canadian research published in the *British Medical Journal* that found acute cannabis consumption could be linked to an increase in crash rates. A breakdown of New Zealand crash statistics showed that of the 48 percent of deceased drivers who had traces of alcohol or drugs in their blood, cannabis was present in 19 percent of them, alcohol in 27 percent and a further 28 percent had traces of both alcohol and cannabis.

Mr Constable complained that the story contained no basis for the claim in its opening sentence that smoking cannabis would double the chance of a serious or fatal crash. In cases where cannabis was present it could not be assumed the driver was under its influence, he said, because cannabis remains in the body long after its effects cease to be felt. Furthermore, the Canadian researcher’s conclusions were not as definite as the story suggested.

He noted the figures given in the story showed alcohol featured more in accidents yet the report concentrated on cannabis. It was part of “a continued and unjustified vilification of cannabis” that only served to prolong its prohibition. To pick one drug out of many in the research was poor journalism to the point of scare-mongering. To make matters worse, the website had not enabled comments to be made on the story.

The editor of the *Sunday Star-Times* said the article was not intended to be biased against cannabis. It was an accurate portrayal of the research, backing it with New Zealand statistics. “I am not qualified to comment on whether cannabis suffers unjustified vilification,” he said, “but confess to a belief that driving pissed or stoned is generally a bad idea.”

He said it was impossible to open every article online for comment. The failure to do so in this case was a coincidence not a conspiracy.

The editor supplied the Press Council with copies of the New Zealand and Canadian research. The newspaper's report that the research showed cannabis doubled the chance of a serious or fatal crash was based on the Canadian paper which stated: "Driving under the influence of cannabis was associated with a significantly increased risk of motor vehicle collisions compared with unimpaired driving (odds ratio 1.92 (95 percent confidence interval 1.35 to 2.73))" The research paper concluded: "Acute cannabis consumption nearly doubles the risk of a collision resulting in serious injury or death..."

This material was made available to the complainant who responded that the newspaper's report ought to have contained more detail of the research and the website could have given a link to it. The Council did not agree that the detail needed to be in the news item, it added nothing to the opening sentence. Nor did the Council agree that the newspaper was wrong to focus on cannabis rather than alcohol and other drugs mentioned in the New Zealand research. The effect of cannabis on driving is probably less well known.

Having read the research paper, Mr Constable suggested one particular statement in the newspaper's report was inaccurate. The news item said, "The research found cannabis significantly impaired the psychomotor response, or muscle activity linked to mental processes." However, the study had actually suggested, "cannabis impairs performance of the cognitive and motor tasks necessary for safe driving, increasing the risk of collision." The Council doubted the distinction in terms would make any difference to general readers.

It was unfortunate the website did not make the story open to reader's comments but the Council accepted that it was not practical to do this for all stories. Published comment has to be constantly moderated and websites do not have the staff to do so for all items. They choose those they believe likely to generate debates of general interest.

The newspaper's assessment of the public interest in cannabis was reflected in the brevity of its report. The complainant clearly believed the subject deserved a more extensive story, which could have noted that the Canadian study contained several statements admitting the limitations of the research and its possible applications. The New Zealand statistics report, in a note on its limitations, acknowledges that "the presence of drugs and alcohol in the study does not necessarily infer significant impairment." It admits "a lack of a strong correlation between tetrahydrocannabinol (THC) levels and driver impairment". But the newspaper's report reasonably refers to drivers "who appeared to be sufficiently impaired for police to perform a drug test".

The newspaper did not go beyond the facts and figures provided by the research. In the Council's view its succinct report was sufficiently accurate. The complaint was not upheld.

Press Council members considering the complaint were Barry Paterson, Tim Beaglehole, Pip Bruce Ferguson, Kate Coughlan, Peter Fa'afiu, Sandy Gill, Penny Harding, Keith Lees, Clive Lind, John Roughan and Stephen Stewart.

CASE NO: 2273 – THE CAMPBELL FAMILY AGAINST THE MANAWATU STANDARD

Logan Campbell and the Campbell family complained about the publication of a photograph in the *Manawatu Standard*. They contended that the photograph transgressed various Press Council principles, especially those relating to privacy ("those suffering from trauma or grief call for special consideration") and the use of photographs ("photographs showing distressing or shocking situations should be handled with special consideration for those affected").

The complaint is upheld by a majority of 7:3.

Background

The photograph appeared on the front page of the *Manawatu Weekend Standard* on March 31, 2012 and accompanied and illustrated a report about a car accident in which two people had been killed and three injured.

The photograph shows a woman, the driver of one of the two cars, receiving help from surrounding firefighters and paramedics.

The woman's face, in profile, is clearly visible to the viewer.

The rest of the car's interior cannot be seen, because of a large plastic sheet and because the various helpers also block the view.

Another photograph, much smaller, shows the two cars which had both been destroyed by the impact.

The report, headlined "Two die and three taken to hospital after horror crash", outlined various details and included brief comment from witnesses, police and firefighters.

The names of the victims were not given and the final paragraph explains that "the names . . . had not been released as this edition went to print".

The Complaint

Hector Bassett, the husband of Shalome Bassett, the woman in the photograph, took his concerns to the editor.

He pointed out that his wife's right to privacy had been breached and she had been shown no "special consideration" in being photographed while clearly suffering from distress – her mother, in the front passenger seat alongside her, had been killed, two of her children had been injured, and she herself was "in a semi-conscious state" and trapped in the car.

He also noted that work mates and friends had seen the newspaper and recognised her.

Then Logan Campbell, brother of Shalome and son of Heather Campbell, the woman who died in the crash, further complained on behalf of Heather Campbell's husband, her five children and their spouses, and her fifteen grandchildren.

He explained how the whole family had been caused hurt and distress by the photograph and insulted by the editor's ongoing stance that the publication was justified

because it highlighted the importance of road safety and was thus in the public interest.

He argued that his sister's privacy had been invaded - she had been in an "exposed and helpless situation" when photographed.

He claimed it was also obvious that his mother, Mrs Campbell, was deceased and behind the plastic sheet in the passenger seat of the car.

Further, the newspaper had blatantly ignored the principle that "those suffering from trauma or grief call for special consideration" especially as that principle applied not only to the people in the photograph but also to any distress likely to be caused to friends and family by the publication of photograph.

He suggested that the principle relating to children and young people had also been broken ("In cases involving children editors must demonstrate an exceptional public interest to override the interest of the child") when the photograph had been published despite the newspaper knowing that two young children were in the back seat of the car.

He argued that the principle applying to photographic selection had also been broken. In his view, "photographs showing distressing or shocking situations should be handled with special consideration for those affected" applied to family and even others who would be affected, and the newspaper had not shown any such "special consideration" to them.

Finally, he suggested that the editor should have acknowledged that he had made an error in approving the photograph for publication and given a sincere apology to the family.

The complainant made several other allegations – such as, the newspaper's reporter and photographer breaking through a police cordon established at the scene, the newspaper's staff listening to the police frequency and emergency channels, the editor distributing photographs of the accident scene to other agencies, and then refusing to destroy the accident photographs held on file, and finally, that the newspaper had been insensitive in sending a reporter and a photographer to the family home two days after the accident.

The Editor's Response

The editor stressed that it had been his decision to select and publish the photograph that had so offended the Campbell family.

He explained that he had carefully considered the distress that the photograph was likely to cause to the complainant's sister and her family and friends but had weighed that against "public interest in seeing the consequences, in human terms, of an accident". The photograph, in his view, added a "significant human element to the story".

Further, the photograph did not show any injuries to the complainant's sister and her face was in profile and at least partially obscured by a firefighter's arm.

He suggested that the photograph should not be viewed in isolation: the story of the accident, taken as a whole, with a written report and two accompanying photographs, is presented sympathetically rather than sensationally.

He added that this was a matter of very significant public interest for the accident occurred locally, involved an emergency response from within the district and resulted in the deaths of two local people.

He did not believe Mrs Bassett's privacy had been invaded because the image concerned was of a traffic accident that had happened on a public road - ie it was a "public event" and he had indeed given the matter "special consideration" – for example, he had rejected as unsuitable for publication other images of the scene because they were too graphic and likely to cause unnecessary distress to the family.

The complaint relating to children and young people could not be sustained because the children were not portrayed anywhere in the photograph.

In addition, there was no indication that the mother's body was under or behind the plastic sheet at the time when the photograph was taken.

Staff had approached the family after the accident but this was common practice and they had left promptly when informed there would be no comment. He accepted that it would have been preferable for the reporter to have telephoned before the visit.

He explained that he had not distributed the photographs for publication by other newspapers. Rather, the photographer had uploaded a total of 17 photographs to the Fairfax Newlink system which allows each Fairfax-owned publication access. The editor had then selected that particular image from those 17 photographs.

While it was correct that he had declined to order the destruction of the photographs on the Newlink system, he had placed a restriction on all 17 photographs that they not be used until this complaint was settled.

He "categorically denied" that the staff had crossed any kind of police cordon. Also the allegations about "listening to the police frequency" were speculative and the chief reporter said he dispatched staff to the scene immediately following a tip from a member of the public.

In sum, while he regretted the additional distress suffered by the family because of the photograph, he stood by his decision to publish.

Discussion and Decision

First, the Council is not able to rule either way on the allegations about the newspaper's reporter and photographer crossing the police cordon, if any such cordon was in operation, or about the staff listening to the police emergency frequency. No clear evidence has been provided to support those claims.

In addition, the editor's explanation that it is not his role to distribute photographs to other media outlets is reasonable. The photographer uploads the images onto a system where they are stored for possible use by any of the Fairfax-owned publications. After that each editor is responsible for what appears in their particular publication.

The Council understands the family's view that the reporter's visit after the accident only caused more hurt and frustration. Approaching the bereaved will always require special tact and sensitivity. Nevertheless, this incident does not in itself constitute a transgression of the Council's principles.

The Council is also unable to see any transgression of the principle applying to children and young people. The two injured children are mentioned briefly in the report (though not by name) but cannot be discerned in the photograph. Here, the Council agrees with the editor that this part of the complaint cannot be sustained.

Further, the Council considered that its principles had not been crossed by the photograph showing the plastic sheet blocking part of the car's interior. The complainant asserted that the photograph showed Mrs Campbell still in the vehicle with the sheet covering her body, but it is uncertain if that were so when the photograph was taken. The attention of the viewer is not drawn to the sheet in any way and, in any case, some of the Council (and perhaps many readers) assumed that the sheet was instead a safety air-bag that had deployed in the accident. The situation is too vague to sustain this part of the complaint.

However, the nub of this whole complaint turns on the photograph revealing the driver, trapped in the car.

That aspect of the overall image gave much greater cause for concern.

The Council has noted before (as the editor emphasised) that people at the centre of important news events may at times be identified, even though this may cause distress for those involved. However, in such cases, editors have to show intense and compelling public interest, such as, perhaps, photographs of victims in the Christchurch earthquake or survivors of the Wahine disaster.

Certainly the photograph is a sympathetic portrayal. The attention of the viewer is drawn towards a survivor who is completely surrounded by people who are trying to help. The caption is "Helping hands" and there are hands holding and comforting and supporting while other hands try to force back debris and twisted metal.

However, a crucial aspect is that enough of the driver's face was revealed for her to be identified by colleagues, friends and family, and the result was that the family had to field a sequence of inquiring calls – while still in shock and trying to cope with their loss and grief.

Significantly, the victim would have been identified by many readers well before the names of the two people who died in the crash had been released by the police, doubtless causing further distress to the family. This was a crucial factor for several members of the Council in their consideration of the complaint.

Clearly, Mrs Bassett was exposed to the readership of the *Standard* at a time of vulnerability and helplessness and the newspaper has to demonstrate a significant level of public interest to justify publication of the photograph and the invasion of her privacy. The Council's second Principle states that "everyone is entitled to privacy of person . . ." unless there are "significant matters of public record or public interest". Further, "those suffering from trauma or grief call for special consideration".

In this particular case, the Council takes the view that any public interest that might lie in this report of a road accident, even such a tragic accident, does not outweigh the "special consideration" and compassion that should have been extended to the Campbell family, especially when the photograph was published before the names of those who had died had been released.

The face of the driver could easily have been pixelated so that she was unable to be identified, or the photograph should not have been published at all.

This complaint about the selection and treatment of a newspaper photograph is upheld on the grounds that privacy was not respected and that a photograph showing a distressing or shocking situation was not handled with special consideration for those affected.

Press Council members upholding the complaint were Barry Paterson, Tim Beaglehole, Pip Bruce Ferguson, Peter Fa'afiu, Sandy Gill, Keith Lees, and Stephen Stewart.

Press Council members who dissented from this decision were Kate Coughlan, Penny Harding and John Roughan.

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

CASE NO: 2274 – THE NEW ZEALAND COLLEGE OF MIDWIVES (NZCOM) AGAINST THE NEW ZEALAND HERALD

Introduction

The New Zealand College of Midwives (NZCOM) complains that an article in the *New Zealand Herald* which was published on May 25, 2012 breached the Council's principles of accuracy, fairness and balance, and comment and fact. The same article was republished on the *Herald's* website - nzherald.co.nz

The complaint is not upheld.

The Article

The newspaper reported that twenty-year-old Casey Nathan died at Waikato Hospital hours after the birth of her son at Birthcare Huntly on 21 May. Her son, Kymani, died two days later. Their deaths came two weeks after a Coroner's ruling on the death of another Waikato baby, and the near death of his mother.

The newspaper provided comment from Action to Improve Maternity founder Jenn Hooper, and noted that neither the NZCOM or the Royal Australian and New Zealand College of Obstetricians and Gynaecologists' New Zealand committee would comment.

The Complaint

The NZCOM argues that:

- The article published unqualified statements of Ms Hooper in which she stated as fact - not comment or opinion - that the deaths of Casey Nathan and baby Kymani "would highlight the need to overhaul the country's maternity system."
- Moreover, to publish such a statement by a person not directly involved and before the Coroner had launched an investigation was unfair, inaccurate and unbalanced.
- Even if the Press Council were to consider Ms Hooper's statement as comment or opinion, the newspaper should not publish such statements which assert or imply cause of death linked to the standard of

midwifery care provided unless it was based on facts so that a response can be made.

- The newspaper's attempt to contact NZCOM for comment did not exonerate it from its failing to uphold the principle of fairness and balance as the College had no knowledge of the specifics of the case when it was contacted and therefore no authority to comment on that particular case. Moreover, the newspaper's attempts to contact the midwife did not exonerate the paper as any comments attributed to the midwife would have breached professional standards - the midwife was therefore prejudiced by not being able to respond.
- Other publications had been balanced in their reporting so there was no need for the lack of balance in *NZ Herald's* reporting.
- The midwife who had cared for Casey and Kymani had been "defamed" by Ms Hooper's published statements and treated unfairly. The midwife supported the complaint.

The Editor's Response

The editor responded that NZCOM had shifted its ground from its original complaint to the newspaper. The claim by NZCOM that neither it nor the midwife could comment was contradicted by the first iteration of the complaint - that they did not get an opportunity to comment.

Every attempt was made by the journalist to contact the midwife and NZCOM, but neither was prepared to give a substantive comment.

It is normal and appropriate news reporting to seek and publish comments on matters of ongoing public interest. Ms Hooper was making a comment and her comment was reported accurately.

NZCOM had misrepresented what Ms Hooper had said. Ms Hooper's comment was aimed at the *system*. She did not criticise the conduct of the midwife or make any comment about what occurred during the birth. Secondly, Ms Hooper's comment was confined to *hoping* that this case would highlight the need for reforming the *system*.

In conclusion, no Press Council principles were breached and the journalist followed correct procedures.

Discussion

The newspaper did not breach the principle relating to comment and fact. Ms Hooper's statements are clearly presented as comment or opinion.

The newspaper said it made every attempt to contact NZCOM and the midwife. The Council has no reason to doubt this assurance.

The silence of both the NZCOM and the midwife in response to enquiries from the newspaper cannot be a barrier to a newspaper publishing on a matter of ongoing public interest. Moreover, an opportunity to provide a view was provided and not taken up by both parties; even to explain to the journalist the professional restrictions. There is no breach of the Council's fairness and balance principle.

The Press Council rules on ethical issues and does not rule on defamation.

Decision

The Council's principles have not been breached. The complaint therefore is not upheld.

Press Council members considering the complaint were Barry Paterson, Tim Beaglehole, Pip Bruce Ferguson, Kate Coughlan, Peter Fa'afiu, Penny Harding, Keith Lees, Clive Lind and Stephen Stewart.

Sandy Gill and John Roughan took no part in the consideration of this complaint.

CASE NO: 2275 – THE NEW ZEALAND COLLEGE OF MIDWIVES AGAINST WAIKATO TIMES, THE DOMINION POST AND STUFF

Introduction

The New Zealand College of Midwives (NZCOM) complains that an article which originated on the front page of the *Waikato Times* on May 24, 2012 breached the Council's principles of accuracy, fairness and balance, privacy and comment and fact. The article was republished in substantially the same terms in *The Dominion Post* and on the *Stuff* website and the complaint extends to those republications.

The complaint is not upheld.

The Article

The article, together with a related article on the family of the deceased, occupied the complete front page of the newspaper and was headed *Birth tragedy takes mum and son*

The standfirst which appeared alongside a photograph of the mother and her partner read:

A coroner has launched an investigation into how things went so wrong for first-time mother... Meanwhile, her grieving family mourns the end of two short lives.

There was a table between the standfirst and the photograph which noted the mother's age, that she died six hours after birth and that the midwife had less than 18 months training.

The article was in many respects factual and included comments from members of both families and a father whose son died after a botched birth. It noted that the midwife had less than 18 months experience, having graduated at the end of 2010. It included:

Her family is now questioning whether that was a factor in their 'loving' girl's death.

"We are talking about inadequate supervision of a recent graduate to midwifery... We have seen the recent reporting of something similar in Hamilton – we want to prevent this, we don't want this to happen to anyone else – it has to stop here" said the deceased's uncle.

A further quotation from the uncle was noted:

Our hearts and our sentiments go out to the birthing centre – but we are grieving too.

The grandmother was quoted as saying that the family was now waiting for the outcome of an autopsy to find the cause of the mother's death.

The Complaint

The reasons given in support of the complaint were, and we quote:

- *Reference to midwife having less than 18 months experience identified actual midwife to many persons as there is no one else of that description in Huntly.*
- *Level of experience of midwife implicated in deaths of persons under her care. Inaccurate unfair and unbalanced as no factual basis for this particular midwife and her age a factor at all or relevant in deaths.*
- *Absence of any information to balance reference to level of experience being cause of death – in contrast to the statement in same article that hospital staff made “best efforts”.*
- *Failure to distinguish comment and fact – inaccurate unfair and unbalanced – statement “we are talking about inadequate supervision of a recent graduate to midwifery... We have seen the recent reporting of something similar in Hamilton – we want to prevent this, we don’t want this to happen to anyone else – it has to stop here”. Again inaccurate. No factual basis that midwife inadequately supervised. No factual basis that this was “something similar” to Hamilton case.*
- *No attempt to obtain/publish other information on standard of care given by health professional.*
- *No attempt to contact midwife for her comment.*

In its complaint to the Council, the NZCOM claimed it was premature and unfair to refer to the midwife’s experience as a possible factor in deaths when there was no information that this was relevant to the cause of death. Further, it was unfair to identify the midwife before the investigation commenced. Finally, it was said that the midwife and other health professionals are prevented by legal ethical rules from commenting on the case and are prejudiced by not being able to respond.

The Newspaper’s Response

The editor of the *Waikato Times* replied on behalf of all publications. He gave some context to the article in that the article appeared 19 days after the coroner published his findings following the death of another Waikato baby. In his report, the coroner identified a series of failures which led to that death.

The allegation of a failure to distinguish comment and fact was not correct because the passage referred to was a quote from a family member who was entitled to have his honest opinions on matters of public interest aired in a public forum.

It was not unfair to include the comments of the father of the other baby who had been subject to the coroner’s report. It was in the public interest to include his comments in the story.

The newspaper had not implied that inadequate supervision led to the mother and child’s death. In fact, it quoted the grandmother as saying that the family was in the dark awaiting the outcome of the autopsy and that the deceased didn’t have a pre-existing medical condition that the family knew about. That was what the family needed to find out.

The newspaper detailed the steps which the reporter took to obtain a response from the midwife. She phoned the midwife but a voicemail message advised that the midwife was on annual leave and requested that she call a colleague. When the colleague was called and the reporter identified herself, the colleague hung up. The reporter then went to the birth centre and asked for the manager but was told she was unavailable. She left her card and asked for the manager to call her but the manager never did.

In respect of the identification complaint, the editor noted that there was no impediment to publishing the name of the midwife but he chose not to do so because he believed her safety may have been imperilled if he did so.

Discussion

The newspaper did not breach the principle relating to comment and fact. The allegation by the NZCOM referred to opinions which were clearly stated as opinions in the article.

It is not correct that the newspaper did not attempt to contact the midwife. The midwife may not have been able to respond but her colleague, with whom the reporter spoke, did not explain this and hung up. The silence of the medical profession and, in this case, the midwife, can not be a barrier to a newspaper publishing a matter of public interest.

The Council’s privacy principle states that the right of privacy should not interfere with publication of significant matters of public interest. The editor’s decision not to name the midwife showed consideration to the midwife.

The public interest in this case did entitle the newspaper to refer to the midwife’s experience. It noted that the family was questioning whether this was a factor in the mother’s death and it was entitled to report this.

The Council notes with concern the tone of the editor’s response to the letter of complaint sent to him by the complainant. The comment that he found “your complaints vexatious in the extreme” is not an appropriate response to a complaint of this nature.

Decision

The Council finds no breach of its principles. The complaints against *Waikato Times*, *The Dominion Post* and *Stuff* are not upheld.

Press Council members considering the complaint were Barry Paterson, Tim Beaglehole, Pip Bruce Ferguson, Kate Coughlan, Peter Fa’afiu, Penny Harding, Keith Lees, John Roughan and Stephen Stewart.

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

CASE NO: 2276 – BARBARA PIKE AGAINST THE NEW ZEALAND HERALD

A complaint by Barbara Pike against the *New Zealand Herald* is not upheld.

Background

The *NZ Herald*, on June 26, published an opinion column by Sir Bob Jones headed *Roll up, roll up – see the skinny freak*. The gist of the column was that where once fat people featured in circus freak shows, they have now become so common that a ‘freak show’ today might feature a skinny person.

In typical un-PC style, Sir Bob commented on the high number of obese people he observed from his Wellington office block, and stated that in April he had advertised a ‘freak show’ featuring a slim woman and an untattooed man. He exacerbated the ‘freakishness’ of the woman by claiming that she was a pretty Bulgarian, and in his opinion these were not common. Later in the column he referred to “stunning Chinese beauties” in Auckland pursuing a “genetically pre-determined requirement of non-stop frock and shoe purchasing”.

Despite the ridiculing of various groups in the column, his point was that obesity is largely self-inflicted and if people monitored their food intake, obesity could be rectified. He supported this perspective with a case study of a young man who had achieved just this kind of result.

The Complaint

Barbara Pike, a counsellor who works with people with various problems, complained to the *Herald* on June 27, citing “the shaming and hatred of overweight individuals” as well as “clearly racist and sexist opinions”. She was dissatisfied with the editor’s response that while the piece was provocative, it was a columnist’s right to “challenge orthodox thinking”. The editor told Ms Pike that the appropriate response was to join in the debate as others had done.

Ms Pike then forwarded her complaint to the Press Council stating that the column breached principles of accuracy, fairness and balance, and of discrimination and diversity.

The Newspaper’s Response

The editor reiterated the points that he had initially made to Ms Pike. He stated that Sir Bob was inverting traditional ‘freak show’ terminology by applying it to skinny people, hence the word was acceptable. He stated that there was a lively discussion both online and in the paper about the column.

Further Comment

Ms Pike continued to disagree with the editor’s comments, maintaining that the column amounted to “hate speech” and that harmful language had been used to describe overweight people. The editor had not engaged with her complaints of racism and sexism. Sir Bob’s opinions, she believed, were outdated and had no place in a major news publication.

In reply the editor said Ms Pike’s views were relevant as examples of the thinking that the columnist was mocking, and that claims about “hate speech” were being

broadly bandied about without there being such a category of offence in New Zealand.

Columnists are not there to soft-soap their opinions with bland language to avoid hurting people’s feelings, he said.

Discussion and Decision

Sir Bob Jones’ column was clearly ironic, satirical and overtly non-PC. Columnists are frequently offensive in their comments as they seek to provoke discussion.

Accordingly, while the Council acknowledges the distaste that Ms Pike feels for the sentiments expressed by Sir Bob, it does not accept that these are sufficient, in the circumstances, to uphold her complaint.

The complaint is not upheld.

Press Council members considering the complaint were Barry Paterson, Tim Beaglehole, Pip Bruce Ferguson, Kate Coughlan, Peter Fa’afiu, Sandy Gill, Penny Harding, Keith Lees, Clive Lind and Stephen Stewart.

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

CASE NO: 2277 – PHILIPPA EMERY AGAINST THE NEW ZEALAND HERALD

The complaint by Philippa Emery against the *New Zealand Herald* is not upheld.

Background

The *NZ Herald*, on June 26, published an opinion column by Sir Bob Jones headed *Roll up, roll up – see the skinny freak*. The gist of the column was that where once fat people featured in circus freak shows, they have now become so common that a ‘freak show’ today might feature a skinny person.

In typical un-PC style, Sir Bob commented on the high number of obese people he observed from his Wellington office block, and stated that in April he had advertised a ‘freak show’ featuring a slim woman and an untattooed man. He exacerbated the ‘freakishness’ of the woman by claiming that she was a pretty Bulgarian, and in his opinion these were not common. Later in the column he referred to “stunning Chinese beauties” in Auckland pursuing a “genetically pre-determined requirement of non-stop frock and shoe purchasing”.

Despite the ridiculing of various groups in the column, his point was that obesity is largely self-inflicted and if people monitored their food intake, obesity could be rectified. He supported this perspective with a case study of a young man who had achieved just this kind of result.

Philippa Emery complained to the *Herald* on June 26, indicating that the article was “offensive and extremely inappropriate”. She claimed that this kind of ridicule might inspire such people to self-harm or suicide.

The editor responded that the piece was provocative but the columnist was within his rights to express his opinion. The editor considered that Ms Emery’s claims about possible consequences were “extreme” and she had not acknowledged Sir Bob’s point, that people should take responsibility for themselves. He invited her to join the debate.

The Complaint

Dissatisfied with his response, Ms Emery forwarded her complaint to the Press Council stating that the column breached principles of discrimination and diversity. She referred to specific descriptors used by Sir Bob in the column, such as “human hippos” and argued that the editor’s reply did not recognise the hurt the article had caused.

The Newspaper’s Response

The editor reiterated the points that he had initially made to Ms Emery. He stated that Sir Bob was well known for his “irreverent, anti-PC and provocative sense of humour” and the column should be read in that light. There was a serious underlying message, that people needed to take responsibility for themselves. He did not accept Ms Emery’s contention that the column could incite bullying, hatred or self-harm. He contended that “Columnists should be entitled to challenge the orthodoxies of the day even if some people regard what they write as rude and offensive”.

Further comment

Ms Emery continued to disagree with the editor’s comments, maintaining that the column used language that was “hateful” and encouraged people to ridicule and shame overweight people. She contended that such language encourages bullying and is wrong and hurtful.

The editor, in turn, reiterated that opinions may be robust and hurt people’s feelings, but aim to stimulate discussion. People who were offended should join the discussion rather than attempt to shut it down.

Discussion and Decision

Sir Bob Jones’ column was clearly ironic, satirical and overtly non-PC. Nevertheless, there was a serious message in the article, even though it was expressed in terms that Ms Emery found bullying and offensive.

Columnists are frequently offensive in their comments as they seek to provoke discussion. Accordingly, while the Council acknowledges the distaste that Ms Emery feels for the sentiments expressed by Sir Bob, it does not accept that these are sufficient, in the circumstances, to uphold her complaint.

The complaint is not upheld.

Press Council members considering the complaint were Barry Paterson, Tim Beaglehole, Pip Bruce Ferguson, Kate Coughlan, Peter Fa’afiu, Sandy Gill, Penny Harding, Keith Lees, Clive Lind and Stephen Stewart.

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

CASE NO: 2278 – NICK THOMAS AGAINST UPPER HUTT LEADER

Introduction

Nick Thomas complains about a headline given to an article in the *Upper Hutt Leader* on 16 May 2012 which reports the completion of road works on the Rimutaka hill road, straightening a stretch which has been popularly, but unofficially, known as Muldoon’s Corner. The headline referred to it as ‘Piggy’s corner’.

The complaint alleges that using the nickname ‘Piggy’ breaches the Council’s Principles 1, 4, 5 and 6, namely Accuracy, Fairness and Balance; Comment and Fact; Headlines and Captions; Discrimination and Diversity.

The complaint is not upheld.

The Complaint

Mr Thomas argues that in substituting the nickname ‘Piggy’ for the usual ‘Muldoon’ in identifying the stretch of road, the *Leader* was using a sobriquet which Thomas states was and is derogatory. This made the headline, in Thomas’s view, ‘disrespectful to a recognized, well respected, deceased person’ and introduced a political slant to what purported to be a straight piece of news. All of the breaches of principle of which Mr Thomas complains hang on his view that the use of this nickname is derogatory.

The Leader Reply

While Mr Thomas claimed that the nickname was never used in public and the media never used it, the editor supplied numerous examples, most of them admittedly dating from later years, but one being the Muldoon obituary from the respected British paper, *The Independent*, 6 August 1992. The editor says the origin of the Piggy nickname is somewhat obscure.

Discussion and Decision

Nicknames have been a part of New Zealand political life for many years: ‘King Dick’, ‘Kiwi Keith’, ‘Gentleman Jack’ and ‘The Great Helmsman’ spring immediately to mind. Where they have become widely used, as ‘Piggy’ has, they seem to have reflected a mix of attitudes. Their origins, even if they could be traced, would not necessarily determine the spirit in which they came to be used and whatever their beginnings, over time, for many people, there came to be in their use an element of endearment. There could also be a touch of mockery, not letting our leaders get too far above us.

The entry for Muldoon in Wikipedia says, ‘from his early years as a member of Parliament, Muldoon became known as Piggy; the epithet that would remain with him throughout his life even amongst those who were his supporters’. The use of ‘Piggy’ for Muldoon appears to the Council to reflect a variety of attitudes and it does not accept that it is simply a derogatory term; hence the complaint is not upheld.

Press Council members considering the complaint were Barry Paterson, Tim Beaglehole, Pip Bruce Ferguson, Kate Coughlan, Peter Fa’afiu, Sandy Gill, Penny Harding, Keith Lees, Clive Lind and Stephen Stewart.

John Roughan dissented from this decision.

CASES NO: 2279, 2280, 2281 and 2282 – BENJAMIN EASTON, SUSAN FRASER, KEITH FLINT AND TOM REARDON AGAINST THE DOMINION POST

The Press Council has upheld a complaint by Benjamin Easton and others against a headline on the front of *The Dominion Post* that called Mr Easton *Ratepayers' enemy No 1*.

The newspaper's June 30 Weekend edition disclosed that the Wellington City Council had spent \$350,000 defending court actions brought against it by Mr Easton over many years. It reported that the council had taken steps to have him declared a vexatious litigant. The article carried two headlines. The first read *Meet the man who's cost a council \$350,000*. The second read *Ratepayers' enemy No 1*. The story was continued on page five and in the editorial.

Mr Easton complained that the newspaper had "vilified" him unfairly, failed to provide a balanced report of issues he had raised and portrayed him inaccurately. Three other people, Keith Flint, Susan Fraser and Tom Reardon independently complained to the Press Council at the newspaper's treatment of Mr Easton saying the coverage was disproportionate and unfair. They also raised concerns about the *Ratepayers' enemy No 1* headline.

Mr Easton, who told the council he lives on the street and supports himself by "political busking", said he suffered hostility and abuse after the report appeared. He considered it unfair to be labelled 'Ratepayers' enemy No 1' for taking legal actions that he believed to be in the public interest.

He was particularly concerned that a bus lane in central Wellington where two people had been hit was narrower than he understood to be the minimum width required.

The editor of *The Dominion Post* said the June 30 articles resulted from an official information request by the paper to the Wellington City Council asking the cost of defending Mr Easton's actions. This was an entirely appropriate subject for the paper to investigate. It was also proper for the paper, as a champion of the ratepayers' interests, to advocate strongly on the issue.

The headline described Mr Easton as *Ratepayers' enemy No 1* because, the editor contended in correspondence to the Press Council, he had "incurred more council spending than any other individual" and "done more than any other individual in the city to absorb public money that would have been better spent on council services".

The Press Council found no basis for Mr Easton's complaints of inaccuracy, subterfuge and discrimination. The inaccuracy he cited, a front page photograph, may have been taken some time ago but the Council did not find its use misleading.

Mr Easton did not provide any evidence of subterfuge on the part of the reporter and the story did not contain gratuitous references to his race, gender or other personal characteristics that would breach the council's discrimination principle.

The articles were certainly strongly critical of his court actions. But in the Council's view their attitude was

not unfair and was sufficiently balanced with Mr Easton's comments. These did not include all the issues that concern him, which go back several years and involved accusations that would be difficult to sustain.

However, the story did not support the headline *Ratepayers' enemy No 1*. If it was a fact that he had incurred more council spending than any other individual a statement from the City Council to this effect would have been pertinent to the story. In the absence of any such corroboration the Press Council considered the headline was excessive and unfair.

Press Council members considering this complaint were Barry Paterson, Tim Beaglehole, Pip Bruce Ferguson, Kate Coughlan, Sandy Gill, Penny Harding, Keith Lees, John Roughan, and Stephen Stewart.

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

CASE NO: 2283 – BOB MC LELLAN AGAINST UPPER HUTT LEADER

Bob McLellan complains against publication of a letter to the editor in the *Upper Hutt Leader* for its use of the term "eco-nazi" arguing that while it did not breach an exact Press Council principle it offended against Accuracy, Fairness and Balance.

The complaint is not upheld.

Background

The letter, headlined *Tree sculpture prompts moaners* was published on July 11, 2012 in a long-running and spirited exchange between supporters of the Forest and Bird Society's encouragement of native tree plantings in the Upper Hutt region and several other letter writers who disagree that an only-native trees and plants policy is beneficial. Over the course of several weeks many letters were published in a ping-pong of ideas between these two opposing groups. The publication of a number of photographs of exotics trees in the glorious autumn foliage appears to have initiated the exchange.

The Complaint

Mr McLellan finds the use of the expression "eco-nazi" extremely offensive and argues it implies the existence of extreme characteristics including thuggery, racial hate, murderous intent and corruption. This would be particularly appalling to men and women who had fought in the war against Nazism. He felt this deeply insulting language should not be published in any newspaper and asked that an apology be published and that the correspondence on this topic be closed.

The Newspaper's View

The newspaper said the phrase is one of a modern collection that includes "food-nazi, petrol-nazi" and "spelling-nazi". The newspaper used the term "food-nazi" to explain how it is used by some to describe people who try to impose their strongly held views on what foods should be, and

should not be, eaten. It said a Google search would reveal widespread use of such phrases.

It also argued that many environmental projects in the Upper Hutt region involve removal of exotic vegetation, an initiative of the Forest and Bird Society, and this prompts strong disapproval from some residents including the letter writer S. Haden.

However, the newspaper argued that such readers have the right to express their position through the letters to the editor column and noted that the debate had been lively. It suggested that perhaps the reason for such a level of community involvement arose from the number of significant stands of both exotic and native trees in the region which is one of the attractions of living in Upper Hutt.

The newspaper saw no reason to apologise or close the correspondence on what would be an ongoing debate.

Further Responses

The complainant does not accept the newspaper's justifying the use of the word on the basis that people have a right to express their opposition - a right which he upholds in principle.

He argues this right is not an open licence to use any form of language. Nor is the fact that some people use such terms as "eco-nazi" and "food-nazi" a justifiable case for it being acceptable in a community newspaper when it is directed at a small, identifiable group. He remains of the view that the letter, in its use of the "eco-nazi" and a reference to "fanatics", is insulting and denigrating.

The newspaper, in its response, identified both Mr McLellan and writer of the complained-about letter S. Haden as regular letter writers and both passionate about the Upper Hut environment. The editor illustrated that both sides of the ongoing debate about de-forestation and planting projects were allowed to have their say in the letters to the editor column with special care taken to alternate the 'lead' letter between the two main factions. The term is a modern one used to describe people who try to impose their radical environmental views on others.

Discussion

Words do change their meaning over time, both gaining and losing power. The term "Nazi" originally meant a member of the German National Socialist Party, led by Adolf Hitler from 1920. However, today's online Oxford Dictionary definition includes not only that ("a member of the National Socialist German Workers' Party") but also "a person with extreme racist or authoritarian views" and a third definition being "a person who seeks to impose their views on others in a very autocratic or inflexible way". Language is dynamic and evolving and the popular adoption of this word means it is used with frequency in some social circles. It is true that other members of society may be seriously offended by its casual use to mean an intolerant person. However, that is not a reason to uphold a complaint against a publication for its use.

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

CASE NO: 2284 – PALESTINE HUMAN RIGHTS CAMPAIGN AGAINST NEW ZEALAND HERALD

The Palestine Human Rights Campaign, through its spokesperson Janfrie Wakim, complained to the New Zealand Press Council that an article published in the comment page of the *New Zealand Herald* on June 25, 2012, breached principles of accuracy, fairness and balance and comment and fact.

They further complained that an article offered for publication to remedy the alleged breaches had not been published.

The complaint is not upheld.

Background

On June 4, 2012, the *Herald* republished an article from the *Independent* about how some of the world's biggest singing stars were facing pressure not to perform in Israel because campaigners angry about human rights abuses on Palestinians wanted a boycott of Israeli venues.

The article was a straightforward account of the issues and named performers who had come under pressure not to perform in Israel as well as those who had chosen to perform despite the protest and those who would not perform in that country.

On June 25, the *Herald* published another article by Andrea Nadel and Tzvi Fleischer, representing the Australia/Israel and Jewish Affairs Council, which referred to the first article, saying that anti-Israel activists had been resorting to intimidation, emotional blackmail and misinformation to encourage a boycott.

This article, headed *Israeli Music Builds Bridges*, was more opinionated and traversed similar ground but from a viewpoint opposing what the activists were doing. It also highlighted how "growing numbers of people" throughout the Middle East were embracing the music of Israeli artists.

The Complaint

On behalf of the Campaign, Mrs Wakim complained to the *Herald* that the second article by the two Australian authors offered a perspective that defended Israeli policies but failed to describe the genesis of the boycott and the call by "Palestinian civil society for an international campaign."

She sent to the newspaper an article critical of what the Australian authors had written and offering the different perspective of the Campaign based in New Zealand. That article, she said, provided some historical and factual material about what she called the boycott, divestment and sanctions campaign.

The Newspaper's response

The acting editor of the OpEd page declined to run the article, saying he thought readers were well aware of the reasons Israel faced a cultural boycott. The paper did not want to publish tit-for-tat items every time it published an article from either side of an issue.

The matter was referred to the editor of the newspaper but this did not result in a change of stance and Mrs Wakim complained to the Press Council.

Discussion

Newspapers have some obligation to be fair when opening their columns to various viewpoints but this does not mean they are obliged to print a counter article every time a reader might take exception to a viewpoint.

The Council's principles on accuracy, fairness and balance states: "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."

The second article was clearly a matter of opinion and readers would not have been confused. It should be noted that this second article was published as a response to the first. Those of an opposing viewpoint would probably have found it objectionable but that applies to many articles published daily.

The newspaper was also within its rights to decline another viewpoint and there was certainly no compelling reason to publish in this case. Balance was achieved by publication of the second article. It is also a matter of continuing public interest and no doubt more will be heard on the subject in the future.

Decision

The complaint is not upheld.

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

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

CASE NO: 2285 – VLADIMIR SHAPKIN AGAINST NZHERALD ONLINE

Introduction

Vladimir Shapkin's complaint relates to an Associated Press-produced news video shown on nzherald at

http://www.nzherald.co.nz/world/news/video.cfm?c_id=2&gal_objectid=10827955&gallery_id=127367

The video, which lasts approximately one and a half minutes, is about the controversy surrounding the Russian feminist punk band, Pussy Riot, and their arrest after performing a protest song in Moscow's main cathedral; a performance said to have been aimed at President Putin and the Russian Orthodox Church. The clip of the performance shown, which is in Russian, lasts about twenty seconds.

The complaint is not upheld

The Complaint

Vladimir Shapkin requested that the video should be removed on the grounds of being 'extremely offensive' in

showing 'a sacrilegious act'. This appears to be the heart of his complaint, though he suggests, perhaps believing it strengthens his case, that had the incident happened in Rome or Israel the women would, too, have been jailed, and had it happened in a Muslim country they would have been killed.

He said a previous performance of Pussy Riot, such as one at a zoo, could have been used instead.

In Mr Shapkin's comments on the *Herald's* reply he placed particular weight on the cathedral being a memorial to fallen soldiers of 1812, and argues that a news story of comparable treatment to a New Zealand memorial to fallen soldiers would be deeply offensive to New Zealanders.

The NZ Herald Reply

The *Herald* rejected 'the notion that the video should be withdrawn because it is offensive and sacrilegious', while accepting that some people could find it so. They claimed it was 'a fair and balanced piece of news journalism, albeit on a subject which some people may find disturbing or offensive', and argued that it is 'fair to show some footage of the concert in order to explain the story to viewers'.

Discussion and Decision

The Russian presidential election campaign aroused widespread interest worldwide. The performance by Pussy Riot probably needs to be seen within this context, and it is for this reason that its reporting is a legitimate news story. The video is a reasonably balanced piece of news journalism. Other performances by the band are not relevant, nor are hypothetical questions of what might happen if a similar performance was given in other cultures.

Mr Shapkin is right, however, in claiming that the performance was sacrilegious, and one can certainly accept that some would find it deeply offensive. But the time given on the video to the performance was brief, without gratuitous dwelling on what some would see as its offensive nature; the report as a whole was balanced, and in the overall context of an important political development, the video was useful in giving the viewer a fuller understanding of the issues. We must, perhaps, accept that in understanding the world we will at times be offended, horrified, appalled. The more honest the reporting, the worse it may be.

The complaint is not upheld.

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

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

CASE NO: 2286 – SKY NETWORK TELEVISION V MANAWATU STANDARD

Sky Network Television (Sky) complained about an editorial published in the *Manawatu Standard* on July 5, 2012.

Sky claimed that the column breached Principles 1 (Accuracy, Fairness and Balance) and 4 (Comment and Fact) of the New Zealand Press Council Statement of Principles.

The complaint is not upheld.

Background

The editorial was headed *Major events should screen on free TV* and provided an overview of what the writer saw as the ongoing erosion of major sporting events being shown on free television. He was concerned that major sporting events were screened more and more on pay-per-view television rather than on free to view television as had been the case in what he called “the good old days”.

The editorial outlined a brief history of Sky television, the largest provider of pay-per-view television, in New Zealand and the fact that many major sporting events were now being shown live on Sky and therefore people who did not have a Sky subscription could only see either a delayed coverage, or in some cases, only excerpts of an event.

The writer highlighted rugby tests and the Olympics as examples. He went on to say that while Sky had the rights to the Olympics coverage, only some coverage would be shown on Sky’s free to air channel, Prime.

The writer felt that major sporting events were important to the collective experience of New Zealanders and expressed concern that “something must be done” to preserve the ability of people to see major sporting events live on free to air television.

Complaint

Sky complained that, while the editorial was an opinion piece, it inferred that television coverage of sporting events, namely the Olympics and rugby tests, is somehow harmed by Sky’s doing.

The complainant stated that no attempt was made by the editorial writer to contact Sky to provide a factual balance to the article.

Sky believed that the London Olympics rights being owned by Sky was beneficial to both Sky subscribers and non subscribers as it was the most extensive coverage ever planned for New Zealand.

The complaint outlined information regarding sporting coverage and also the amount of free to air coverage on Prime of the Olympics, and the many sports screened on free to view channels not affiliated to the Sky network.

It stated that the major sporting codes of New Zealand want to be broadcast on Sky as it leads to more revenue for them which provided more funds. It went on to state that coverage of the All Blacks rugby tests is also screened on Prime with a delay of generally only 90 minutes from kickoff.

Sky was disappointed that the newspaper had published such an unbalanced and factually incorrect article.

In response to a later point made by the newspaper, Sky disputed the relevance of the Press Council decision 2134

and did not believe it was applicable. Sky noted that in that case the main facts were not in dispute. The question there was whether the editor should have enquired about other facts.

Sky believed that the article was about how much sport programming is on free to air television as a result of Sky’s actions, not about whether the free to air coverage is live or delayed.

The Newspaper’s Response

In reply to the complaint from Sky, the editor stated that the editorial was clearly an opinion piece, and was presented as such. It was published on the newspaper’s “Opinion” page, and appeared online with a bright red “OPINION” label.

He stated that while Sky has listed a number of points it would have liked included in the article, Sky has not pointed to anything that is factually inaccurate. Sky was offered the opportunity to express its opposing viewpoint in the form of a letter to the editor but declined to do so.

He acknowledged that Sky had not been contacted for comment, prior to the editorial being written but believed he was not obliged to and quoted a Press Council decision, Case Number 2134.

The editorial was about pay-to-view television as opposed to delayed free to air coverage of sport. The situation today was compared to the “good old days” before pay television when everyone was on the same footing which created a sense of occasion and shared experience around major sporting events.

Access to coverage of those same events is now variable and the editorial clearly argues that all New Zealanders should have the same access to events that are important to this country.

Discussion and Decision

The editorial was clearly marked as opinion both in the newspaper and on line.

It discussed the changes in sporting coverage over the years from when any coverage was on free to view television and today, where major sporting events are often on pay-per-view television, and coverage on free to view television is often delayed broadcast.

The editorial used rugby and the Olympics as examples and noted Sky as the main pay-per-view provider in New Zealand.

The editorial was clearly about pay-per-view television and this was reiterated throughout.

The editorial discussed the effects of the loss of free live sports coverage, especially compared with watching a delayed broadcast ie the “collective experience” enjoyed by the public was becoming increasingly weakened.

As stated in the decision from Case Number 2134, an editorial is an opportunity for a newspaper to comment on an issue in the news and express an opinion. It is an opinion piece only.

Sky was given the opportunity to provide an opposing viewpoint in the form of a letter to the editor but declined to do so.

Accordingly, this complaint is not upheld.

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

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

CASE NO: 2287 – ROSEMARY WILLIAMS AGAINST STUFF.CO.NZ

Rosemary Williams claims *Stuff.co.nz* (the Fairfax online news service) failed to comply with Principles 1 (Accuracy, Balance and Fairness), 4 (Comment and Fact) and 5 (Headlines and Captions) of the Press Council Statement of Principles in relation to a piece published on Sunday 29 July 2012 headed *Why Macsyna doesn't deserve a sorry*.

(link: <http://www.Stuff.co.nz/national/crime/7370210/Why-Macsyna-doesn-t-deserve-a-sorry>).

The Press Council does not uphold the complaint.

Background

The piece in question was written by a contributor, Michael Laws. The piece opened with the line “Macsyna King, the mother of the murdered Kahui twins, wants an apology from you and me. She is claiming exoneration in the light of this week’s release of the coronial inquiry into the murder of her boys”. The piece provided some (limited) background to the Kahui twins tragedy. It went on to express strong views as to why no apology should be extended to Ms King. It is not clear from whom Ms King was actually seeking the apology. It is sufficient to say the piece was highly critical of Ms King and her ability to raise children. Basically, according to the contributor, an apology was the last thing Ms King deserved.

The Complaint

Rosemary Williams’ claims are focused. Ms Williams is not disputing *Stuff’s* right to publish this piece as opinion despite the disparaging and unbalanced thrust. Rather Ms Williams points to the piece initially appearing on the *Stuff* site without it being qualified as opinion and without attribution. Ms Williams says it was particularly misleading for *Stuff* not to have identified the piece to have been written by Mr Laws, a person who Ms Williams says is “someone who has in the past breached standards of good taste and decency... and is widely regarded as a polarising figure”. Ms Williams suggests the piece would have been interpreted differently had the author been identified.

Ms Williams also complains that when the piece first appeared on the *Stuff* site (at 9 am July 29, 2012) the “feature” occupied the top left hand corner box complete with an image of Ms King. Ms Williams referred to the headline which read (at this point) “Seeking a sorry; call for community apology”. Ms Williams says there was no indication from the heading that the link was to an opinion piece. The heading, according to Ms Williams, “suggests a report, stating Ms King’s position and perhaps the position of others. It certainly does not suggest an opinion piece that criticises Ms King severely”.

Ms Williams claims *Stuff* has breached Principles 1, 4 and 5 as a result. Ms Williams says it is incumbent upon

Stuff to take more care in the presentation of such pieces. This is unacceptably sloppy journalism on *Stuff’s* part.

The Response

Stuff responds by acknowledging that the piece appeared for a short time without the necessary byline and opinion tag. The editor explains that the piece was “uploaded as part of a Saturday night process where *Sunday Star-Times* [an associated newspaper] is carried over to go live on *Stuff* at 5am on Sunday. As part of this process, the tag and byline was left off.”

This error was corrected later on Sunday morning. Further the work was attributed promptly to Mr Laws.

The Decision

While Ms Williams is justified in noting the absence of the “opinion” tag for the piece and in criticising the headline “Seeking a sorry; call for community apology” these are not matters which lead the Council to determine its Principles have been breached.

The Council notes *Stuff’s* speedy unprompted response when the omissions Ms Williams identifies were discovered internally. The errors were rectified within hours. The Council does not agree with Ms Williams when she says the errors demonstrate “sloppy” journalism by *Stuff* and a failure to maintain the high standards required of the Press.

The Council notes Ms Williams’ reference to the headline “Seeking a sorry; call for community apology”. It is unclear as to whether this headline actually linked to the piece by Mr Laws or whether it was in fact associated with another (news) story. The link in question has been severed and appears not capable of being retrieved.

The complaint is not upheld.

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

CASE NO: 2288 – BRUCE ALDRIDGE AGAINST STUFF

Introduction

Bruce Aldridge complains that a series on the *Stuff.co.nz* website entitled *Marriage equality stories* is inaccurate, unfair and unbalanced.

The complaint is not upheld.

Complaint

The purpose of the series, as stated in the first opinion published, was to feature different New Zealanders and their thoughts on the current marriage equality debate. The introduction to the first opinion noted that the Marriage Amendment Bill aims to amend marriage legislation to ensure gay couples are not treated in “a discriminatory manner”.

The complaint was made after the publication of the first two opinions. In reply submissions, Mr Aldridge

alleges that there had by then been eight opinions, six of which supported the Bill and two of which opposed the Bill.

The Website's Position

The website noted that it started the series with a live chat with two key figures, one on each side of the debate. There were only five opinions in the series *Marriage equality stories* and of these three took one side and the other two the other side of the debate.

On the supplementary complaint, the editor repeated that there were only five opinions in the *Marriage equality stories* and that if the complaint were to be extended beyond that series, it was appropriate to consider the website's entire offering rather than the eight stories that Mr Aldridge had selected. He gave a reference to these stories and there were numerous stories and opinions well in excess of the eight referred to in the complaint.

Discussion

The original complaint related to two opinions only. The complaint was premature and when the five articles on the series are considered, it is not sustainable. In a series of five articles it cannot be said that there was a lack of balance when three took one view and two the other. Nor do any of the articles display inaccuracies or unfairness.

When the opinions and articles which appeared on the website are considered, rather than just the eight referred to by the complainant, it is obvious that there is balance and not a lack of fairness or accuracy.

Decision

The complaint is not upheld.

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

CASE NO: 2289 – DIANE CHANDLER AGAINST THE NELSON MAIL

Diane Chandler's complaint is against the publication of a letter to the editor in *The Nelson Mail*. She argues that this letter published in response to one by her contravened Council Principle 1 – Accuracy, Fairness and Balance – and Principle 4 – Comment and Fact. By a majority of 8:3 the complaint is not upheld.

Ms Chandler's letter (17 August) related to the Nelson City Council's review of its dog control policy and her perception, when exercising in the Stoke railway reserve, that the Council was not aware of the hazard to cyclists of free roaming dogs. For this reason she suggested that those involved in or witnessing such incidents should report them on the phone number 0800 CYCLE CRASH. The *Mail* gave a heading to her letter 'Ensuring safer paths'. The *Mail* published a letter in reply (from P. King, 23 August) which set out a number of 'rules' which, it stated,

Ms Chandler had made for those using 'her' reserve. It was this letter which Diane Chandler complained about.

Mr King's letter does not directly respond to the particular issue that Ms Chandler addressed in her letter of 17 August. Rather it expresses his opinion that her letters to the *Mail* with references to the Stoke Railway Reserve show a proprietorial attitude. The editor, replying to Ms Chandler's complaint (30 August), wrote 'it is certainly not our policy to allow any letters which publicly attack any individual', but went on, 'I don't believe the two letters we published in response to yours are too personal'. Four days later he wrote to her that he believed Mr King's letter was satirical. In his later response to the formal complaint he changed this to 'facetious'.

Among Ms Chandler's 'rules', as listed by Mr King, is 'No allowing one's dog to smell the roses'. This is clearly inaccurate, but in a way which lends support to the editor's view that Mr King's letter should not be taken literally, though 'whimsical' might more accurately characterise it than the editor's 'satirical' or 'facetious'.

Press Council Principles stress that editors have considerable freedom in selecting and treating letters for publication, and the Council recognises that the Letters to the Editor section gives scope to individual correspondents to express strongly partisan, even prejudiced, views. It has also noted, however, that this section "is not to be the forum for personal attacks" (See Adjudication 2087). The borderline between a criticism of someone's views and an ad hominem attack can be a fine one. In this case the Council judges Mr King's letter to have been close to that line but not over it.

The complaint is not upheld by a majority of Council members.

John Roughan, Tim Beaglehole and Stephen Stewart dissented from this decision and would have upheld the complaint.

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

CASE NO: 2290 – FOXTON RSA AGAINST THE DOMINION POST AND STUFF

Anne Hunt, on behalf of the Foxton RSA, complained about a report published in *The Dominion Post*, *Manawatu Standard* and *Stuff*. She argued that the newspapers had not produced a fair and balanced report and had misled their readers.

The complaint against *Manawatu Standard* is the subject of a separate adjudication – see case 2304.

This complaint is upheld.

Background

The report first appeared on the *Stuff* website on August 30, 2012 and was also printed in *The Dominion Post* on the same date.

The article outlined a fraught series of complaint and counter-complaint within the membership of the Foxton RSA.

The reporter noted that the trouble had started “about a year ago” and gave examples, and then summarized the comments of (at least) three members who all claimed that the tensions were ongoing.

The report appeared under the headline ‘*Short shorts’ add to RSA tensions*’.

Its opening read “Complaints of bullying and intimidation continue at Foxton RSA after a member who objected to a young woman wearing ‘short shorts’ had a dismembered chicken dumped in her letterbox”.

At the end of the report, the club’s Vice-president, Anne Hunt, argued that the club had turned around after the problems of the past and pointed to positive progress. She was extensively quoted.

The “interview” with Anne Hunt was carried out via e-mail.

Complaint

In her initial complaint to the newspaper, Anne Hunt claimed that she had only been invited to respond to general concerns raised rather than the specific points mentioned in the report. In particular, she should have been given the chance to comment on the claims that the executive should “resign and go to the poll”.

She also stressed that, overall, the article was misleading in that almost all the concerns occurred more than a year previously, and although she had pointed out to the reporter that they were historical in nature, they had been reported as current issues.

Later, in her formal complaint to the Press Council, she stressed that “even a factually-correct article can leave misleading impressions” ie the reporter had concentrated on issues from the past which only served to bring the RSA into disrepute.

The Newspaper’s Response

In its first response to Anne Hunt, the newspaper argued that her reported comments added balance to the criticism of the executive apparent in the article.

Further, the substantive points raised had been put to her and a right of reply does not extend to countering every single opinion expressed in an article.

Finally, the incidents reported had been “clearly dated” throughout.

In a later response to the Press Council, the editor reiterated that the article took care to date the incidents.

She also claimed that Anne Hunt had nominated herself as the official spokesperson for the RSA.

She pointed out that material supplied to the Press Council by Anne Hunt herself confirmed that “disciplinary proceedings were indeed being pursued with gusto, with six formal disciplinary hearings being taken against accused members for the month of August alone”.

She stressed that it was obvious that some members had concerns about the management of the RSA and those concerns had been put to Anne Hunt for comment. Her comments had been fairly and accurately reported.

Further exchanges

Anne Hunt noted that rather than being a “self-appointed spokesperson” she had been appointed by the Foxton RSA Executive as Communications Officer on June 23, 2012.

She argued that it was incorrect to claim that the incidents had been clearly dated because the lead supplied no date alongside the reference to the “short shorts” incident, and consequently the description of the “dismembered chicken” incident happening “soon afterwards” became meaningless in terms of timing. Finally, the “f word” incident was also undated.

All these matters occurred a year before the article had been published.

Finally, the disciplinary hearings for August that seemed to so concern the editor had taken place in August 2011, not 2012.

The editor, in a final submission, argued that the intro stated that “complaints continue at Foxton RSA” because that was the view of the members interviewed for the article. The dissatisfaction is current and not merely historical.

The reporter had not relied on one member’s criticism, rather she had included the views of others, including two former presidents of the club.

Discussion and Decision

The complaint about a lack of balance is rejected.

The Press Council is satisfied that several members of the club were dissatisfied with the executive and their substantive criticisms were put to the complainant and she was given considerable space in a short report for her countering views.

Further, as the newspaper noted earlier, a right of reply does not usually extend to comment on every single opinion.

However, the Council was more concerned about the allegation that the report misled readers, because it failed to identify, at least with any clarity, that so many of the incidents that were mentioned occurred about a year before.

Throughout, the timing of events is handled clumsily.

Readers of the intro (“Complaints . . . continue . . . after a member who objected to ‘short shorts’ had a dismembered chicken dumped in her letterbox”) must have surmised that this would have happened recently. It is not until the seventh paragraph that they learn that it was “last year” when a complaint was made about “short shorts” in the bar and further learn, three paragraphs later, that it was “shortly afterwards” that the complainant received a dismembered chicken in her letterbox. These events occurred around August 2011.

Further on, one disgruntled member voices concerns about a petty approach to bad language . . . “one lady was stood down because someone thought they saw her mouth say the f-word” but the reader does not know that this also happened in August 2011, not 2012.

All the incidents outlined in the first half of the article occurred either in May 2012 or in August 2011, though that is not at all clear to the reader.

The second part of the article is given to the comments by the dissatisfied members and to the balancing comment by Anne Hunt, but the criticism by the members is general in nature, such as “We have RSA members . . . who do not come to the club anymore” and “If something does not change, it will close down”. The only specific examples cited as evidence for this general sense of unease are the historical incidents.

Finally, and most importantly, the heading – ‘*Short shorts’ add to RSA tensions*’ – lends considerable weight to

Anne Hunt's complaint that historical events were being presented as if they were still current issues. Certainly headlines traditionally do use the present tense but this happened in the distant past, not the recent past. It is difficult to see how the newspaper could justify this unfortunate headline.

The headline is not only wrong, coupled with the undated incident in the intro, it is misleading to readers.

For those reasons, the complaint about a consequent lack of fairness is upheld.

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

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

CASE NO: 2291 – ALLAN GOLDEN AGAINST THE DOMINION POST

Allan Golden complains to the Press Council about a *Dominion Post* opinion piece about Neil Armstrong's moon walk. The complaint is not upheld.

Background

The column published on September 1, 2012 discussed the impact of US astronaut Neil Armstrong's moon landing and compared his achievements to those of cyclist Lance Armstrong, who had been stripped of his awards that same week because of drug cheating.

Complaint

Mr Golden said the column was untrue because the moon landings did not happen and it was improper for *The Dominion Post* to suggest otherwise. He claimed that the columnist and *The Dominion Post* editor knew the moon landings were a fiction and they were propagating "false propaganda".

He said the column breached six Press Council principles, including accuracy, fairness and balance. He also cited principles covering children, discrimination, subterfuge, conflicts of interest and corrections.

Mr Golden later widened his complaint to the newspaper's news coverage of Neil Armstrong's death, which also repeated the false story of the landings.

The Newspaper's Response

Dominion Post editor Bernadette Courtney says the column was clearly labelled opinion and was the honestly held opinion of the columnist.

She said Mr Golden was entitled to express another opinion and the newspaper had published at least one letter in the past year claiming the landings were a hoax.

The columnist's view was shared by many others and was far from extreme.

Discussion

It is widely accepted that Neil Armstrong did land on the moon and *The Dominion Post's* column is reflecting many

reports over many years that have assumed the moon landings to be fact. Mr Golden believes the reports to be propaganda and *The Dominion Post* a willing vehicle for that propaganda.

The difficulty for the Press Council is Mr Golden has not supplied any evidence to convince it that the moon landings did not happen – except his own opinion.

Decision

The Council does not uphold the complaint.

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

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

CASE NO: 2292 – GENEVIEVE McCLEAN AGAINST NZ HERALD ONLINE

Introduction

Genevieve McClean complains against nzherald.co.nz for a video of a car smash in an Auckland suburb.

http://www.nzherald.co.nz/nz/news/article.cfm?c_id=1&objectid=10830981

The complaint is not upheld

Background

The complainant is a friend of the driver of a car which rammed into a suburban Auckland dairy. In the minutes following impact the scene was filmed by a bystander who made his footage available to the *New Zealand Herald* and it was posted on *nzherald.co.nz*. A news item about the crash was added a short time later.

The Complaint

Ms McClean complains that the video is gratuitous, does not promote any news value, is voyeurism and disadvantages the victim and the victim's family who should be shown special consideration due to their trauma and stress. She asked nzherald.co.nz to remove the video from the website to avoid further distress to the victim's family who were thought, at the time of the complaint, to be unaware of the video's existence.

Additionally, she argued the video would be highly offensive to an objective reasonable person and was kept on the net only to entertain, shock or titillate. She also argued that the video might seem innocuous to a viewer who did not know the victim.

The Response

nzherald.co.nz, while acknowledging the complainant's perspective and the emotional distress caused by the accident, argued that it was a useful accompaniment to a news story about a serious incident upon which a news organisation had a duty to report. It did not breach the privacy of the victim. News organisations unfortunately sometimes had to show images that may upset some people.

Discussion

The video is 1 minute 16 seconds in length. It was shot from the opposite side of the road to the scene of the accident. The accident occurred at 9pm so the light is dim and the quality of the footage very grainy. It has poor audio with no sound for the greater proportion of the video. The video is titled:

*Raw video: Pursued car smashes into corner dairy
New Zealand Herald reader video*

The vehicle is identifiable only as far as its colour (grey) and style (station wagon or people mover). No registration plate is visible.

The driver of the vehicle is not visible nor identified on the video as either male or female though the accompanying story does identify the driver as a woman (un-named).

As to the audio, nzherald.co.nz says the video was edited only once and that was prior to it being loaded to the site. That edit removed a portion in which bystanders were apparently heard debating the circumstances of the crash.

This is at odds with the complainant's view that "horrifyingly you can hear groans of the victim as she is cut from the car wreck before medics arrive". The complainant says this part of the audio was removed subsequent to her complaint. However, nzherald.co.nz says that sounds from the victim *may* be audible at the very start of the video if viewers have the capacity for high volume but no 'groaning of the victim' was ever heard.

Decision

Bystander video is a regular feature of news websites and often very valuable in helping to inform the public about events of interest.

The video at the heart of this complaint is not of sufficient quality to add more than a distant-bystander perspective to a story about a suburban car crash.

Played at normal volume Council members could discern no groaning sounds from the victim; even at highest volume the sounds were virtually imperceptible.

Motor vehicle accidents, whatever the cause, are dreadful events often with shocking and traumatic results for their victims. The news media has an important role to play in documenting the cost of accidents and in reminding drivers of the consequences.

A careful balance is required to protect those suffering from grief and trauma while avoiding censoring coverage of the human cost of accidents. It is not considered this video fails that test.

Accordingly the complaint is not upheld.

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

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

CASE NO: 2293 – LINDSAY ROBINSON AGAINST SUNDAY STAR-TIMES

The Press Council has not upheld a complaint against the *Sunday Star-Times* by Lindsay Robinson, DFC.

Background

The *Sunday Star-Times* published an opinion piece on July 1, 2012 which commented on the recent recognition by the Queen, at the unveiling of a monument to Bomber Command in London, of the surviving New Zealand members of Bomber Command. The article included a wider discussion of the effects of mass bombing on the conduct of various military conflicts.

While recognising the need to honour the New Zealanders who took part in and/or died in the raids that Bomber Command staged in Germany, the article argued that the real reason for the raids was 'to smash the cities, destroy German morale and finish the war'. The journalist, Anthony Hubbard, paid tribute to the valour of the aircrews, nearly half of whom had died in action, but quoted an historian, Antony Beevor, who claimed in a recently published book that the raids were 'an utter failure'. The article cited Beevor's claim that purely military targets were not picked, but that the head of Bomber Command had wanted to 'devastate the cities and kill a lot of Germans'.

Mr Robinson complained initially to the Press Council; the complaint was forwarded to the paper's editor.

A subsequent letter was received from Mr Robinson a month later stating that the newspaper had 'conceded nothing' and requesting the Council continue with his complaint against the paper. He claimed that the article was factually incorrect; insulting to both the dead and the survivors; denied any credit to Bomber Command for the war's ultimate victory; and claimed that civilians were the main target.

Editor David Kemeys replied to Mr Robinson, thanking him for his wartime service; recognising that events can be considered differently 'at great remove' without understanding of how things were at the time; and indicating that he holds immense personal admiration for those who put their lives on the line.

Notwithstanding these sentiments, Mr Kemeys indicated that Anthony Hubbard was reporting an opinion, formed after his interviews with Antony Beevor. This opinion - and that of Beevor - may not be correct, but are their opinions, which they have the right to express. He indicated that there had been letters to the paper both supporting and criticising Bomber Command and Beevor, and that he would welcome a letter to the editor from Mr Robinson. He concluded, 'It is the least we can offer, especially to a man who was there, and who can provide a direct insight.'

Mr Robinson subsequently sent additional material, including a photo that showed where bombs were actually dropped on specific targets. In his final communication to the Council he stated that he is still in touch with his

crew in the U.K. who were ‘astounded’ by the article and awaited the Council’s verdict eagerly.

Mr Kemeys’ final response showed his considerable sympathy for the feelings of Mr Robinson. He recognised that freedoms had been preserved by men such as Mr Robinson, and that their action makes it possible for others to criticise. Nevertheless, it is an opinion piece, and represents Hubbard’s opinion formed after interviews with Mr Beevor. Hence, it was published, as are other views, many of which are unpopular.

Discussion and Decision

It is evident in this complaint that Mr Robinson was profoundly upset by the article, which puts forward an historical perspective that is at variance with Mr Robinson’s experience and perceptions. That is unfortunate.

It is also evident that the editor has a very genuine sympathy for Mr Robinson’s complaint; indeed he appears to agree with what Mr Robinson said about history being viewed differently by those who were involved in the situation. However, he could not agree that the article should not have been published. It is an opinion piece, however controversial. He warmly encouraged Mr Robinson to write a letter putting his own perspectives forward, but this offer was not accepted.

Accordingly, with no principles of the Council having been breached, the complaint is not upheld.

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

CASE NO: 2294 – DEBORAH RYDER AGAINST THE NORTHERN ADVOCATE

Deborah Ryder claims *The Northern Advocate* failed to comply with Principle 1 (Accuracy, Fairness and Balance) of the Press Council Statement of Principles in publishing two articles on August 16 and 17, 2012. The articles reported the pending closure of the Classics Games, Books and Puzzles store in Whangarei. The store was owned by Ms Ryder’s company Classics Books and Games Ltd. The company had been wound up in April. The liquidator had traded the company until August despite it being in liquidation.

The two August articles followed a piece published by *The Northern Advocate* in April referring to the liquidation. No complaint is made about the April article.

The Press Council upholds the complaint against the August 17 article on lack of balance leading to unfairness. The complaint against the August 16 article is not upheld.

Background

The articles reported as to the company’s liquidation in April and the store’s closure in August. The April article (headlined *Classics store trading in liquidation*) referred to Ms Ryder putting the company into voluntary

liquidation she by then having moved to Wellington. The April article referred to “debts which have led to the liquidation” and to the liquidator’s decision to keep the store trading. The liquidator was keeping the company trading, an unusual step, since it could lead to a better outcome for creditors. The continued operation had a limited time frame.

The August 16 article (headlined *Eatery, boutique go under*) referred to several retail and hospitality failures in central Whangarei. Classics Books and Games Ltd was just one of them. The short part of the article dealing with Classics Books and Games Ltd referred to Ms Ryder working in Wellington with the shop being run by managers at the time of liquidation. The article referred to the liquidator having listed debts totaling \$101,763 in his first report. The company had 80 creditors. The store was to close on August 25 as the liquidator had been unable to find a buyer.

The August 17 article, titled *Bossed from afar, staff say*, referred to the staff claiming Ms Ryder had “micro-managed” the store from Wellington up to the April liquidation.

The Complaint

Deborah Ryder claims *The Northern Advocate* breached Principle 1 by:

- (a) wrongly referring, in the August 16 article, to her company having collapsed because of debt. Ms Ryder says the \$101,763 amount was an outdated estimate by the liquidator sourced from the Companies Office site. Ms Ryder says the figure overstated the amount due. She also says she gave the business to a liquidator since she was working in Wellington. The liquidator was instructed to sell the business and if it did not sell then to close it; and
- (b) wrongly referring in the August 17 article to her “micro-managing” the business before it was handed to the liquidator and saying that key business decisions were made by her. Ms Ryder says this reference emanated from a staff member upset with the comment in the August 16 article that the store was being run by “managers”, not Ms Ryder, at the time of the liquidation. Ms Ryder says this claim is incorrect. She says the “management structure” she put in place on going to Wellington had not worked so she gave the business to the liquidator.

Ms Ryder says she received an email from *The Northern Advocate* on August 15 asking whether she had any comment about the pending store closure. Despite Ms Ryder’s asking to see the proposed stories the paper did not contact her further and she says she was not given any opportunity to correct the errors in question.

Ms Ryder also maintains *The Northern Advocate* acted wrongly by referring to her living in Wellington. Ms Ryder says that members of her family were compromised by this disclosure in the light of a court order.

The Response

The Northern Advocate responds by saying by saying:

- (a) Ms Ryder was offered the chance to redress her concerns in the form of a letter to the editor and a clarification story. Ms Ryder declined the offer;
- (b) its business editor had advised that “a person in liquidation is unable to comment on the process once a liquidator has been appointed”. The paper seeks the Council’s clarification as to whether this is correct.

The Decision

The Press Council does not see any basis for Ms Ryder’s complaint that *The Northern Advocate* was wrong in referring to her living in Wellington. The court order she refers to is unspecified. It was not served on or copied to the newspaper and has not been seen by the Press Council.

The Press Council does not uphold Ms Ryder’s complaint over the August 16 article. The paper accurately reported the company’s debt amount as detailed in the liquidator’s first report. The story referred to the pending store closure. There is nothing in the August 16 article which is unfair or unbalanced. The business had not succeeded. The paper was entitled to rely on such information regarding the company as was available on the public record. Ms Ryder does not point to any updated material lodged by the liquidator as to the extent of the company’s debts.

The Council has a different view of the August 17 article. This referred to the store’s staff saying Ms Ryder micro-managed the business up to April when a liquidator was appointed. The story, emphasised by the headline *Bossed from afar, staff say*, was critical of Ms Ryder. The words “micro-managed” and “bossed” were used in a derogatory sense. While the remarks were attributed to staff members apparently unhappy with the reference to them in the preceding day’s article it was incumbent on the paper to at least seek comment from Ms Ryder as to these specific statements. A post publication offer to Ms Ryder to publish a letter or clarifying statement from her was not in this instance enough to put matters right.

There is no basis for *The Northern Advocate*’s belief that “persons” in liquidation cannot comment on the process once a liquidator is appointed.

Ms Ryder’s claim that the August 17 article breached Principle 1, in terms of lack of balance and unfairness, is upheld.

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

CASE NO: 2295 –

KAREN BATCHELOR AND THE AMERICAN PIT BULL TERRIER ASSOCIATION OF NEW ZEALAND AGAINST BAY OF PLENTY TIMES

Karen Batchelor, on behalf of the American Pit Bull Terrier Association of NZ, complained about a news report and two subsequent opinion pieces published in the *Bay of Plenty Times*. She cited the principles referring to Accuracy, Fairness and Balance; Comment and Fact; Discrimination and Diversity; and Subterfuge.

Her complaint is not upheld.

Background

On October 9, 2012 the newspaper published a brief report about a dog attack on a woman who had received puncture wounds. The report was accompanied by a photograph of a pit bull.

In the same issue, a columnist commented on another dog attack in which three dogs had killed two family cats.

His column was entitled *Tackling a feral menace*.

He pointed out that the dogs in question were “pit bull-like” and he suggested that many owners of such dogs want to be tough but end up by not controlling them and the dogs become a menace.

Four days later the newspaper’s editorial was headed *Dog owners deluding themselves*.

The writer expressed the view that there are on-going problems with aggressive dogs and pointed in particular to “mongrel dogs with bull traits” and “pitbulls and their crosses”.

The editorial also included the comment, “pitbull owners and lovers are a deluded bunch and that ongoing delusion is as dangerous as the unpredictable dogs themselves”.

The same day the newspaper carried an “inside story” which was a broad examination of dog attacks. Ms Batchelor was interviewed and her views received considerable coverage.

The Complaint

Karen Batchelor contacted the newspaper to point out that the photo accompanying the news report was inaccurate and misleading – the breed of dog involved in the attack was not a pit bull.

She also argued that pit bulls are not inherently dangerous, nor are their owners invariably dangerous. The claims made by in the editorial and in the opinion column were, in her view, inaccurate, unfair, biased and offensive.

She took particular exception to the various disparaging comments made about pit bull owners, claiming that this was “grossly offensive” to the majority of owners.

She supplied a range of information to the newspaper outlining how human behavior is crucial in determining the cause of dog attacks, not the breed of dog involved.

Her supplied material also stressed that it was often difficult to identify the breed of dog involved in attacks with any real accuracy. For example, many such dogs were frequently cross-bred.

Dissatisfied with the newspaper’s response to her initial complaint, Ms Batchelor then made a formal complaint to the Press Council.

The Newspaper's Response

The editor accepted and regretted that the photograph with the original news report was misleading and acknowledged that the caption should have explained that a file picture had been used. He noted that the photo had been changed immediately they knew the breed involved (a shar pei cross).

The newspaper had also published a correction and an apology (online) once the mistake had been noticed.

However, the editor defended the opinion pieces. Both the column and the editorial reflected the honestly held views of the writers and, moreover, the newspaper was entitled to adopt a forthright stance.

He pointed out that opinion pieces are not necessarily balanced and by their very nature can be provocative.

The newspaper had invited the complainant to submit an opinion piece of her own, expressing her views on the issue.

Discussion and Decision

The Press Council considers that the use of the photograph above the news report was an honest mistake by the newspaper, one which was freely acknowledged and corrected as soon as possible. It also notes that the online version is now very careful to point out that a file photo has been used and that it does not depict the dog in the attack.

Ms Batchelor disagrees with the views of the columnist and the editorial writer and disputes much of the information they present, but the content was not misleading as she contends. For example, the complainant questioned the expertise of John Payne, the Tauranga City Council manager of environmental compliance, in relation to identification of breeds and understanding dog behaviour and says he is "misguided", but the *Bay of Plenty Times* was entitled to call on someone with his experience and to carry his view that "pitbulls cannot be trusted".

The two pieces that are complained about were clearly presented as opinion pieces.

The Press Council has often stressed that such pieces do not have to be balanced, as long as they are not deliberately misleading nor dishonest.

An occasional comment was forceful, even robust, but even the statement that "pitbull owners and lovers are a deluded bunch" does not invite readers to discriminate against them. The Press Council is satisfied that such comment sits well within the boundaries of free expression.

The complainant cited Subterfuge in her complaint but the Press Council could discern no sign of that.

Finally, the Council notes that the views of the complainant (and the American Pit Bull Terrier Association) were given some prominence in the inside feature published on the very same day as the editorial. Further, the newspaper has invited Ms Batchelor to submit her own opinion piece.

For the reasons given above this complaint, about a biased, prejudiced and unbalanced approach by the newspaper, is not upheld.

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

CASE NO: 2296 – BEV BUTLER AGAINST THE OTAGO DAILY TIMES

Bev Butler complains that the *Otago Daily Times* has failed to report fully and accurately on a number of issues relating to the Forsyth Barr Stadium in Dunedin. The Press Council disagrees and does not uphold the complaint.

Complaint

Bev Butler, an anti-stadium campaigner, has filed a three-part complaint against the *Otago Daily Times* for its treatment of various issues relating to Dunedin's new stadium. Specifically, the complaint concerns coverage of: the performance of a marketing company hired to raise private sector funds; the past performance of the new chief executive appointed to run the stadium; and the amount of private sector funding raised for stadium construction.

Relating to the first part of her complaint, Ms Butler sent a press release to the newspaper in September 2012 releasing details of a contract and payments between a marketing company and the Carisbrook Stadium Trust. The contract required the marketing company to raise private sector funding for the stadium. She had obtained the information over a period of months using official information requests.

Ms Butler claimed the marketing company had produced little of value and questioned the role of the new stadium chief executive who had signed the contract in his previous role as chief executive of the Carisbrook Stadium Trust. The contract lasted from 2007 to 2009 but was terminated early with a further sum in settlement.

She complained that the *Otago Daily Times'* report of September 7, 2012 focused on the timing of her release of the information – in the week that the new stadium chief was appointed – not the issues she raised. She said the only comments reported from the other key players were to do with her 'timing'. She asked for an apology for the newspaper's handling of the information she had sent.

She said the contract left ratepayers exposed to further claims by the marketing company. It had taken 14 months to get the documents she requested, necessitating a complaint to the Ombudsman and threat of legal action.

The second part of her complaint related to statements from the new chief executive reported by the newspaper that he had no further involvement in the contract's management after signing. Ms Butler says this is incorrect. She said he was receiving invoices up to a year after the contract was signed.

She asked the newspaper to print the correct information, which she had supplied, but it had not. This she said was in breach of Press Council principles concerning accurate, fair and balanced reporting.

In the third part of her complaint she claimed the newspaper omitted to mention the low level of private sector funding raised for the construction of the stadium. The amount was reported in a PricewaterhouseCoopers' report on stadium costs for the Dunedin City Council. She said the newspaper's failure to report this showed lack of balance and accuracy.

The Newspaper's Response

Otago Daily Times deputy editor Barry Stewart rejected Ms Butler's accusations of unbalanced reporting. "There has been much public debate over the Dunedin stadium project since it was first mooted in 2004. The *Otago Daily Times* has published literally hundreds of articles, letters, opinion pieces and features on the stadium during the years since. Many of the issues raised by Ms Butler have been in the public domain for some time."

He said Ms Butler has had a largely open forum to express her views in the newspaper and will continue to have that opportunity. But it was the newspaper's right to decide which stories and written and how they are presented.

He said the article dealing with the release of Ms Butler's information about the marketing company contract gave all parties the opportunity to respond. He rejected her complaint that the report had not covered the issues she raised, saying most of the front page coverage dealt with the information she uncovered. However in their responses the Dunedin mayor and the stadium chief executive chose to focus on the timing of her release of the information. The reporter went back to Ms Butler for reaction to some of the comments made by the mayor.

Mr Stewart said the reporter had accurately reported Ms Butler's information about 'imprudent spending' and others' reaction to it.

The newspaper could not substantiate her claim that the Carisbrook Stadium Trust information had only been released after a threat of prosecution.

On the second part of her complaint, he said views about the management of the contract "show a fair degree of interpretation, often seemingly depending on one's own view of the stadium". He rejected suggestions that the newspaper's coverage had been unbalanced.

As to the third aspect of the complaint, he said the newspaper did not have any hidden agenda over funding issues. "We provided comprehensive, fair and balanced coverage of the PricewaterhouseCoopers' report." Mr Stewart provided the Press Council with a file of stories about the stadium, including its coverage of the PricewaterhouseCoopers' report and articles about private funding for the stadium.

Discussion

The Forsyth Barr Stadium, completed in 2011, remains a contentious issue in Otago, particularly in regard to the level of ratepayer funding used to pay for it. Therefore it's an important story for the *Otago Daily Times*.

Ms Butler was disappointed at the handling of her press release by the newspaper, but the reporter would not have been doing his job if he had not taken the issues contained in her release to the parties involved. His story fairly reflects their views along with those of Ms Butler and provides the balance the Press Council would expect to see.

On the question of the stadium chief executive's on-going involvement in the marketing company contract, the newspaper on September 7, 2012 published Ms Butler's reservations about the "business competence" of the chief executive based on his signing of the contract. It put her

claims to him and published his comments. As to details of his on-going involvement in payments, the Council accepts that this is a matter of interpretation and likely continuing source of disagreement for pro and anti-stadium groups. The *Otago Daily Times* has the right to determine what and how it covers issues. The Press Council does not find the newspaper's coverage in this respect to be inaccurate, unfair or unbalanced.

Conclusion

For the reasons outlined above, the Press Council does not uphold the complaint.

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

CASE NO: 2297 – JEFF DICKIE AGAINST OTAGO DAILY TIMES

The Complaint

Jeff Dickie complains about a news story on reaction to the appointment of a manager for Dunedin's council-owned venues and he further complains that the *Otago Daily Times* practises selective journalism in covering professional rugby and civic debt levels. He cites the principles of accuracy, fairness, balance; comment and fact as having been breached.

Background

The controversy surrounding the building of the new stadium in Dunedin has been heated and divisive. Anti-stadium campaigner Bev Butler, in a press release, questioned the business competence of a newly appointed chief executive of Dunedin Venues Management as he had been, back in 2007, chief executive of the Carisbrook Stadium Trust and had signed a contract for raising private sector funding. In her view the fund-raising company produced little of value and, as the contract was ended prematurely, she questioned whether he was the best person to manage the publicly owned venues. She released Official Information Act –accessed documents detailing the amount of money paid to the fund-raising company at the premature termination of the contract in 2009. She had received the figures in June 2011 but said she had not released them previously as she was waiting for further details.

The *Otago Daily Times* covered the press release and reaction in a front page story on September 7 (which turned to page 4) in which Dunedin Mayor Dave Cull accused her of "descending to personality attacks and running a smear campaign and "worse than that, using yesterday's battles to do it." He said she was using "old news" in a convenient way of trying to smear the new chief executive."

Bev Butler responded that the mayor appeared to be "commenting on the run" and his remarks were very strange.

The new chief executive (Darren Burden) refused to be drawn into speculation about the timing of the Bev Butler's document release but invited readers to "read into it that what you think."

The fund-raising company's chief executive Brian Meredith didn't dispute the released figures but did query the timing of their release. "All I say is it's interesting timing if she's had those figures for a year or more."

Carisbrook Stadium Trust chairman Malcolm Farry described the release of the information as "innuendo, imagination and misinterpretation to draw false conclusion."

The Complaint

Mr Dickie complained to the newspaper the following day that the coverage was a personal attack on Ms Butler. Furthermore the coverage failed to mention the very important points raised by Ms Butler. Instead it had given precedence to comments about her in an editorial style one would expect in an Eastern Bloc country or totalitarian state.

Mr Dickie also chastised the *Otago Daily Times* for failing miserably over an extended period to offer any investigation into persistent allegations of misuse of public and charity monies in Otago and when individuals had, as a result of credible vigilance, offered their opinions they suffered from a ridiculous level of editorial abridgement. Mr Dickie said he had experience of editorial manipulation and deletion completely altering the meaning of items he had written.

Mr Dickie stated that the newspaper is in large part responsible for the massive debt of the Dunedin City Council and complicit in the "ridiculous situation that now has ratepayers funding professional rugby". He accused the newspaper of turning a blind eye and publishing professional rugby and pro-stadium propaganda in a sustained manner and therefore doing its community a disservice.

He also provided a list of nine questions to which he demanded answers and these ranged across an historic and current list of topics including querying why the newspaper published a particular columnist and why his wife's comment had not been published on their website.

Response

The newspaper rejected the various allegations against the integrity and reputation of the *Otago Daily Times* and its staff and stated that the coverage of the Butler press release had been handled professionally and accurately. All parties were given an opportunity to respond including Ms Butler – responding to responses. The newspaper rejected the claim that the very important points raised by the Butler release were not covered by the story. "The majority of the front-page coverage is given over to reporting the information she uncovered."

The newspaper's detailed response included references to many articles published over time answering the allegation by the complainant that these issues had not been covered. The complainant was also invited to submit a letter to the editor on issues which he wanted to get into the public domain.

Discussion

While the complaint is centered on a specific news story the real problem Mr Dickie has with the *Otago Daily Times* appears to come from his view that the newspaper has a culture of poor reporting on issues surrounding Dunedin's debt level and the decision to build a stadium and its impact on the civic debt. The complainant's final submission specifically refers to the Dunedin debt level, how it is reported upon, and his view that the newspaper has an agenda when it comes to supporting professional rugby – something he sees as a scandalous misappropriation of ratepayers' funds.

The complainant argues the news story of September 7 is deficient under a number of principles. However, it covers every aspect of the topic giving every player an opportunity to comment and it even gives the main protagonist an opportunity to respond to comment on her reaction to the appointment of the new Dunedin venues manager. Could it be any more thorough? Probably not.

Could it have had a different angle? Yes, it could have focused on the content of the press release rather than the timing of it. Would that have advanced the knowledge of the readers? Perhaps there is an argument that it might have if this was the first knowledge they had of the amount of money paid to the former fund-raising company.

However, the press release itself focused on the relationship between the appointment of the new chief executive and his role in signing the fund-raising contract and the newspaper followed this line. In doing so, they drew responses about the historic nature of the information and the length of time it had been in Ms Butler's possession.

Ms Butler was trying to set the news agenda however the responses to her release did not veer in the direction she anticipated. This is not due to manipulation by the newspaper.

On the broader range of allegations against the newspaper, little evidence is presented to support this. The newspaper's selection of stories about the stadium and professional rugby issues is dismissed by the complainant as "selective indeed" without further explanation of its deficiency. Complaints must have more substance in order to be considered.

Decision

The complaint is not upheld.

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

CASE NO: 2298 – THE CHURCH OF SCIENTOLOGY OF NEW ZEALAND AGAINST NEW IDEA

A complaint by the Church of Scientology New Zealand against an article published in *New Idea* magazine dated October 15 2012 is not upheld.

Background

New Idea published an article entitled *Tom's new nightmare: Scientology star's murder scandal* in which it reported that actor Tom Cruise was 'horrified' by Scientology being dragged into the reporting of a murder in which a 'high profile celebrity member' was implicated.

Johnny Lewis, now deceased, is alleged to have murdered his landlady before committing suicide. The article linked Lewis' mental breakdown 'in part to the failings of Scientology treatments including the rehab programme Narconon'.

Further information in the article suggested Cruise had supported Scientology's stance on psychiatric treatment and promoted the Narconon programme, but that Lewis' former legal adviser thought that Lewis was mentally ill rather than drug addicted. Lewis had committed a number of other crimes previously and the article claimed that he had been cited in Scientology literature as a 'celebrity success story' from the Narconon programme.

A Scientology source was reported, claiming that Lewis had not been active in the church for several years; later in the article an ex-Scientology member stated that Lewis' parents 'are super-hardcore Scientologists'. A box at the foot of the article's pages contained a number of cases of alleged Scientologists who had committed murder after struggling with addiction or mental illness.

The Complaint

Mike Ferriss, Secretary for the New Zealand Church of Scientology, complained that the article breached principles of accuracy, fairness and balance; of discrimination and diversity; and corrections.

Mr Ferriss argued that linking Lewis with 'a growing list of Scientologists who have committed murder' implied that members of that church were more likely to commit murders; that only one of the cited murderers was a Scientologist, although the father of one was; that Lewis had never received treatment from Narconon; and that balance had not been provided in the article because the local church's opinions had not been sought. He contended that Lewis' religious beliefs were 'gratuitously' included in the article, and that Lewis had not been connected with the church for many years.

He had contacted Louise Wright, of *New Idea*, by phone and via a following email, emphasising these points. He sought a prominent apology to the church in *New Idea*, and an explanation of the drug work that the church engages in.

Mr Ferriss' approach to Ms Wright was responded to by Colin Broadbent, lawyer for *New Idea*. He stated that the article was not defamatory and no follow-up was planned; further that any future correspondence should be

sent via the law firm. This met with a refusal by Mr Ferriss to abide by this request, but accepting the magazine's decision not to publish a follow-up.

The Magazine's Response

Editor Louise Wright repeated points the magazine had made with regard to a previous complaint by Mr Ferriss (Case 2190), noting that the magazine is 'celebrity gossip' and that serious investigative journalism is not what readers of the magazine are seeking.

The story was sourced from the US and therefore the seeking of comment from the New Zealand church was not deemed to be necessary. The story was not about the local church. The article itself gave conflicting messages about whether or not Lewis had been involved in the Narconon programme; sources close to both Cruise and Lewis were cited in the story, and the magazine had no reason to believe that anything in the story was inaccurate and "it is not feasible to double-check, from New Zealand, the accuracy of factual matters contained in stories that are written overseas about overseas subjects." Neither would their readers have any expectation that they should.

Mr Ferriss' final comment indicated dissatisfaction with the editor's response and reiterated the points in his complaint.

Discussion

Mr Ferriss has submitted three prior complaints against magazines relating to the linking of the Church of Scientology to various stories (Cases 2191, 2190 and 2123). While one (not against this magazine) was upheld on having a misleading headline, none was upheld on article content, although the same argument pertained in each case – that the material was sourced from overseas and comment from the local church was not deemed necessary. The magazine would be wise to make this clearer when they provide such material, to reinforce the 'non-local' content and perhaps avert complaints of lack of balance.

Gossip by its very nature has a much lower threshold of credibility and the Press Council recognises that strictly applying its principles to such articles is difficult when details are often speculative and conditional. Magazines should make every endeavour to ensure that they use reputable overseas sources if verifying the content of articles is difficult. Special care should be taken when the articles refer to murder and suicide.

The Press Council is unable to rule on the accuracy or otherwise of the article which provoked the current complaint.

The complaint is not upheld.

The Council notes that the complainant was asked to direct all correspondence to the magazine's Australian-based lawyer. The Press Council expects editors to respond to complaints that are raised under the Press Council complaints process. It is not necessary to involve counsel.

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

CASE NO: 2299 – DARRYL DAWSON AGAINST WHAKATANE BEACON

The Press Council has not upheld two complaints from Darryl Dawson against the *Whakatane Beacon*.

The first relates to an August 21, 2012 report in the newspaper, after Mr Dawson had filed a Notice of Claim in Whakatane District Court against Whakatane District Council and the business that ran the council's 2010 local body election. The report said Mr Dawson was seeking damages. Mr Dawson said the damages claim was incorrect.

The second complaint concerned a *Beacon* report on September 18 2012, on court proceedings arising from his action. Mr Dawson alleged the story showed a lack of balance.

First Complaint

On August 21 2012 the *Beacon* reported, under a headline *Overspend claim lodged with court*, that Mr Dawson had filed a statement of claim in Whakatane District Court. According to a Whakatane District Council spokesman the claim seemed to allege some form of breach of contract in relation to the Local Electoral Act. The newspaper reported that Mr Dawson was "seeking damages" from the District Council and the business that ran the council's 2010 local body election.

Three days later Mr Dawson wrote to the Press Council complaining that he had not sought damages, only the costs of his filing fee and serving fee. He had written to the *Beacon* to correct the story, and enclosed a copy of that letter. He sought the Press Council's help in getting the letter published, saying he had been "banned" from writing letters to the *Beacon*.

On August 27 the Press Council wrote to the newspaper, enclosing Mr Dawson's letters. In later correspondence with the Council, Mr Dawson said he had met the editor on August 28.

The editor, Mark Longley, had offered to print Mr Dawson's letter if he could show details of his Statement of Claim proving he was not seeking damages.

The *Beacon* published Mr Dawson's correcting letter on September 4. In correspondence with the Press Council, it acknowledged that the "damages" claim was incorrect and an error by the *Beacon*. The newspaper said its report was based on information given by the council.

However, Mr Dawson then wrote to the Press Council again, making allegations about the *Beacon's* motivations and the source of its incorrect information, and the District Council's involvement. He supplied a District Council press statement relating to the Notice of Claim dated August 27; it made no reference to damages. The council denied making any statement in relation to damages being sought.

He wanted a full retraction in the newspaper for "defaming" him, and said the newspaper seemed to have a "vendetta" against him.

In an exchange of correspondence, the editor acknowledged the *Beacon's* error about the "damages",

denied a vendetta against Mr Dawson, and said it believed publication of Mr Dawson's letter on September 4 had corrected and closed the matter.

On October 9 Mr Dawson again wrote to the Press Council saying the letter the *Beacon* published was not the full retraction and apology he sought.

On October 11 the *Beacon* editor told the Press Council it had published Mr Dawson's letter and that Mr Dawson had not previously asked the *Beacon* to retract the statement or apologise. "He simply wrote the letter and we published it. I feel that we have done what was asked of us and enough to correct the error."

The Second Complaint

This concerned a story which appeared in the *Beacon* on September 18 titled *Democracy quest 'a misuse of process'*. It reported on the court case that arose from Mr Dawson's Notice of Claim, and the attempt to have it struck it out by Independent Electoral Services and the Whakatane District Council.

Mr Dawson alleged the report showed a lack of balance and submitted a letter to the editor about its content. The *Beacon* did not publish his letter. The letter alleged the story failed to give balance by not presenting his side of the story. Some of the reported statements were "wrong and false". He complained about comments by counsel for the district council and the IES which had criticised his actions. He believed the newspaper's readers had a right to hear his side to the *Beacon's* story.

Mr Longley said he was not sure that Mr Dawson understood the reporting of court procedure.

"This was a report on what happened in court, the quotes Mr Dawson objects to were printed as attributed quotes. He is suggesting we should have looked into the validity of the statements made against him and asked if they were true. That is the job of the judge and what the court process is for. We simply reported it and Mr Dawson clearly does not like that." The re-litigation reference, a concern of Mr Dawson's, was a quote from the council's lawyer.

Mr Dawson's point of view was given coverage in the report, as was the other party's.

The Decision

The Press Council carefully considered both complaints. In terms of the first complaint, where the *Beacon* report said Mr Dawson was seeking damages, the Press Council is not able to determine the source of the incorrect statement. The Council notes that having been advised of the error the newspaper could have checked the Court records, rather than requiring Mr Dawson to provide the proof. But the newspaper admitted its error, and corrected it by publishing Mr Dawson's letter on September 4. Although it would have been appropriate for the *Beacon* to have added a footnote acknowledging the error, the Council notes publication of his letter was the remedy Mr Dawson initially requested by way of correction, and considers this sufficient action by the newspaper.

In terms of his second complaint, the *Beacon's* story of September 18 was a straightforward account of the court proceedings. Mr Dawson does not appear to understand the

nature of court reporting. The report quoted Mr Dawson's evidence as well as evidence presented by Independent Electoral Services and Whakatane District Council, plus comments by the judge. This is standard practice. The *Whakatane Beacon* later reported the court's judgment, which went against Mr Dawson.

Mr Dawson's complaint about lack of balance is not upheld.

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

CASE NO: 2304 – FOXTON RSA AGAINST MANAWATU STANDARD

Anne Hunt, on behalf of the Foxton RSA, complained about a report published in *The Dominion Post* and the *Manawatu Standard*. She argued that the newspapers had not produced a fair and balanced report and had misled their readers.

The complaint against *The Dominion Post*, the subject of a separate adjudication (see case 2290) was upheld.

Background

The report first appeared on the *Stuff* website on 30 August 2012 and was also printed in both *The Dominion Post* and the *Manawatu Standard* on the same date.

The article outlined a fraught series of complaint and counter-complaint within the membership of the Foxton RSA.

The reporter noted that the trouble had started "about a year ago" and gave examples, and then summarized the comments of (at least) three members who all claimed that the tensions were ongoing.

In *The Dominion Post* and on *Stuff* the report appeared under the headline '*Short shorts' add to RSA tensions*'.

The *Manawatu Standard* ran its own headline *Claims of bullying dog RSA Foxton*.

The article opened "Complaints of bullying and intimidation continue at Foxton RSA after a member who objected to a young woman wearing 'short shorts' had a dismembered chicken dumped in her letterbox".

At the end of the report, the club's Vice-president, Anne Hunt, argued that the club had turned around after the problems of the past and pointed to positive progress. She was extensively quoted.

The "interview" with Anne Hunt was carried out via e-mail.

Complaint

In her initial complaint to the newspapers, Anne Hunt claimed that she had only been invited to respond to general concerns raised rather than the specific points mentioned in the report. In particular, she should have been given the chance to comment on the claims that the executive should "resign and go to the poll".

She also stressed that, overall, the article was misleading in that almost all the concerns occurred more than a year previously, and although she had pointed out

to the reporter that they were historical in nature, they had been reported as current issues.

Later, in her formal complaint to the Press Council, she stressed that "even a factually-correct article can leave misleading impressions" ie the reporter had concentrated on issues from the past which only served to bring the RSA into disrepute.

The Newspaper's Response

Editor Bernadette Courtney responded on behalf of both newspapers.

In its first response to Anne Hunt, the newspaper argued that her reported comments added balance to the criticism of the executive apparent in the article.

Further, the substantive points raised had been put to her and a right of reply does not extend to countering every single opinion expressed in an article.

Finally, the incidents reported had been "clearly dated" throughout.

In a later response to the Press Council, the editor reiterated that the article took care to date the incidents.

She also claimed that Anne Hunt had nominated herself as the official spokesperson for the RSA.

She stressed that it was obvious that some members had concerns about the management of the RSA and those concerns had been put to Anne Hunt for comment. Her comments had been fairly and accurately reported.

Further exchanges

Anne Hunt noted that rather than being a "self-appointed spokesperson" she had been appointed by the Foxton RSA Executive as Communications Officer on June 23, 2012.

She argued that it was incorrect to claim that the incidents had been clearly dated because the lead supplied no date alongside the reference to the "short shorts" incident, and consequently the description of the "dismembered chicken" incident happening "soon afterwards" became meaningless in terms of timing. Finally, the "f word" incident was also undated.

All these matters occurred a year before the article had been published.

The editor, in a final submission, argued that the intro stated that "complaints *continue* at Foxton RSA" because that was the view of the members interviewed for the article. The dissatisfaction is current and not merely historical.

The reporter had not relied on one member's criticism, rather she had included the views of others, including two former presidents of the club.

Discussion and Decision

The complaint about a lack of balance is rejected.

The Press Council is satisfied that several members of the club were not happy with the executive and their substantive criticisms were put to the complainant and she was given considerable space in a short report for her countering views.

Further, as the newspaper noted earlier, a right of reply does not usually extend to comment on every single opinion.

In the decision on *The Dominion Post* complaint the Council noted it was particularly concerned that the headline lent considerable weight to Anne Hunt's complaint that historical events were being presented as if they were still current issues. Certainly headlines traditionally do

use the present tense but the event highlighted happened in the distant past, not the recent past. In *The Dominion Post* case the headline invited readers to assume the event mentioned was current.

The *Manawatu Standard* headline however indicated correctly that concerns about the club were on-going. While the timing of the various events mentioned throughout the article was not always clear the *Manawatu Standard* headline was not inaccurate and so readers were not misled from the outset. On this basis the Council determined that this complaint should not be upheld.

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

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

CASE NO: 2300 – GUY HALLWRIGHT AGAINST NEW ZEALAND HERALD

Guy Hallwright complained to the New Zealand Press Council that a series of articles published in the *New Zealand Herald* after being found guilty of the criminal charge of causing grievous bodily harm with reckless disregard breached the Council's principles relating to accuracy, fairness and balance.

The complaint is not upheld by a majority of 5:3.

Background

In September 2010, Mr Hallwright was driving with his daughter in Auckland when he and another driver, Song-Jin Kim, had a difference of opinion over driving behaviour which led the former to give what Judge Raoul Neave would later describe as "a well-recognised gesture of dissatisfaction" and a "verbal accompaniment."

When both vehicles stopped close to each other, Mr Hallwright had walked up to the driver's side of Mr Kim's car and asked him what his problem was, or words to that effect. He had then shut the car's door and returned to his own vehicle.

He had begun to manoeuvre his car back into the line of traffic when Mr Kim approached his vehicle in what was later described as an aggressive and demonstrative way and began banging his hands on the bonnet.

As Mr Hallwright pulled out, Mr Kim had gone under a wheel, suffering two broken legs and a broken ankle as a result.

Mr Hallwright continued on, telephoned the police, deposited his daughter at an appointment and returned to the accident scene. Later, he was charged with causing grievous bodily harm with reckless disregard, found guilty by a jury and sentenced to 250 hours of community work. He was also ordered to pay emotional harm reparation of \$20,000. An earlier charge alleging a deliberate intention to cause harm had been dismissed by the judge after the Crown case.

The court case was widely reported and remarks made by the judge in sentencing were to attract further wide publicity.

Judge Neave, while acknowledging the serious injuries suffered by Mr Kim, was critical of the media's "prurient" interest in the case, commented on whether the charge should have been reckless driving causing injury laid under the Land Transport Act 1998, referred to Mr Hallwright's "impeccable character" and said descriptions of the incident as "hit and run" were irresponsible and inappropriate.

Initial Interaction

Through his lawyer, Mr Hallwright complained to the editor of the *New Zealand Herald* on September 27 and referred to five articles relating to his sentencing on August 30, 2012.

On August 31, under the heading, *Banker's sentence shocks his victim*, and a sub-heading *Judge tells off media for prurience, praises defendant as 'impeccable'*, the *Herald* reported how the victim was shocked by the leniency of the sentence.

On September 1, on the front-page, the *Weekend Herald* carried the headline *Witness slams judge* with the overline: *'The sentencing is a joke. If it's not hit-and-run. What the hell is it?'*

The newspaper reported how a witness to the incident, who had given evidence, was "outraged" by comments from the judge during the sentencing, particularly the judge's criticism of the media for calling it a hit-and-run.

On the same day, the newspaper also published an editorial critical of the judge.

There were further articles on September 6 and 15, one referring to a lawyer prepared to work free of charge for Mr Kim and another on the possibility of an appeal by the Crown. The appeal did not proceed.

The complaint said the articles breached the Press Council's Principle 1 relating to accuracy, fairness and balance and not deliberately misleading by commission or omission. Also, a fair voice had to be given to opposing views.

The articles when read as a whole with their pejorative headlines portrayed Mr Hallwright as being guilty of "a deliberate hit and run road rage, as commonly understood, who intentionally caused serious harm to Mr Kim."

The reader was led to believe the sentence was inadequate and should have been a jail sentence, and that he had received favourable treatment from the judge because he was an investment banker, which the complaint noted was not his occupation.

The articles ignored or gave an unbalanced account of all the facts and circumstances, including Mr Kim's "particularly aggressive manner" and Mr Hallwright's fears for the safety of his daughter and himself.

He expressed surprise that the comments of just one witness should be used. The articles also ignored the Judge's reference to the Sentencing Act which made it inappropriate to impose a custodial sentence. Among other facts downplayed was his genuine remorse at what had happened. It was unfair to suggest, as the articles did, that he had got off lightly.

In his initial response, the editor of the *Weekend Herald*, David Hastings, said he did not accept the newspaper had breached Press Council principles. The reports gave a

fair and accurate summary of the judge's comments and criticism of the comments.

The newspaper had interviewed the victim, a witness who was critical of the judge as well as seeking comment from others "in the light of the controversy that erupted after sentencing." It also sought comment from Mr Hallwright.

The editor said the reports did not portray Mr Hallwright as being guilty of a "deliberate hit-and-run road rage, as commonly understood." The term, hit and run, is not commonly understood to mean a deliberate act. "All it means is that a vehicle hits someone and the driver leaves the scene rather than stopping to render assistance."

Formal complaint

In his complaint to the Press Council, Mr Hallwright's lawyer said the reports were not a fair and accurate report of the judge's comments, and they portrayed him in a way that was deliberately unfavourable. They did not tell all the facts of the case and mitigating facts in his favour.

Had the mitigating facts been published, readers would have understood he was not involved in a hit and run as commonly understood, he did not receive favourable treatment and that a jail term was inappropriate.

Photographs published on August 31 were also prejudicial and the article indicated the victim had been treated poorly by the court. Comments from Associate Professor Bill Hodge in the same article reinforced that view.

Similarly, the September 1 article confirmed Mr Hallwright was involved in a hit and run incident for which he received a "joke" sentence. The hit and run aspect was mentioned in other articles as well.

The overall portrayal was not fair or accurate about what took place, rather it was biased and one-sided.

The media should report court proceedings and they should scrutinise and comment on decisions. But such coverage should be in a fair and balanced way based on all the facts.

Mr Hallwright's lawyer disputed the editor's understanding of the term hit and run. The initial "hitting" might not be deliberate but "running" was a deliberate act and the average reader would take that to mean a person deliberately and callously leaving the scene to escape detention. He had been portrayed that way throughout the articles.

Editor's Response

In his formal response, the editor said the stories selected for the substance of the complaint were a small part of a long series of reports on a running story that began long before the court case and continued some time later.

There were in fact two running stories – Mr Hallwright's trial and the controversy that arose afterwards because many people thought he had received a lenient sentence and the judge's comments were injudicious.

The complaint relied to a great extent on insisting that certain points made by the judge were not reported in the *Herald*. Yet every point claimed to be omitted was in fact reported with appropriate wording.

The editor set out over some length how the newspaper

had covered the points of complaint, particularly the mitigating factors in Mr Hallwright's favour.

He reiterated his belief the term hit and run did not mean that a driver deliberately ran someone over.

"Any reasonable reading can only conclude that the coverage was fair, balanced and accurate. We properly followed up the controversy that erupted as a result of the judge's comments. And we also gave substantial coverage to Mr Hallwright's version of events not only in the reports of sentencing but also at the time he was found guilty and during the trial itself," the editor said.

Discussion

Proceedings following the incident between Mr Hallwright and Mr Kim were undoubtedly newsworthy. The incident happened in a public place, in central Auckland, in broad daylight and was witnessed by others. It was always going to attract attention and therefore publicity.

The Press Council can understand Mr Hallwright's discomfort, not just through coverage of his case but also in finding that his sentencing continued to attract considerable publicity because of the judge's remarks, especially when the various articles were accompanied by bold, even provocative headlines and arrangement of photographs, including the front page. In a sense it could be argued that the further publicity given to Mr Hallwright was collateral to the commentary on the sentencing.

Yet it cannot be said that the articles and headings in their totality were inaccurate. Mr Hastings' rebuttal of the complaint based on what the *Herald* reported is a convincing one.

It was the judge's opinion that the media coverage of the case was "prurient" but he was not specific about what coverage. In any event, the *Herald* well covered what the judge thought.

Fairness and balance require consideration as well. While the presentation was undoubtedly bold, the details contained within the articles were once again highly newsworthy, such as the comments of a dissatisfied Mr Kim and a witness who sought out the newspaper to say the judge's remarks were offensive.

It was also reasonable for the *Herald* to report comments from various members of the legal profession, who also expressed disquiet at the leniency of sentence.

More balance could have been provided by Mr Hallwright when he was approached for comment but he chose not to – as was his right.

Mr Hallwright (and the judge) said the incident could not be called "hit and run." It was certainly the view of the aggrieved witness that the incident was such a case and the *Herald* had no reason not to refer to it as such. Once again, the views of both sides were well covered in the various articles.

Decision

By a majority of 5:3 the complaint is not upheld.

Dissent

Dissenting votes were cast by three Press Council members (Chris Darlow, Stephen Stewart and Tim Beaglehole)

The dissenters felt Mr Hallwright had been unduly

pilloried by successive stories and the public left with the impression that a wealthy banker had “got away with” a lenient sentence after injuring the victim man in a road-rage, hit-and-run incident. Mr Hallwright was not a banker and the “road rage” comment was a *NZ Herald* description in a caption to a picture featuring Mr Hallwright.

The judge noted this was not a hit and run in the generally accepted sense in that Mr Hallwright did not drive away to escape attention or detection. He had, in fact, called the police shortly after the incident so references to hit and run were “as irresponsible as they were inappropriate.”

There was the sense that the *Herald* had set out to demonise Mr Hallwright. The *Herald* was entitled to criticise the Judge, and the sentence, but the treatment of the stories and its coverage had crossed the line particularly through the September 1 front page lead prominence, with accompanying pictures, given to just one witness in the case. The *Herald's* approach could have led to the perception that the *Herald* was aggrieved with the Judge for his critical comments of the media's reporting, and that its coverage was motivated by this.

The three members considered the coverage was unfair to Mr Hallwright and would have upheld the complaint.

Sandy Gill, Clive Lind, Keith Lees, Penny Harding and Pip Bruce Ferguson did not uphold the complaint.

Chris Darlow, Stephen Stewart and Tim Beaglehole would have upheld the complaint.

Barry Paterson abstained from voting.

John Roughan and Kate Coughlan took no part in the consideration of the complaint.

CASE NO: 2301 – JOANNA AND RO PIEKARSKI AND VICTORIA DAVIS AGAINST GOLDEN BAY WEEKLY

Joanna and Ro Piekarski and Victoria Davis complained about the *Golden Bay Weekly's* coverage of the proposed development of an Integrated Health Centre in Takaka.

The Complaint

The complaint stems from the complainants' dissatisfaction with the *Golden Bay Weekly's* coverage of the development of the Integrated Health Centre for the region to be based in Takaka. The complaint ranges from the general: the publishers (and editors) ‘have always taken it upon themselves to pick a side on issues and only print one-sided stories’, to the much more specific, the failure to print particular letters or contributions. The principles adduced were Accuracy, Fairness and Balance; Comment and Fact; Conflicts of Interest. Following the editor's reply the complainants appeared to drop the latter two principles, or at least to concentrate on Accuracy, Fairness and Balance as the main grounds for their complaint.

The Golden Bay Weekly Response

The editors replied that ‘it is ludicrous to suggest that they ‘have always taken it upon themselves to pick a side on issues and only print one-sided stories.’ and supplied photocopied pages of the *GBW* with any reference to the health project.

On the particular issue of not printing letters critical of the health project and of what was claimed to be ‘an increasing news blackout . . . regarding the proposal, particularly since a “cost blowout” was revealed’ they wrote that the letters which they did not publish arrived at a time when the tenders for the project had been opened and when critical negotiations were taking place to try and ensure adequate funding could be secured. In their judgment critical letters at that time could be counter-productive to the success of the negotiations. The editors added that the *GBW* had taken no position on the integrated health facility until March of this year when, convinced of the merit of the scheme, they decided they should show their own support for it and attempt to rally support for it in the community. (This development in the editors' point of view was outlined clearly in letters to Ro Piekarski and to another writer which are quoted at length in the initial complaint.)

There was further correspondence and comment from both sides which did not significantly alter the points at issue.

Discussion

Golden Bay is a small and relatively isolated community and although other sources of information are available to its residents it is clear that their weekly paper assumes an importance greater than a similar publication in a larger centre. It is also a community where many people have chosen to live for lifestyle reasons and where developments, such as mining or marine farming, which might impact on that lifestyle provoke strong controversy. While a little different, the integrated health project, not least in its financial arrangements, could impact very broadly on those residents. It is understandable that there were, and are, strong and differing views on the wisdom of the development and that the community newspaper should be seen as the appropriate place for these views to be expressed.

At the same time the Press Council has always been clear that an editor has the responsibility for deciding which letters should be printed and how they should be handled. Equally clear, and at times to be applauded, is the editor's right to be an advocate. The *GBW* has been open and forthright about its support for the health centre since early this year, and there can be no complaint about that. Until that time, judging by the material sent to the Council, the paper published letters and other material reflecting a variety of views on the centre. It also sought and published responses by the Interim Management Group to questions raised by correspondents.

The editors' decision not to publish critical letters during the contract negotiations, while arguable, could be supported, and a complaint focused on that would probably not be upheld. What is less clear is the editors' apparent decision not to publish any further critical letters once the project is started on the grounds that ‘revisiting old arguments now is counter-productive’, or ‘to re-litigate the old questions threatens to subvert the project’.

While one would hope that the correspondents themselves would recognise some validity in these comments it is also clear that the development and running of the centre may well raise issues on which public comment, possibly critical, could be useful and constructive. The Council would hope that the editors' general support for the project would not preclude the publication of such material.

Finding

The complaint is not upheld.

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

CASE NO: 2302 – ROSYLIN SINGH AGAINST HERALD ON SUNDAY

Rosylin Singh complained about a story and photographs published in the *Herald on Sunday* on September 30, 2012.

She claimed that the newspaper published photos of her without her permission, both in the print and online edition.

Her complaint is not upheld.

Background

The article was headed *Short skirt scandal* and covered information from the complainant's disciplinary hearing before the Health Practitioners Disciplinary Tribunal (HPDT). The article also included a photograph of the complainant.

The article noted the complainant had gained employment in her profession while her practicing certificate was suspended, as outlined by the HPDT and quoted the HPDT as commenting on its concerns regarding what appeared to the HPDT as "continuing concern about [the complainant's] honesty".

The headline *Short skirt scandal* related to concerns expressed with the complainant's dress style when employed at a high school, details of which were included in the HPDT's decision. The reporter had also interviewed the complainant and photos taken at the time of that interview were used.

The complaint relates to the use of the photos. In some correspondence, the complainant stated that she did not know the photos had been taken and did not give permission for the photos to be used.

But in other correspondence she states that upon discussion with her daughter, she then recalled agreeing to have photos taken but requested that if the photos were used, her face not be shown.

Ms Singh's main concern appeared to be the photo which appeared in the print edition of the newspaper. She believed that it made her look "indecent".

The Newspaper's Response

The editor replied that the article was about a decision from a national disciplinary body and as such had high public interest.

The newspaper reporting/photography team spent a considerable amount of time with the complainant who was "very charming and cooperative" and believed at the end that they had Ms Singh's permission to use the photo's she had voluntarily posed for.

Given the seriousness of the subject matter and high public interest status, the newspaper did not believe running the complainant's story and photo was a breach of her privacy.

The paper does acknowledge that initially before the interview commenced, the complainant told the reporter and photographer that she did not want to be recognized in any photos, but as the interview progressed and the complainant voluntarily posed for photos, they believed that the complainant had changed her mind.

Discussion and Decision

This complainant stated that she did not give permission for the photo's to be used, but the newspaper believed that she had given permission by the end of the interview.

In reading the complainant's correspondence, it begins with the premise that she gave no permission and did not even know the photos were being taken, through to acknowledging posing for the photos and giving permission for them to be used without her face included *ie* bodyshot only.

The newspaper stated that at the end of the interview, the reporter and photographer believed that the complainant had given permission and voluntarily posed for photos.

The article is about a situation of high public interest and contains information both from the complainant and the HPDT decision.

Given the changing stories given by the complainant in her correspondence, and the fact that she did pose voluntarily for the photos, on the balance of probabilities, it is credible to believe that the reporter and photographer did have a genuine belief that the complainant was happy for the photos to be used in an article about her.

Accordingly, this complaint is not upheld.

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

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

CASE NO: 2303 – TITAHI BAY RESIDENTS' ASSOCIATION (TBRA) AND GRAEME EBBETT AGAINST KAPI-MANA NEWS

Titahi Bay Residents Association and Graeme Ebbett claim *Kapi-Mana News* failed to comply with Principles 1 Accuracy, Balance and Fairness and 11 Corrections of the Press Council Statement of Principles in relation to three pieces published on September 25, 2012. The first story was headed *Third call for Titahi Bay board* with a side piece titled *Beach row boils over*. The third, an editorial, ran under the headline *Must it be so hard?*

The Press Council does not uphold the complaints.

Background

The pieces in question related to issues between TBRA (which Mr Ebbett chairs) on the one hand and Porirua City Council on the other as to whether Titahi Bay should have its own community board. TBRA claims it should but the Council is against it. TBRA had recently circulated a petition calling for "A locally elected Community Board for the Bay" citing concerns over the Council's recent sale

or closure of certain local assets and the manner in which the Council was administering (or not administering) rules governing vehicle access to Titahi Bay beach.

The part of the article titled Third call for Titahi Bay board referred to the TBRA petition and pointed out requests for a community board had been previously rejected twice by the Local Government Commission. Most of this article reported comments from the Porirua mayor Nick Leggett on the one hand and Mr Ebbett on the other as to whether a community board should be created. The part headed *Beach row boils* over referred to “simmering ill will” between the council and Mr Ebbett over beach access, ill will which had “flared” when Mr Ebbett demanded that the council stop consulting with the community as to whether cars should be allowed on the beach.

The editorial bemoaned the breakdown in relations between TBRA and the Council but questioned the need for a community board for Titahi Bay.

The Complaint

TBRA and Mr Ebbett say the *Kapi-Mana News* pieces were inaccurate in three ways. First, *Kapi-Mana News* did not set out the full background as regards the Titahi Bay community village plan, published 2005, which recommended the establishment of a community board for the area. Secondly, the paper failed to say that the council had not enforced beach vehicle access rules as it was required to do through binding agreements with TBRA and Greater Wellington Regional Council and associated Court orders. TBRA says the council has no right to reopen consultations with interested parties over beach access. Thirdly, Mr Ebbett says *Kapi-Mana News* was wrong when it claimed he had stood unsuccessfully for the council four times. Mr Ebbett takes particular issue with the editorial’s reference to him “taking the front foot” and “[doing the] community little good to constantly provoke an adversarial culture”. Mr Ebbett claims it is the council, not TBRA, which is the party initiating the controversy.

TBRA and Mr Ebbett go further. They claim *Kapi-Mana News* set out to “deliberately mislead and misinform” its readers by these omissions. TBRA and Mr Ebbett are concerned the paper failed to correct its errors and did not give them a right of reply.

TBRA and Mr Ebbett say the articles failed to mention the board establishment as a “requirement” of the village plan. They say the articles were “completely personalised” to Mr Ebbett and the TBRA when they were simply advocating for the plan’s adoption. They claim that the newspaper “has allowed itself to become the vehicle for an unprincipled political attack, the sole purpose of which was evidently to discredit the TBRA, its chairman, shut down the petition and thereby control the outcome of the upcoming local body elections”.

The Response

Kapi-Mana News responds by claiming the pieces are balanced and fair while acknowledging space constraints precluded a full account of the background.

Kapi-Mana News says that the community board proposal did not feature prominently in the 2005 Titahi Bay village plan. It was just one of some 70 “proposed

actions”. The establishment of the community board was not a village plan requirement. The plan is currently under review. There is no clear preference, according to *Kapi-Mana News*, for a community board.

The newspaper acknowledges not having referred the Mayor’s comments, about the council’s processes over the beach access rules review in the *Beach row boils* over sidebar story, to Mr Ebbett for a response. The story had opened with Mr Ebbett’s own comment. It was the council which had the right of reply.

Kapi-Mana News says its check of the Porirua City Council records shows Mr Ebbett having stood for the council four times between 1995 and 2010.

Mr Ebbett for his part says he has “no record of accepting any local body nomination seventeen years ago”.

The Decision

There is controversy over the manner by which the Titahi Bay area should be governed at a local level. This controversy has continued for some time. Such controversies have occurred elsewhere in New Zealand often as a consequence of local government reform. The issues invariably give rise to strong opposing opinions which are honestly held. Such is the price of democracy. The media often reports on these matters given the level of local interest. It is almost inevitable such reporting will not be to the liking of one group or other.

This is the case here. *Kapi-Mana News* serves the Titahi Bay and neighbouring areas. Questions as to whether Titahi Bay should have its own community board and the things giving rise for such a call are topical. TBRA had launched a petition which brought matters back into focus. It was not surprising the petition encouraged different views. Petitions tend to have this effect.

The Press Council considers the two parts of the September 25 article to be fair and balanced. On any objective view the pieces do little more than recite the respective views of TBRA and the Porirua City mayor. The two sides of the debate are canvassed albeit in a summary form. The Press Council Principles do not require newspapers to fully rehearse the history when reporting on long running issues.

The editorial was clearly opinion falling within Principle 4 of the Statement of Principles. TBRA and Mr Ebbett disagree strongly with the editor. There will be others who agree. As the Council has said in previous decisions opinion pieces do not offend the Press Council Principles simply because they engender strong opposing reactions. The Council will only uphold a complaint against an expression of opinion in the rarest of cases. It takes extreme circumstances to do with risks to the public or gratuitous offence to a particular group for the Council to uphold a complaint in those circumstances. This is not one of those rare cases.

The Council does not uphold the complaints.

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

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

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) 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 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.

NZ Press Council
Trading Account
For the Year ended 31st December 2012

	<i>2012</i>	<i>2011</i>
	\$	\$
REVENUE		
Union	2,700	2,700
NPA Contribution	245,000	220,000
Community Newspapers	6,443	5,296
Magazines Contribution	<u>8,897</u>	<u>8,875</u>
Total Sales	263,040	236,871
GROSS SURPLUS FROM TRADING	<u><u>\$263,040</u></u>	<u><u>\$236,871</u></u>

NOTE: This statement is to be read in conjunction with the Notes to the Financial Statements on page 97 and 98

NZ Press Council
Statement of Financial Performance
For the Year ended 31st December 2012

	<i>2012</i>	<i>2011</i>
	\$	\$
Gross Surplus from Trading	263,040	236,871
SUNDRY INCOME		
Interest Received	2,647	2,065
Total Income	<u>265,687</u>	<u>238,936</u>
Less Expenses		
Accident Compensation Levy	-	473
Accountancy Fees	926	907
Advertising & Promotion	2,963	700
Audit Fees	850	850
Bank Charges	42	16
Chairman's Expenses	2,100	1,478
Cleaning & Laundry	313	760
Computer Expenses	907	2,100
Electronic Complaints Management System	5,000	-
Postage & Courier	2,823	2,111
General Expenses	9,913	4,968
Insurance	3,100	2,850
Legal Expenses	-	2,959
Printing & Stationery	7,519	8,063
Reception	-	348
Rent	13,096	14,082
Rent - Carparking	1,920	1,920
Internet Expenses	55	60
Power & Telephone	1,972	2,302
Travel & Accommodation	21,251	15,841
Annual Leave owing	5,732	3,281
PAYE & Student Loan	25,821	24,251
Wages & Salaries	115,805	111,447
Board Fees	26,455	22,638
Total Expenses	<u>248,563</u>	<u>224,405</u>
Net Surplus Before Depreciation	17,124	14,531
Less Depreciation Adjustments		
Depreciation as per Schedule	631	623
Depreciation - Loss on Sale	14	-
Net Depreciation Adjustment	<u>645</u>	<u>623</u>
NET OPERATING SURPLUS BEFORE TAX	16,479	13,908
Less Taxation Provision	644	-
SURPLUS AFTER TAX	<u>15,835</u>	<u>13,908</u>
NET SURPLUS/(DEFICIT)	<u><u>\$15,835</u></u>	<u><u>\$13,908</u></u>

NOTE: This statement is to be read in conjunction with the Notes to the Financial Statements on page 97 and 98

NZ Press Council
Statement of Financial Position
As at 31st December 2012

	<i>2012</i>	<i>2011</i>
	\$	\$
CURRENT ASSETS		
Bank - Cheque Account	8,436	8,232
Bank - Savings account	79,536	66,584
Taxation	-	20
Accounts Receivable	2,536	640
Shareholders' Overdrawn Current Accounts	-	-
Total Current Assets	<u>90,508</u>	<u>75,476</u>
NON-CURRENT ASSETS		
Fixed Assets as per Schedule	<u>6,234</u>	<u>4,412</u>
TOTAL ASSETS	<u>96,742</u>	<u>79,888</u>
CURRENT LIABILITIES		
GST Due for payment	9,417	7,605
Taxation	624	-
Accounts Payable	10,662	12,079
	-	-
	-	-
	-	-
Shareholders' Current Accounts	-	-
Total Current Liabilities	<u>20,703</u>	<u>19,684</u>
TOTAL LIABILITIES	<u>20,703</u>	<u>19,684</u>
NET ASSETS	<u><u>\$76,039</u></u>	<u><u>\$60,204</u></u>
Represented by;		
EQUITY		
Share Capital	-	-
Reserves	-	-
Retained Earnings	<u>76,039</u>	<u>60,204</u>
TOTAL EQUITY	<u><u>\$76,039</u></u>	<u><u>\$60,204</u></u>

The accompanying notes form part of these Financial Statements and should be read in conjunction with the reports contained herein.

For and on behalf of the Board ;

Director _____ Director _____

Date

NOTE: This statement is to be read in conjunction with the Notes to the Financial Statements on page 97 and 98

NZ Press Council

Notes to the Financial Statements

For the Year ended 31st December 2012

1. STATEMENT OF ACCOUNTING POLICIES

The financial statements presented here are for the entity NZ Press Council, a registered company under the Companies Act 1993.

NZ Press Council qualifies as an Exempt entity under the Financial Reporting Act 1993. These financial statements have been prepared in accordance with the Financial Reporting Act 1993 and the Financial Reporting Order 1994.

The accounting principles recognised as appropriate for the measurement and reporting of earnings and financial position on an historical cost basis have been used, with the exception of certain items for which specific accounting policies have been identified.

(a) **Changes in Accounting Policies**

There have been no changes in accounting policies. All policies have been applied on bases consistent with those used in previous years.

(b) **Fixed Assets & Depreciation**

The entity has the following classes of fixed assets;

Buildings

Furniture & Fittings

Office Equipment

All fixed assets are initially recorded at cost with depreciation being deducted on all tangible fixed assets other than freehold land, in accordance with rates set out in the Income Tax Act 1994.

(c) **Goods & Services Tax**

The Statement of Financial Performance and Statement of Cashflows (where included) have been prepared so that all components are stated exclusive of GST. All items in the Statement of Financial Position are stated net of GST, with the exception of account receivables and payables.

(d) **Receivables**

Receivables are stated at their estimated realisable value. Bad debts are written off in the year in which they are identified.

2. AUDIT

These financial statements have been subject to audit, please refer to Auditor's Report.

3. CONTINGENT LIABILITIES

At balance date there are no known contingent liabilities (2011:\$0). NZ Press Council has not granted any securities in respect of liabilities payable by any other party whatsoever.

NZ Press Council
Notes to the Financial Statements
For the Year ended 31st December 2012

4. SECURITIES AND GUARANTEES

There was no overdraft as at balance date nor was any facility arranged.

Independent Auditor's Report

To the Members of the Press Council.

We have audited the financial report on pages 2 to 8. The financial statements comprise the Statement of Financial Position as at 31 December 2012 and the Statement of Financial Performance for the year then ended, and a summary of significant accounting policies and other explanatory information.

Officer 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 Press Council's 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 Press Council's 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 Press Council.

UnQualified Opinion

In our opinion, the financial statements on pages 2 to 8 comply with generally accepted accounting practice in New Zealand, and give a true and fair view of the financial position of Press Council as at 31 December 2012, and of its financial performance for the year then ended.



Parsons Roddick & Co
7 March 2013
UPPER HUTT

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LOWER HUTT	3rd Floor, 45-47 Queens Drive, PO Box 30164, Lower Hutt 5040, New Zealand Telephone: 04 569 3804 Facsimile: 04 566 1220 Email: mail@parsonsroddick.co.nz

PRINCIPAL: ALLAN J EVANS, C.A.

