

NEW ZEALAND PRESS COUNCIL

Tourism and Travel House, Ground Floor, 79 Boulcott Street, Wellington

P O Box 10-879, The Terrace, Wellington

Tel.04 473 5220 Fax 04 471 1785

Email: presscouncil@asa.co.nz

Website: www.presscouncil.org.nz

OFFICERS FOR 2004

Sir John Jeffries

Independent Chairman, Retired High Court Judge

Mary Major

Secretary

Representing the public:

Sandra Goodchild

Chartered Accountant, Dunedin (until December)

Dinah Dolbel

Barrister, Auckland (until August)

Lynn Scott

Company Director, Whangarei (from August)

Aroha Puata

Lawyer and mother, Upper Hutt (from September)

Ruth Buddicom

Barrister, Christchurch

Stuart Johnston

Emeritus Professor, Lower Hutt (until July)

Denis McLean

Retired diplomat, Wellington

Richard Ridout

Farmer, Rangiora (until June)

Representing the Newspaper Publishers Association (NPA)

Suzanne Carty

Editorial Consultant, FairfaxNZ, Wellington

Jim Eagles

Travel Editor, *New Zealand Herald*, Auckland

Representing Magazine Publishers

Terry Snow

Freelance editor, Auckland

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

Alan Samson

Lecturer, Massey University School of Journalism

Murray Williams

Freelance journalist (from May)



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Chairman's Foreword

My eight-year term as chairman ends on June 30, 2005 and therefore the 2004 Annual Report will be my last.

There are a few observations centred on the changes that are appropriate as one leaves an organisation. These changes mostly took place on my watch. In my Foreword for the 1999 Annual Report I reproduced a remark by Franklin D. Roosevelt that, in a changing world, institutions can be conserved only by changing. A timeless remark is exactly that.

The central feature of the constitution of the Press Council is that it is self-regulatory, which carries with it the responsibility of reforming itself. Critical self-examination does not usually come easily but nevertheless must be rigorously undertaken to ensure the mission is met to the satisfaction of the public and the industry.

I finish my term with a strong conviction that self-regulation is the best model. I will not canvass the detailed reasons (they can easily be found in previous Annual Reports) but the only viable alternative is statutory control that, in certain circumstances might be satisfactory, but is by no means ideal. The Press Council in New Zealand is funded entirely from industry sources. Besides adjudicating on complaints the defence of freedom of expression is most effective from the platform of self-regulation.

When I took up the chairmanship in July 1997 there was awareness on the Council that the time had come for change. After 25 years in existence the need for repairs and maintenance was manifest. There were fairly persistent and legitimate criticisms levelled at the Council in two important areas, namely, jurisdiction, and the absence of a written code, or statement of principles. It was agreed – fairly, in my view – that these were needed for the sake of the public and the industry being informed about what the Council itself regarded as of importance in the area of media ethics.

The Council was established in 1972 and was one of the first such bodies in the world. At that time, the print industry in New Zealand consisted mainly of newspapers and a few magazines. The Council had jurisdiction over metropolitan and provincial newspapers and some of the community newspapers but none over magazines. The areas of growth since 1972 have been in magazines (particularly lifestyle magazines) and community newspapers. There were clear areas of the print industry over which we had no jurisdiction. New Zealanders have become huge magazine readers. From 1998 the Council itself moved to extend jurisdiction over practically all print media (including overseas publications) that had a significant public readership in New Zealand. There are a few minor exceptions.

The other main issue was the Statement of Principles. This was an area of difficulty but as part of self-regulation the Council itself had to take the lead. A Working Party comprising members of the Council and our constituent bodies, and representatives of the Newspaper Publishers Association was set up in 1998 and delivered a conclusion that was to adopt a Statement of Principles. It is worth recording that the debate on the Principles within the Working Party was quite vigorous. The Principles are different from a prescriptive Code into which complaints must fit. The Principles are to guide the public, but a potential complainant is permitted to go outside the terms of the Principles and choose their own language to express a complaint.

Towards the end of the last century the Internet was becoming a widely used method



The New Zealand Press Council 2004: From left, Denis McLean (Wellington), Terry Snow (Auckland), Aroha Puata (Upper Hutt), Lynn Scott (Whangarei Heads), Suzanne Carty (Wellington), Mary Major (Secretary), Sir John Jeffries (Chairman, Wellington), Ruth Buddicom (Christchurch), Alan Samson (Wellington), Murray Williams (Wellington). Absent: Sandra Goodchild (Dunedin), Jim Eagles (Auckland). Sir John Jeffries, formerly a judge of the High Court, is the independent chairman. The members representing the public are Mrs Goodchild, Ms Buddicom, Ms Puata, Ms Scott, and Mr McLean. Ms Carty and Mr Eagles represent the Newspaper Publishers Association and Mr Snow represents magazines on the Council. Mr Samson and Mr Williams are the appointees of the Media Division of the New Zealand Engineering, Printing and Manufacturing Union.

of communication. The Council, therefore, opened its own website and basic information about it, and its operation, was made available, including all recent adjudications. Many newspapers published on the Internet and we resolved to accept complaints about Internet publications so long as there were published hard copies.

There were other less radical changes such as revision of the Council's procedure and some relaxation of the past rule that an upheld decision had to be published in full to one that the substance of such an adjudication had to be published. This was in recognition of the difficulties with space encountered by magazines. As with other public bodies email is frequently used but the procedure rules must be followed such as supplying a copy of the publication the subject of the complaint.

The Council looked at the possibility of providing an appeal system but decided against such a procedure. Nevertheless to accommodate the possibility that the Council had overlooked some aspect of a complaint, or that new information had become available not previously known, we undertook to review an adjudication. Not perfect but it has been used and one adjudication has been withdrawn and cancelled. The Council allows dissents from a majority decision and that course has occasionally been used.

We think that, as a Council, it is fair to say the public and the industry have accepted the reforms of the Council. The only significant sanction the Council can impose is that the substance of an upheld adjudication must be published and from time to time this has continued to be criticised as toothless. Our experience is that editors publish such

adjudications and consider it a penalty. It would change for the worse the environment of complaints against the print media to try to adopt harsher penalties such as fines or suspension of publication as some suggest. At present the public has ready access to the Council and a minimum of simple procedures to follow. The procedure is free, quick and fair. No pressure is placed on a complainant to accept mediation, although that is available, and an adjudication is usually made. Most members of the public prefer the procedure of a complaint to the Press Council rather than to take action through the courts even if that is available.

Finally I come to the matter of personnel of the Council. Suzanne Carty, former editor of *The Evening Post* and nominee of the Newspaper Publishers Association, is the only member of the Council who remains since I took over the chairmanship in 1997. In 1999 the Council was increased by two to reflect the incorporation of magazines into the jurisdiction. All other members have been replaced and Suzanne is due to retire at the end of June. The Council considered that it was essential that there be a regular turnover of personnel and to that end introduced the eight-year rule whereby public members could serve two terms of four years and then retire. The rule did not apply to the chairman but I voluntarily accepted the overall term and at the time of renewal asked for only three years.

Mr Stuart Johnston, a public member, died in 2004 during his second term. The passing of Stuart was a great loss to the Council as he was regarded as an outstanding member whose contribution in time he devoted and quality of work were of the very highest order. The Council extended its sincere sympathy to the family over their loss.

Appointment of public members has been done by advertisement and the assistance of the Chief Ombudsman has been sought to meet the requirement of transparency. This system has proved to be very satisfactory.

On a personal note one of the most pleasant aspects of my time as chairman has been the exceptional cordiality of relationships on the Council. The Council has six members representing the public and five the industry. This arrangement, too, has been very satisfactory. At all times Council members have looked first and only to achieve a decision that has integrity and honesty so as to meet the Council's obligations to the public and the industry.

Finally, I come to the secretaries to the Press Council, of which there have been two in my time. Graeme Jenkins, a very experienced journalist who had spent all his working life in the industry, had been at the Council since 1992 when I took up the position of chairman. He knew all aspects of the publishing business and had a wide knowledge of the personnel in the industry. Graeme made a valuable contribution as secretary to the Working Party during 1998-9, in the time of the major changes. He had a particular interest in sport and covered for newspapers five Olympics, three Commonwealth Games, and five overseas All Black rugby tours.

In March 2001 Graeme retired and Mary Major replaced him, working at the Council every day on restricted hours. Mary's background was as a medical radiographer but before coming to the Press Council, she had graduated from Whitireia Community Polytechnic in journalism. Mary very quickly displayed an aptitude for the Council's work and has been of immeasurable assistance to the Council members and me. The Council has been very well served by its secretaries and I formally record on behalf of the Council and myself our gratitude for work performed so effortlessly and cordially.

The Press Council and the 'Big' Stories

New Zealanders, in general, sustain a high level of interest in world affairs and other big questions of the day. The issues may have far-reaching and challenging implications. Reporting them can, however, be a challenge, particularly for daily newspapers, in a relatively small market. There are two kinds of problems.

Exasperated readers seem often to be provoked into taking up their pens to complain to the Press Council because they find that coverage does not do justice to their own particular point of view on such weighty matters. They approach the Council as a sort of court of last resort able to uphold this or that perspective against reporting they see as unfair or unbalanced.

On the other hand complainants are apparently unable to get to grips with the limitations on resources both of people and finances that inevitably constrain in-depth reporting in this field. Even with major national stories it will be hard for editors to free up the reporting staff to follow the issues and delve deeply over perhaps weeks or months to achieve coverage of all the angles. The great global issues — war and peace, disasters, global warming, genetic engineering, ethical questions or the threat of epidemics — are even more difficult to cover from a New Zealand perspective. More than this, there is an inherent difficulty: newspapers are about news; space and time do not allow weighing of every shred of evidence or the production of an academic treatise. For that readers must resort to a library.

A complaint (Case 968) against *The New Zealand Herald*, for example, about publication of a report showing coalition casualties in the Iraq war was based on the proposition that balance and fairness required similar coverage of Iraqi casualties. The editor argued that the article was about the political impact of rising casualty figures in the countries contributing forces to the coalition. The information sought by the complainant was not relevant to the thrust of the report. The Press Council agreed. The report — so far as it went — was not inaccurate. Newspapers cannot be expected in every instance to cover all sides to a story. In this case the point made in the report, that coalition countries were beginning to feel the pressure from the casualty figures, had a narrow focus. Balance and fairness in relation to the overall issues involved in the Iraq war could not be assessed on the basis of a single report about one consequence of the fighting.

Other similar questions were raised in two complaints (Cases 971 and 972) against the *Sunday Star-Times* over an article based on American research that suggested that gays are able to change their sexual orientation. The starting point was a syndicated report taken from Britain's *Sunday Telegraph*. As well as reporting the research findings cited in the British report, the *Sunday Star-Times* interviewed three New Zealanders "who believed they had changed their sexual orientation". Again the issue for the complainants was one of lack of balance and unfairness. It was asserted that the *Sunday Star-Times* had failed to take note of qualifications to his research findings acknowledged by the American psychiatrist who had conducted the original research. The editor responded that it was

not possible for the newspaper to interview the American psychiatrist nor to critique the methodology of his research. Rather the purpose of the story was to introduce a New Zealand perspective with profiles of New Zealand ex-gays whose experiences seemed to corroborate the research findings.

The Press Council noted that in reporting on such areas of academic specialisation, newspapers are caught in a dilemma. "In whatever way the press handles these subjects, proponents for all sides of any issue will be critical that their purpose is not being served with sufficient advocacy," it said. The Council agreed with the editor that journalists cannot be expected to be experts in such academic areas. Although the complaint was not upheld, the Council suggested, nevertheless, that it is important to pay due attention to "the sensitive social and political currents which swirl around" studies of this kind.

A senior American authority on the subject of climate change complained (Case 962) that *The New Zealand Herald* had published the contrarian views of a well-qualified New Zealand scientist. The complainant asked the Council to find against the newspaper on grounds of inaccuracy, lack of balance and excessive advocacy in publishing views that cast doubt on what he claimed was the agreed international position on the evidence about climate change. The New Zealander's views, he said, "have no place in any serious scientific discussion". The Press Council rejects this line of argument and did not uphold the complaint, noting that newspapers are not journals of peer review and can neither be expected to pronounce authoritatively on the merits of issues nor to canvass all views in every article. "Advocates of a particular standpoint", the Council noted, "may not find the press always serving their purpose, but then the function of the press is to serve their readers in the broadest terms." The article in question offered a sceptical New Zealand point of view and accordingly made a valuable contribution to a very important debate.

A complaint (Case 966) against the *Waikato Times* over an article about war crimes raised another aspect. The report, taken from *The Times* of London, discussed the 1995 massacre in the town of Srebrenica in Bosnia and Herzegovina, which had been, it was stated, "under the 'protection' of 110 lightly armed Dutch peacekeepers who offered no resistance when the Bosnian Serbs stormed in" The complainant contended this was unfair to the reputations of the Dutch peace-keepers in that they had faced impossible odds and the bloodlust of thousands of heavily armed soldiers. The Press Council, in not upholding the complaint, found that the *Waikato Times* had printed a high-quality news story that in fact put the blame for the tragedy squarely on the international community. Although the newspaper had abridged a letter from the complainant it had given him the space to write in "energetic defence of Dutch honour". The Srebrenica story, wrapped up as it was in the whole sorry history of the wars of nationalism in the Balkans during the 1990s, could not be encompassed, to the satisfaction of all parties involved, in a single newspaper report.

In all four of these cases partisans of particular interests or points of view complained in essence that their interests had not been served. They clearly believed that the Press Council should take it upon itself to redress the balance in their favour. But this would be to direct newspapers as to the thrust and range of their coverage – a step down a very slippery slope that the Council refuses to take. In general such complaints miss the point.

A free press constitutes a public forum in which the widest possible range of views should get an airing. It is not the Press Council's function to determine what constitutes the "correct" interpretation to be put on reporting on the great issues of the day. There will always be some staunch protagonists of one point of view or the other who would wish to have a body like the Council police the thoughts of their opponents. Political correctness is not on our agenda. The idea is to let the arguments rage – and for the reading public to decide which side they are on.

The Press Council obviously sets store by the need for balance; the importance of accuracy, fairness and balance is established as the first of the Principles against which the Council examines complaints. The Council also aims to encourage newspapers to be as good and as professional as they can be, to report without fear or favour, and to range as widely as possible. Yet, for all the obvious constraints, it will usually do no harm to acknowledge another side to a story, the complexity of the subject or that a report is simply one view of a big, unfolding topic – thus alerting readers to the wider picture.

The facts are of course fundamental. The truth in human affairs, however, is elusive. The well-respected American political commentator, Walter Lippman, put it this way: *We say that the truth will make us free. Yes, but that truth is a thousand truths, which grow and change.*

Plagiarism

The difficult issue of plagiarism came before the Press Council in 2004 (Case 977) with a complaint about a *Southland Times* reporter stealing quotes from the Queenstown paper *Mountain Scene*. The reporter had done so after being declined an interview with Queenstown Airport Corporation chairman John Davies. Mr Davies had apparently referred her to the article in question, saying it was “word perfect”.

Applying the concept of plagiarism to the news media is no simple task: with its emphasis on “finding the news”, the medium is clearly in a different category from literary, artistic or musical works. The Press Council acknowledges that news is news wherever it comes from, and is able to be used freely. Judgment turns on the scale and detailed wording of the suspect material.

Nevertheless, it is accepted newspaper practice that when using direct quotes from another source, rather than obtaining them directly from the person quoted, a publication must attribute those quotes. The news media today regularly pull together a vast number of sources – wire services, syndicated articles from overseas newspapers, magazines to which clipping rights are owned, rival newspapers and the electronic media, as well as staff reporters – for a single story.

If the *Southland Times* story had been correctly attributed there would have been no basis for the complaint. Because the piece failed to credit the source or make any attempt at proper attribution, the Press Council had no recourse but to rule that the “paper had breached acceptable journalism standards”.

Plagiarism also became a public talking point in 2004 when young *New Zealand Herald* reporter Renee Kiriona, after an unsatisfactory interview with rugby league star Tawera Nikau, looked to the Internet for information about him. Finding a profile written by a *Waikato Times* writer, she added a few parts of her own for the top, then submitted it as her own. She subsequently re-interviewed Nikau, sending in a second version of her story. Unfortunately, she neglected to tell her editor who, with two story versions on her desk, combined the copy...

Writing about the Kiriona case in the *New Zealand Listener*, media commentator Russell Brown named some earlier sinners, including some of our most well-known journalism practitioners. He cites Shenagh Gleeson, the author of a backgrounder about the Kiriona affair, describing how in her own early reporting career on the *Waikato Times* she and other reporters, asked to “match” stories, routinely and “without reproach” lifted “chunks” from the originals.

In a 1977 Press Council case cited by Brown, former *Metro* magazine editor Warwick Roger, then a reporter for *The Dominion*, was censured for without permission taking quotes recorded by film-maker Richard Turner for a documentary on the Black Power gang, using them in two major crime stories. In its decision, the Council said that Roger agreed “he and/or *The Dominion* failed to make adequate acknowledgement that a very large part of those two articles (including all the direct quotations) consisted of the work of Richard Turner”. It upheld the complaint saying, “He had not thought it necessary to

approach the publishers of [a magazine that had earlier carried the material] to make sure they did not have an interest in the material.”

Talk about recent plagiarism in journalism around the world and the first name likely to spring to mind is Jayson Blair. Blair was the young *New York Times* reporter who became international news himself in 2003 after stealing sources and quotes as well as making up copy for a wide range of stories. United States media commentator David Plotz reminds us, among others, also of National Public Radio’s Nina Totenberg, who plagiarised a *Washington Post* story about American Speaker of the House Tip O’Neill when she was a young print reporter; and the *New Republic*’s Ruth Shalit, caught after having cut and pasted others’ material for five different stories. Other journalists have gone even further, notably the *New Republic*’s Stephen Glass (who backed up his fictions with fake websites and phone numbers) and the *Washington Post*’s Janet Cooke (who won the Pulitzer Prize for her story about an invented eight-year-old heroin addict).

Plagiarism has always existed in journalism and editors have always, and will continue to, come down hard on the practice. In his book *Quagmires and quandaries: Exploring journalism ethics*, Australian journalism educator Ian Richards cites from a 1938 French journalism charter: “A journalist worthy of the name does not commit any plagiarism”. The press in numerous countries, from Sri Lanka to Czechoslovakia explicitly ban the practice. In New Zealand the code of ethics set up by former newspaper owner Independent Newspapers Ltd (adopted by individual newspapers of Fairfax New Zealand) requires its editorial staff to “value originality in journalism and take every reasonable precaution to avoid plagiarism”. Both the Press Council’s Statement of Principles and the journalist union’s (NZ Amalgamated Engineering, Printing and Manufacturing Union) code of ethics require of journalists scrupulous honesty and accuracy. Coming from the other side of the problem, most senior journalists spoken to can recall at some time in their careers being plagiarised. No working journalist can seriously claim to be ignorant of the requirement not to plagiarise.

The matter could probably be left at that — accepting the inevitability of occasional transgressions and trusting in editorial vigilance — if not for two things. Firstly, the vast body of commentary emerging after Blair, Kiriona et al, has engendered a realisation that the practice, to some degree or other, might be much more widespread than thought.

All that’s bad enough. But what is of particular concern these days, thanks to electronic media and the Internet, is the ease by which plagiarism can be practised. Dr Richards correctly points to a virtually unlimited range of sources to plagiarise. But what about unpremeditated wrongdoing? It is easy to understand, if not approve, the modern-day journalist under pressure who might typically start a story by grabbing a couple of paragraphs of background material to slot into their own story without attribution.

Journalists know that to present someone’s work as their own is ethically wrong but somehow the practice of cutting and pasting electronically in this way seems to escape some people’s ethics alarm bells.

Some say the Internet is fair game. Cited in Martin Hirst and Roger Patching’s *Journalism Ethics: Arguments and cases*, educational consultant Dale Spender argues there is nothing wrong with searching the net for material, cutting and pasting it to come up with

something new, and calling it your creation. Cutting and pasting, she says, is the modus operandi of the Internet and “yesterday’s plagiarism is today’s way of earning a living”. Hirst and Patching beg to differ, saying of the practice, “without suitable attribution it is classic plagiarism”. It would be of extreme concern should Spender’s stance be taken up by younger generations.

Public relations brings another cloud to the issue. Many journalists believe the myriad press releases that land on their desks can be reprinted verbatim, though they are taught to use them as a springboard. PR practitioners often say they are bemused to see their work appear verbatim under a reporter’s byline – but they are never surprised. Seeing the material published, of course, is to their benefit, so complaints are unlikely. Some would say this sin is one of laziness rather than plagiarism.

In the academic world globally, plagiarism is of such concern that website and computer programmes like www.plagiarism.org and Turnitin have been devised to help teachers and institutions detect cheating by scanning and comparing hundreds of millions of pages of essays and exam papers posted on the Internet. Numerous cheaters are also routinely caught each year simply by Googling paragraphs that have been submitted.

The only possible way to confront the dilemma is to start by recognising that the intrinsic dishonesty of plagiarism is the same whether from electronic or non-electronic sources, PR press releases or a book. As Dr Richards points out, it is possible that under pressure from the sheer amount of material accessible via the Internet, the understanding of what constitutes plagiarism can “fray at the edges”. That does not mean we should accept dishonesty, rather that there is a need for increased debate and consideration. A first step would be to remind all journalists of their obligation to truth and honesty, along with a nudge that any sort or degree of plagiarism is unacceptable. But that’s the easy part. Given the immensity of the net, the bigger problem remains — how to detect it in the first place.

Press freedom — an ever-present issue

When the New Zealand Press Council was set up in 1972, one of its founding precepts was to maintain freedom of the press. No press freedom, however, is possible without free speech, a freedom it is often said New Zealanders died for in two world wars.

Today, freedom of speech is underpinned in this country in a way it has not been in earlier times. Though New Zealand does not have something akin to the United States Constitution and its First Amendment, we do have the Bill of Rights Act 1990. The public and the news media are its chief beneficiaries.

It, in Section 14, says: “Freedom of Expression – Everyone has the right to freedom of expression, including the freedom to seek, receive, and impart information and opinions of any kind and in any form”.

The Act could be changed by a simple majority of parliamentarians – it is not entrenched. But it would be a brave Government, let alone a Parliament, that tried to fundamentally alter the legislation. In an age that demands more accountability from all public institutions, including the media, tinkering with a law that underwrites basic Kiwi freedoms would be more than unwise.

The Press Council finds that freedom of the press and thus, freedom of speech are liberties still not well understood by New Zealanders in the early 21st century. It is not uncommon to hear that an individual believes in free speech, but ... The “but” frequently alludes to an opinion with which the writer disagrees.

In other words, some complainants – those unhappy with opinions expressed in newspapers or magazines – believe in free speech as long as the person exercising it expounds a view they agree with. To disagree with those views, however, means the writer’s very right to express them can be called into question.

Again in 2004, the NZPC received a number of complaints that, when reduced to their essence, hinged on an unwillingness to see a point of view expressed that differed from the complainant’s own or on a discomfort that a report or opinion piece did not place enough – or perhaps, any – emphasis on their particular viewpoint.

Ours is but a small echo of a robust debate that has continued in the US since the terrorist attacks of 2001. Even in the world’s oldest democracy, the ability to express unpopular opinions is becoming harder.

Criticism from the political right has uncomfortable echoes of the 1950s’ persecution of communists, perceived communists and fellow travellers by the House Un-American Activities Committee and Senator Joe McCarthy.

Just this year, US author Ted Rall wrote an article about Ward Churchill, a professor at the University of Colorado, whose resignation is being demanded by a right-of-centre news anchor on the Fox television channel because of a piece Churchill wrote on the web after 9/11, denouncing American jingoism.

Rall said, “Popular opinions don’t require protection. The First Amendment was written to protect free expression that causes discomfort, even rage, by the majority. Both the

ensor and the civil libertarian will probably disagree with [Ward] Churchill's assessment of American collective guilt [over September 11] but the true defender of free speech recognises his own revulsion as further reason to err on the side of open discussion over silence."

This isn't just a problem of the 21st century. In 1945, author George Orwell wrote: "In our age, the idea of intellectual liberty is under attack from two directions. On the one side, are its theoretical enemies, the apologists of totalitarianism, and on the other its immediate practical enemies, monopoly and bureaucracy. Any writer or journalist who wants to retain his integrity finds himself thwarted by the general drift of society rather than by active persecution."

Though the debate does not rage to the same extent in this country, the Press Council and newspaper editors find themselves having to defend free speech – or freedom of the press – more often than they would wish. This is a battle that is never truly won.

The defences need to be mounted wearily often, the ground slips back more frequently than it ought and moves forward agonisingly slowly.

But this is a battle the Press Council is proud to help wage. Without freedom of speech, and by extension, a free press, democracy cannot function. Former US president and founding father Thomas Jefferson, put it well: "Were it left to me to decide whether we should have a government without newspapers or newspapers without government, I should not hesitate to a moment to prefer the latter."

One local example of how free speech needs to be defended involved a complaint by American Michael Mann, unhappy at two articles in *The New Zealand Herald* in August 2003, and that came to the Press Council in early 2004. They quoted, in part, the views of self-confessed climate-change agnostic and Auckland University professor Chris de Freitas.

The grounds of the complaint from Prof Mann, from the University of Virginia's environmental sciences department, were that the articles were inaccurate, lacked balance and showed excessive advocacy. The complaint was not upheld.

In its adjudication, the Press Council said: "The press's requirements ensure a ... popular and general approach to the most arcane subjects and wide-ranging, mass-readership publications will report minority views and even opinions that may be manifestly counter to the prevailing wisdom, or even wrong ... Advocates of a particular standpoint may not find the press always serving their purpose, but then the function of the press is to serve their readers in the broadest terms."

Another example was a sports column in *Hawke's Bay Today* about former All Black coach John Mitchell. Mr J R Braithwaite said the column was "highly personal", "unbalanced", "abusive" and an "excellent example of why people in the public eye desire as little contact with the press as possible".

In deciding not to uphold the complaint, the Council agreed with the paper's editor who conceded, in correspondence over the matter, that the column was in poor taste and did not meet required standards. The Council also agreed that it was unfortunate that criticism of the coach was not redeemed by a higher standard of wit.

Its adjudication went on to say, however, that it had consistently upheld the right of writers of opinion pieces to express their views in strong, even distasteful terms. It repeated comments from its 2002 annual report, where a writer in *The Times* of London was quoted as saying, "It has to be said at regular intervals that press freedom is empty if it

means freedom to be caring, compassionate, thoughtful, sensitive and sensible. True freedom of the press can only mean the freedom to be vulgar, stupid, ignorant, offensive and just plain wrong". The writer was, of course, referring to opinions, not facts.

Another complaint in 2004 also reflected the need for the press to be able to comment unfettered about matters of public interest.

Mr Noel Cox, of Auckland, was unimpressed by a column in *The New Zealand Herald*, reprinted from *The Independent* of London, about the British royal family. Mr Cox took exception to the portrayal of the royal household by columnist Beatrix Campbell. Mr Cox claimed that even opinion pieces should adhere to certain minimum standards of accuracy, fairness and balance.

In its adjudication, the Council acknowledged that Mr Cox was entitled to defend and support the royal household. It then said: "The Council also recognises the acknowledged right to free expression of a columnist's clearly stated opinion. In this case, the article was unmistakably attributed as an opinion piece."

A final example involved Wellington's *Dominion Post* newspaper and a regular correspondent, P J Carmody. Mr Carmody complained about a newspaper editorial and a Tom Scott cartoon, both dealing with the abuse by a Catholic priest, also a teacher, at a number of the Church's schools.

Mr Carmody argued, among other things, that the paper had an anti-Christian agenda and that its editorial should have restricted its criticism to the priest in question, rather than refer to the Church.

Editor Tim Pankhurst defended the editorial, saying he did not resile from it and that sexual abuse by a priest of children in his care as well as the Church's handling of the matter over time were matters of considerable public interest. He conceded that the Scott cartoon was tough, but said the cartoonist was encouraged to give his cartoons a strong current-affairs edge. The Council did not uphold the complaint, saying in reference to the cartoon that cartoonists had wide licence to use their skills to feature the news of the day, humorous or not. "Editorials and cartoons are universally recognised as opinion pieces and are published at the discretion of the editor."

New Zealand is fortunate that arguments about press freedom, and freedoms generally, are carried out in a healthy democracy, where such principles do not have to be defended by one's life.

When the world marked Press Freedom Day in May 2004, already 13 journalists had been killed since January 1, most of them in Iraq. At the same time, 133 journalists were in jail in 22 countries, including Cuba (29), China (27), Eritrea (14), Iraq (12) and Burma (11). More than 70 "cyber-dissidents" were also in prison, most of them in China, for posting information on the Internet.

The year before, 2003, 42 journalists were killed, 766 were arrested, 1460 were physically attacked or threatened and 501 media outlets were censored. New Zealand neighbour Tonga features on that list.

Though no journalist in this country feels physically threatened for merely doing their job that does not mean defenders of press freedom can pack up their tools and go home. In democracies like this, attacks usually take a more sophisticated form. And whatever form they come in, attacks need to be firmly repelled.

Blogging – comment on interesting developments

One of the most vital challenges to the mainstream media to emerge during 2004 arose from the unprecedented growth in the Internet. In the first quarter of 2004, more than 4.7 million websites were created. By then, the Internet had well over 700 million users. Research showed increasing numbers of people had given up newspapers, or watching television, in favour of their computer screens.

News sources on the Internet span from the traditional media to weblogs (known as “blogs”). Blogs are personal journals on the web that are shared among the global blogging community. They have been said to represent a “passage to the public sphere” where journalism is seen as a “practice” rather more than as a “profession”. Bloggers are not reliant on the judgment of an editor, or a position in an established publication, for the vehicle to put their views before others. By posting an on-line blog, they control publication of their own views. Not surprisingly, bloggers, and their blogs, are as diverse as the world’s population. Proponents of, and commentators on, blogging argue that this increase in human freedom adds to democratic possibility.

The use of blogs exploded during 2003-2004 and shows little sign of diminishing. It is significant that some bloggers have acquired readerships greater than many newspapers.

Though blogs were initially dismissed by many media commentators and observers, the increasing penetration of news blogs into the realm of not only journalism, but serious journalism, has led to a belated acknowledgement that readers are not deterred by the subjectivity of blogs. Some commentators even claim that bloggers are forging a grassroots journalism that, although free from the controls and ethics of professional news services, is nevertheless subject to a vigorous critique within its own community. There is no shortage of evidence in the blogging community that many of its participants are informed media critics who apply rigorous scrutiny to the writings of their fellow bloggers just as they do to the mainstream media.

Mainstream media is showing an awareness of the need to respond to this blogging phenomenon. Dan Gillmor in *We the Media: Grassroots Journalism by the People for the People* wrote,

“Big media ... treated the news as a lecture. We told you what the news was. You bought it or you didn’t. You might write us a letter; we might print it ... it was a world that bred complacency and arrogance on our part. It was a gravy train while it lasted but it was unsustainable.”

He predicted that news reporting would become more of a conversation where the lines would blur between producers and consumers, “changing the role of both in ways we are only just beginning to grasp”.

When Salam Pax (The Baghdad Blogger) reached hundreds of thousands of computer screens during the Iraq occupation, in a blog that ran between September 2002 and August 2004, many of the deceits in the supposedly “objective” sources of reportage were

dramatically exposed. His blog never claimed to be anything other than subjective yet, despite all the attempts to attack his credibility and to criticise his lack of objectivity, his accounts frequently proved more reliable than many of those deemed to be from objective sources.

Radical voices in media commentary see blogging as answering the call for a more democratic media that is capable of responding to what they claim is a “politico-corporate media web of deception”. Some bloggers see themselves as answering the calls for a “regime change” to report real news that “speaks truth to power”.

Among the blogging community, there is plenty of discussion that evinces a lack of confidence in the ability of the Fourth Estate, in its opinion-forming role, to avoid the taint of partisanship and self-interest. Most often, this comment is associated with some analysis of media ownership, the increasing global reach of the conglomerates concerned, their joint venture interests and their other industrial activities. There are calls for a “fifth estate” operating on more democratic lines that could protect the interests perceived to have been formerly safeguarded by the Fourth Estate. There is no lack of recognition on the part of these bloggers that the press can perform essential political, social, economic and cultural functions in a democracy. But many people express concern that media content can be determined or affected by the pattern of ownership, management, regulation and subsidy in media organisations.

During the Iraq occupation, when the embedding of journalists became widespread in an unprecedented way, the distrust of many readers toward conventional news sources in a war setting incrementally increased. Perhaps, therefore, it is no accident that it was during these hostilities that the most marked explosion of blogging has occurred. Despite their perceived disadvantages, for many readers blogs were preferable to the alternative. As Dan Gillmor has observed, “In the emerging world of Internet communications, obfuscation and lies will work even less than before.”

Bloggers do have the advantage of needing only their own observations, a personal computer and a power source to spread their opinions to millions. The comparatively cumbersome processes and machinery of publication involve identifiable journalists gathering news, time, people, distribution and in the end public and legal accountability, and are tortoise-like in comparison to the racy speed of a blog.

Bloggers are not a passive audience. They have the tools to challenge mainstream media and to create media themselves. Potentially, this could make the media better for everyone. Already bloggers claim credit for fulfilling this role.

Most notably, the bloggers claimed credit for exposing the forgery in candidate George W Bush’s National Guard documents posted on the CBS website during the 2004 United States presidential election. Within 19 minutes of the *Sixty Minutes II* programme beginning, bloggers were documenting the first signs of the forgery. Ultimately, they proved correct and programme frontman Dan Rather resigned. While Peggy Noonan wrote in her op-ed in *The Wall Street Journal*, “It was ... a great historical development in the history of politics in America”, it could just have as readily served as a warning to the media itself for as one of the bloggers responsible noted, “We are just getting warmed up”. While mainstream media’s authority was in this instance weakened, it didn’t have to be. Poor journalism was the real culprit.

CNN's chief news executive resigned after being pounded by bloggers for reportedly saying that US soldiers had targeted 12 journalists killed in Iraq. And bloggers claimed credit, too, for exposing James Guckert (aka Jeff Gannon) who had gained a White House press pass despite questionable credentials (a false name, a tax-evasion problem and advertising his services on a gay escort site) but who could be relied upon to ask the "soft question" for his Texan republican sponsor.

Before their respective news organisations caught up with them, a number of reputable journalists were also active in the blogging community during the Iraq occupation. Many appeared to enjoy the immediacy and interactivity of the blogger's world with one foreign correspondent commenting, "Bloggers have made me a better journalist because they find my mistakes, tell me what I am missing, help me understand nuances..."

Bloggers have been active, too, in the corporate sphere. When (alleged) trade secrets of Apple Computer Inc were published by bloggers, Apple sued and sought disclosure of sources for the information published. The bloggers have relied on the journalist's right to keep their news sources confidential. It is only a matter of time before the Courts will be required to determine whether this protection will be extended and, if so, in what circumstances.

And bloggers have challenged the politicians' power to control information too. It was a blogger who used the Freedom of Information Act to argue that Americans should be shown photos of the flag-draped caskets of their dead returning from Iraq and that to withhold this information amounted to an unacceptable censorship. As George Orwell wrote in his proposed preface to *Animal Farm*, "If liberty means anything at all it means the right to tell people what they don't want to hear."

Having found their voice, it is unlikely that bloggers will now surrender it. Blogging might challenge the mainstream media, but it can just as easily provide it with real opportunity. Engagement by the public in the media (in all of its manifestations) must enliven it. Far better this, than to remain in the state which Noam Chomsky described in 1994,

"... that for 80% (of the public) ... the main thing is to divert them ... just get them away. Get them away from things that matter. And for that it's important to reduce their capacity to think." [See *Noam Chomsky and the Media* Ed. Mark Achbar, Black Rose Books]

Despite Chomsky's view blogging goes some way to show that some people, at least, still want to think. This is the challenge that the bloggers offer mainstream media. It is a challenge that the media can, if they are willing, rise to meet.

World Association of Press Councils conference

Bagamoyo, Tanzania

Sir John reports

At the request of the WAPC I attended the conference in Bagamoyo, Tanzania held on October 23-26, 2004. I delivered a paper, which is set out hereafter.

The WAPC had in recent times had its own difficulties, about which I refrain from commenting. However, at the Bagamoyo Conference it was reported that the Alliance of Independent Press Councils of Europe (AIPCE) rejected the idea of becoming a more broadly based organisation and including Press Councils outside Europe. Also it is reported they rejected the idea of creating a minimum infrastructure effectively avoiding an independent website. That is their choice but it seems to me that those decisions emphasise the need to support and strengthen the newly structured WAPC. In my view it would be detrimental to the cause of self regulation and freedom of expression to leave the majority of the world without some organisation committed to the ideals and mission of the WAPC should it fail.

As many experienced conference attendees will testify it is the informal social transactions that take place where so much valuable information is traded and exchanged. That was my experience at Bagamoyo and I appreciated first hand the value of such an organization as the WAPC conducting a conference in Africa.

The Tanzanian Media Council hosted the conference. The three-day programme was varied and interesting. Some papers such as that of Mr Reginald Mengi, a media-owner in print and electronics in Tanzania, were particularly interesting especially for Tanzania and other African countries. Two other papers by representatives of the World Press Institute of USA entitled "Globalisation and the Media" (Mr Bob Porterfield) and "Shaping a Competent and Effective Media for Social Development" (Mr Clayton Haswell) were of general interest worldwide.

A paper of particular interest to women worldwide was an excellent presentation "Gender and the Media" by Thandi Shezi.

There were panels and many other papers too numerous to mention.

There were about 110 attendees from 23 countries. The conference was well planned and organised and those there found it very worthwhile.

Media Self-regulation: A Press Freedom Issue

A paper on the theme "Media Self-regulation: A Press Freedom Issue" although apparently straightforward is not an easy concept. It is best not to engage in fruitless analysis of meanings of words but to deal with the central point which, in my respectful opinion is: how is press freedom affected by the model of self-regulation as opposed to other models such as government legislation.

Several years experience in issues of self-regulation and press freedom have taught me to avoid sweeping generalisations and adherence to one solution. Most now accept

that freedom of the press is an essential for a truly democratically governed country. Nevertheless correlatively most agree that in democracies we are all greatly affected by what appears in the press and that there ought to be some form of regulation available to the general public to have complaints resolved cheaply, expeditiously and, most important of all, independently. The recognition of this concept of regulation is relatively new. The trick is to have sufficient regulation so as to satisfy public demand without impinging on the priceless value of freedom of expression.

The term self-regulation is not one that has attracted academic analysis. The reason no doubt is that it is self evident. The undertaking, or social service, takes on the burden of itself providing for the public discipline of the undertaking and a complaint resolution body in which the public can have confidence that its complaints are being dealt with fairly and independently. The range of activities can be straight commercial activity such as banking, insurance, financial services and advertising; professional services such as medicine, law, accountancy and dentistry and, for us particularly, newspapers and print journalism. It is regulation of the press that sharply raises free speech issues.

There are definite undertones of being a judge in one's own cause that I hope can be dispelled by the outline of the New Zealand experience, which is by no means novel or unique. Furthermore if the undertaking financially supports or establishes the complaint resolution body and staffs it, it *must* be prepared in the interests of justice on occasions to bite the hand that feeds it.

The New Zealand Press Council is composed of 11 members of whom six are public members (that includes the Chairman) and five industry members. In making decisions the Council rarely, if ever, divides along industry members versus public members, which latter group is in the majority in any event.

I turn to the free press issue. It is best if an audience is told candidly and up front where the speaker stands. Without dogmatism I hope, I stand on the platform that press freedom is better served by self-regulation. One must never forget that regulation must be tempered and governed by the necessity of not damaging what I have described as of priceless value, namely free expression.

I turn now to describe the system of self regulation of a free press in New Zealand (this includes most print journalism and the Internet if there is also produced a hard-copy publication and overseas publications if they have a significant readership in New Zealand) which I know most about and which is typical of the system in many countries around the world.

The New Zealand Press Council is a self-regulatory body set up 33 years ago by print industry representatives, namely the newspaper owners and the journalists' union. They were, and still are, the founding constituent members and were the two signatories to the Constitution from which we get our authority. We are probably the oldest press council in the world after the United Kingdom, which established one in 1954.

The purposes of the Press Council are to provide the public with a complaint-resolution body, protect freedom of the press, and maintain the highest standards in journalism. They are the objectives specifically stated in the Constitution. The Council was among the first bodies of a straight commercial activity to provide the public with a complaint-resolution service. The Press Council is a social enterprise that we hope is recognised as

an entity that is making its contribution to societal life in the country. Unusual for today, this service is provided free to all. We have received complaints about newspapers from overseas readers.

Self-regulation is a most important core value of the Press Council. The only viable alternative to self-regulation is statutory control. The central feature of self-regulation is retention of independence outside central government control, thus giving the Press Council an unrestricted mandate to control its own industry and, as a responsible body known to the public, to protect freedom of expression. It is quite usual for major government departments and even Ministers themselves to lay complaints with the Press Council. We have had a newspaper complain about another newspaper. Any body or person may complain to the Press Council.

The Press Council is completely independent of any government influence or taxation support. Funding comes entirely from the industry. The nature of its service is a public body-social enterprise activity sharply focused on free expression in a democratically governed country.

The Press Council is an autonomous body in that it is self-governing. But as its business is to offer a service to the public as a complaint-resolution body, to fulfil its function as a protector of freedom of expression and standards of journalism – all public issues – it must pay strong attention to the public and make itself transparently accountable. Transparency for the general public and other users of the Council's services is essential.

The group of readers within the industry have a particular reason for knowing about the Council and are obvious readers of our annual reports. Every editor in the mainstream industry is sent a copy of the annual report, as is every Member of Parliament. The Council has a statutory obligation to supply the National Library Service with copies. The annual reports are available to 10 journalism schools as a valuable source document for them. We hope the widespread dissemination of annual reports stimulates interaction and monitoring of the social service.

At the 25th anniversary, in 1997, of the establishment of the Council it undertook a review to measure whether it was meeting the public needs having due regard for some fairly persistent criticism that was coming our way. In other words, we embarked upon reform. An aspect of self-regulation that must be kept to the forefront is that the self-regulatory body itself must keep a sharp and disinterested eye on its own performance. We found in that review that there were several areas that required our attention. Extension of jurisdiction to cover most print media, and the need for a written document that informed the industry and public of the Press Council's mission, were the most important. These ends were both achieved, but not without some hitches.

Jurisdiction was achieved but without the co-operation of a significant group of publishers. Jurisdiction is a classic example of one of the downsides of self-regulation. Self regulation has no authority to legislate, which is obvious. To get people and bodies to accept the rulings of the Press Council it must do so by persuasion and appeals to publishers' self-interest. The failure of some to contribute and co-operate has not prevented our provision of services to the New Zealand public under the complaint system.

We called the written document the Statement of Principles and it has been a success and well used by complainants and editors.

The foregoing raises the authority of the Council to perform its duties. It has no legislative powers and must rely heavily on persuasion to achieve its ends. This is a large issue but some corporate actors will be aware of the difficulty a self-regulatory body faces without mandatory powers. The New Zealand Press Council's only substantial sanction is that the publication, the subject of an upheld complaint, must publish the adjudication. This is surprisingly powerful in the New Zealand context. However, it must be acknowledged it is not strong on punishment. We have decided not to seek punitive powers because that strategy can be expensive, time-consuming and counter-productive. It also encourages some corporate actors to become adversarial and obstructive.

What then is my closing argument to support the proposition that self-regulation positively contributes to press freedom?

Self-regulation is the system that touches most lightly freedom of expression. The alternatives carry greater danger of interference with press freedom. If one's activity is primarily complaints resolution then there is never any shortage of critics. The criticism must be borne and objectively assessed. If it is valid it must be answered.

There is always a body of opinion, often stemming from academics, that there is a better way. In New Zealand we are not free from such agitation, often well expressed and argued. The better way usually involves government intervention and that has recently taken place in New Zealand in regard to regulation of the medical and legal professions. There is now for the legal profession a form of co-self-regulation but that is another story.

A little appreciated phenomenon is that governments support self-regulation because they simply do not want to burden themselves with the problems associated with attempting to control the print media. One hopes that this will continue to be so for New Zealand but complacency is to be avoided.

Self-regulation can and does work well in society as an alternative to defamation proceedings in the courts. It does so in New Zealand. An aggrieved person who feels damaged by a publication can get satisfaction by an upheld decision from a press council. The complaint procedure is fast and fair at no cost. In New Zealand we have no power to impose monetary penalties as a sanction but we have found many complainants are satisfied if there is vindication of their complaint.

Finally, free expression is a very powerful doctrine with the potential for divisiveness, but nevertheless that cost must be borne for the greater good of overall freedom.

‘Medical misadventure, patients’ complaints and the media’

Report on HDC seminar, by Terry Snow

In December 2004, the Health and Disability Commissioner (HDC) Ron Paterson organised an all-day seminar titled “Medical misadventure, patients’ complaints and the media”. His concern stemmed from the basic question, what is the role of the media in reporting medical misadventure and complaints against doctors?

The Press Council was invited to send an observer. When the question arose about how the Press Council worked as a regulatory body, it was explained how

- the self-regulation principle operated;
- what the Press Council’s principal objects and Statement of Principles were;
- the fact there was a majority of public members on the Press Council;
- that there was ready and cheap access for the public after they had addressed their complaints to a publication first.

Despite some apparent unhappiness in the medical profession with press coverage, in the past six years there had been only one complaint to the Press Council from a doctor and two from District Health Boards.

The genesis of the seminar was the public debate arising from the Commissioner’s annual report and the section “Trial by media”. There he stated that doctors were being scared out of practice by hostile media publicity during complaint investigation, and a majority of disgruntled patients were quick to contact the media despite the willingness of many providers to disclose their mistakes and say sorry. His report did say most media reporting of health issues was positive, and name suppression for doctors found guilty under the complaints procedure should be reserved for exceptional cases. But reporters should aim for fairness and balance in their stories.

The New Zealand Herald responded with an editorial “Let’s get real on medical complaints”, which suggested doctors enjoyed real protections in New Zealand. Letters to the editor both praised the editorial, and criticised it for oversimplifying a complex situation.

The general effect of the seminar for the participants was to make the medical profession’s leaders and the media representatives present aware of each other’s concerns. Of 40 participants registered only six were from the media, and three of those were speakers. A practical suggestion at the end of the session was that the Health and Disability Commissioner might advance education about complaint reporting by giving talks in-house to general reporters and sub-editors as well as to the specialist health reporters, and that use be made of the Journalists’ Training Organisation.

The seminar was conducted under Chatham House rules so that no comments made during the day were to be attributed to any identifiable individual. There were four sessions.

The consumer perspective

The consumer advocates and a former claimant against doctors and a District Health Board (DHB) spoke of the media as always being used as a last resort when doctors, a

hospital or DHB failed to satisfy them or respond to their complaints. Usually the cases were very serious — the death of a young girl, a woman misdiagnosed with breast cancer, the practice of a doctor that made women feel unsafe.

The advocates warned about the two-edged nature of media coverage — likely to help but also exposing the complainants' private lives and details, and not always producing the angle or approach they expected. Mention was made of the way the Cartwright inquiry had changed the face of bland medical reporting, and the usefulness of the media in the cases involving health professionals Parry, Botterill, Morgan Fahey, and the baby hearts stored at Greenlane Hospital.

Practitioner and employer perspective

The doctors presenting this session said recent medical journal articles talked about the stresses on doctors from adverse publicity, and the negative effect this had on the recruitment of doctors. Under the old regime, a doctor could apologise directly to a patient for a mistake but the new regime had management systems built into it. It seemed that doctors were working like lawyers in following systems and processes.

The doctors themselves were divided between the points of view that any publicity equated to “trial by media” (the BBC charter about balance and fairness was quoted) and a genuine recognition that doctors were not communicating well within the health system or to their patients and the public generally. This then reflected in complaints brought up in the media.

Doctors made the point that complaints against doctors were professional not criminal, and the media did not make this distinction. Judgments were quoted that in the Parry case “the facts do not support the public hue and cry” and in the Southland Burton case “no fault was found with a doctor’s supervisory skills”. Only a small percent of complaints against doctors were upheld.

A media riposte to this point of view was that while doctors regarded themselves as victims, they were the second victim and the patient or complainant who had a genuine grievance was the first victim. If more attention was paid in the first instance to the first victims so that their complaints were alleviated, there might not be second victims such as doctors suffering under the stress of publicity about their medical practices.

It was suggested that there was still a lot of inadequate communication within the health system itself and this led to patients feeling they were not being told the whole story, or not understanding what was going on. There was reference to the fact that within various hospitals it was rare for patients to have a single health carer who could advise of the whole picture and what was happening, as many different doctors visited a patient.

From the DHB perspective, it was acknowledged that it was important to identify complaints early, especially after bereavement, otherwise patients complained and went to the press.

- Complaints were rarely about individuals, and the root causes were usually issues within the system. Complex issues often lay behind major complaints, but when these were dealt with in the press they were usually simplified to blame an individual.
- Complaints were mostly about rudeness, delays or the dismissive manner of staff.

- Communication with the press could often come out as wrongly quoted or inaccurate medicine.
- DHBs were often spending a lot of time interpreting between the management and medical layers.

Discussion that some media could be trusted (National Radio) and some could not (flashy TV shows) drew media comment that the medical profession had to be aware that different kinds of media served different audiences with different styles and approaches to stories. Sensationalism was not the same as large headlines, for example, which were simply in large type to draw attention to a story.

Regulatory perspective

It was explained the NZ Medical Council (NZMC) role was to promote public health and safe practice, but as the profession could lose touch with the public, the media had a role to play for doctors. The profession could drift away from the public as happened with the baby organs preserved at Greenlane. This opinion immediately drew a comment that this was not losing touch but inhumane, and a fundamental breach of the rights of families and patients.

The seminar was told the role of NZMC had changed too — lay members meant it was not a closed shop protecting members, but still a major consideration in name suppression was the health of the doctor, unless the doctor agreed to be named. It was later commented that most complainants in disciplinary cases wanted the name of the health professional published, even at the cost of being identified themselves.

Doctors felt that though the first role of the media was that of public watchdog, the media must do its homework – they set aside time for senior health reporters, but the downside was that newspapers often went once lightly over stories. The media distress caused to doctors was not to be underestimated — why were health professionals picked on?

The regulators discussed the pros and cons of name suppression, suggesting the new combined Health Practitioners Disciplinary Tribunal now might remove anomalies over the way name suppression was applied. They urged the media to weigh up the balance between protecting doctors as well as the public. In the matter of complaints, as soon as a patient approached the media with a grievance, they often checked with the HDC to see whether there was a complaint in train, but the process might not even have started. The media comment was that news was timely, and the complaint process worked on a different time scale.

Media perspective

Media representatives explained that, despite the perception of the medical profession, not many complainants came to the media. It was a last resort when patients couldn't get satisfaction — the Gisborne women and the cervical smear inquiry revealed that complainants had tried for three years with the medical system before putting their story to the media. It was not an easy thing for complainants to go public.

The seminar heard that the media saw the “trial by media” accusation as a phrase that tripped too easily off the medical tongue. Contrary to the picture of a sensationalist press beating up medical complaint stories on their own initiative, most came from official

sources. A year's reporting of complaints about doctors in the *New Zealand Herald* was given as an example. Of 19 stories about complaints against doctors, 13 were reports of tribunal hearings, one a Parliamentary disclosure, one from the HDC, two from the courts, one of an overseas practitioner struck off and one NZPA story about a Christchurch surgeon being struck off.

The media published stories not just because they were good copy but good stories, which was another thing. Misadventure was good copy because we were all patients. Doctors were perceived as knowing everything and did not do a good job explaining themselves (to patients, to the public or the media). Also, despite criticism of the media, doctors were not averse to using the media when it suited them.

The media representatives said privacy was often used by doctors as an excuse for not talking about a case. If a reporter asked permission of a patient to talk to their doctor, it was responsible reporting. Some medical criticism of the media reporting on complaints against doctors was simply shooting the messenger for reporting what was actually happening. The media was reporting what it saw.

Doctor-patient relationships were private and the majority should stay that way. But there was a point where public disclosure became a matter of public interest and a line had to be drawn where that happened. Stories about misadventure and medical complaints were not run to serve the financial interests of the papers, contrary to medical claims.

The main motivation for people to complain to TV about medical stories was also that they didn't want the same thing happening to other people. There were frequent calls to TV with complaints but very few stories made it.

Editors were also mindful of the precious reputation of doctors and careful not to run stories without proper checking. Editors were very aware of defamation and did not leap into print. Very few of the complaints made to the press about medical situations saw the light of day. But editorial mistakes could be made and if so, there needed to be immediate redress.

Openness with the media was best, the seminar was told, although the Waitakere hospital decision to be as deliberately open as possible about an operating theatre fire during a caesarean operation led to both good and bad results. The chief executive found all his cautious provisos surrounding the possible cause, while it was still being investigated, were edited out by TV to produce a single sentence answer, leading to a critical reception from his medical colleagues.

Doctors resistant to stories in the press needed to ask if they thought a patient had the right to know about a complaint in process against a health practitioner, so they could choose their health professional safely. Wouldn't doctors themselves in a different region or country want to know how safe another practitioner was before sending members of their family to be treated? It could be that the system was at issue. But the need of patients, and what might happen in future if there was bad medical practice, drove stories.

In general discussion it was acknowledged that there is pressure on resources in newspapers, and the more junior reporters were prone to misunderstanding complex medical stories. But in the seminar there was vigorous public defence of the junior reporters adhering to ethical approaches to medical stories, in the same way that junior doctors would be expected to adhere to the same ethical principles as their senior colleagues.

In Memoriam

Stuart Francis Wilson Johnston 1931–2004

Stuart Johnston, retired professor of English and stalwart member of the Press Council, died on July 4, 2004.

Since his appointment as a public member in July 2000, Stuart was a champion of freedom of speech, the right to publish and, in particular, clear and precise expression of thought and fact. Many was the time that Stuart altered a sentence of an adjudication immediately enhancing the sense and clarity of what was being expressed. He was also our in-house grammarian.

Not only did Stuart bring to the Council table his well thought-out contributions to the consideration of complaints, he also worked behind the scenes on the review of the Constitution and Press Council pamphlet. It was reassuring to the other Council members to know the work was in such steady hands. He scoured the Internet and forwarded many items of interest to other Council members, helping to keep everyone up-to-date with items of international import. If he had any one complaint about the media it was that editors did not seem to recognise the value of a quick and reasonable correction or apology. He admired the Ian Mayes' "Corrections and Clarifications" column in *The Guardian*, and was delighted when *The New Zealand Herald* started their version.

It was with concern and sadness that the members noted Stuart's failing health. It was a measure of the man that he marshalled his remaining strength and energy (and indeed scheduled his blood transfusions) to allow him to attend the Council meetings and at the end, as late as the 20 June meeting, Stuart contributed to the meeting by phone.

The Council gives thanks for his friendship, advice and outstanding contribution to the work of the Press Council. We extend to his family our deepest condolences.

Personnel

There were several changes in the membership of the Press Council during 2004. Among the public members Richard Ridout retired in June and was replaced by Lynn Scott. Mr Ridout was instrumental in the Council's adoption of a Statement of Principles in 1998.

Stuart Johnston's death in July left more than just a space at the Council table.

After nationwide advertising interviews were held in August-September for two public members. The successful candidates were Aroha Puata and Keith Lees. We were fortunate that Ms Puata was immediately able to attend the September meeting. Mr Lees was selected as a replacement for Sandra Goodchild who retired in December. Sir John noted that Mrs Goodchild's intellectual input had been highly valued by the Council, as had her sensible comments on the complaints. Mrs Goodchild's skills as an accountant had also been very useful to the Council over the eight years she was a member.

Lucy Bennett, Union representative, resigned in December having taken a position with the Australian Associated Press. There was a vacancy on the Council until May when Murray Williams was appointed by the EPMU.

An Analysis

Of the 45 complaints that went to adjudication in 2003 nine were upheld in full and three in part. There were 28 complaints lodged against daily newspapers, nine against the *Sunday Star-Times*, five against community newspapers, and one each against *Readers' Digest*, *Rural News* and the Otago University student magazine *Critic TeArohi*. Student magazines are not usually considered to come within the jurisdiction of the Press Council, but some years ago the editor of this particular magazine asked to be included, and since has advertised the services of the Press Council within its pages. This was their first complaint. Five of the complaints against the *Sunday Star-Times* related to two articles.

Most complaints going to adjudication are considered by the full Council. However, on occasions there may be a complaint against a newspaper for which a Council member works. On these occasions the Council member leaves the meeting and takes no part in 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 discussion. There were 15 complaints in which one or more members declared an interest in 2004.

While the meetings of the Council are not open to the public, complainants can, if they wish, apply to present their claims in person. Three complainants took this opportunity in 2004. At the time the Press Council considered the three complaints against the *Sunday Star-Times* personal representations were heard from one of the complainants, the Transport Accident Investigation Commission, from the editor of the newspaper, and from a legal representative for the newspaper.

The Statistics

Year end Dec	2002		2003		2004	
Adjudications Issued		48		52		45
Upheld	8		14		9	
Part upheld	2		5		3	
Not upheld with dissent	1		2			
Not upheld	36		31		33	
Declined	1					
Not Adjudicated		39		27		30
Mediated/Resolved	3		3		3	
Withdrawn	1		2		1	
Withdrawn at late stage	1		2		1	
Not followed through	16		9		12	
Out of time	2		2			
Not accepted	3		2		2	
Outside jurisdiction	3				3	
In action at end of year	10		7		8	
Total Complaints		87		79		75

Adjudications 2004

Disagreement over Parihaka – Case 961

Mr Denis Hampton complained about an article in *The Press* on September 25, 2003 linking the events which took place in Parihaka, Taranaki, 120 years ago with events in and around Christchurch's Cathedral.

Drawing on information provided by former Dean Rev Robyn Cave it contrasted Christchurch children on November 5, 1881 feasting on sticky buns to celebrate the Cathedral opening with “desperate” Parihaka youngsters on that same day staging a non-violent protest while their village was sacked by troops.

The article also referred to Parihaka's prophet leaders, Te Whiti o Rongomai and Tohu Kakahi, later being shown the Cathedral, while they were imprisoned in Christchurch, as part of a campaign to convince them of European superiority.

Rev Cave was quoted as saying that this was “a shameful period in New Zealand history,” and that “the issues still need to be addressed.”

Mr Hampton disputed most of the details given about the Parihaka incident and the prophets' subsequent time in Christchurch. He said the article continued a longstanding pattern of misreporting what happened in Parihaka, and, to make matters worse, it also wrongly implied the prophets had been badly treated while in Christchurch.

When Mr Hampton complained to *The Press* he was offered the opportunity to write a 1000-word article on Te Whiti in Christchurch but he declined, describing the offer as “a cop-out”. The facts in this case were clear-cut, he said. *The Press* should verify the truth and put things right. In reply the editor of *The Press* said the paper was not in a position to adjudicate on a dispute about an historical incident that had long been a matter of controversy. Its role was to offer conflicting viewpoints to readers so they could make up their own minds. It had published the material provided by Rev Cave and was equally prepared to run an alternative view from Mr Hampton if he wished.

The Council, like *The Press*, is not equipped to adjudicate on the detailed accuracy of Rev Cave's statements, although it notes that several recent histories have expressed a broadly similar interpretation of the invasion of Parihaka.

What the Council has to decide is whether the paper behaved ethically. The article was essentially a trailer for a forthcoming function at the Cathedral, at which two Maori leaders would be speaking about the link between the Cathedral and Parihaka. The final paragraph gave details about the free-entry function. Readers would have realised that the article presented material supplied by Rev Cave rather than the newspaper's own report of historical events. The newspaper could have prevented any possible uncertainty on this point by some additional signposting that attributed all the views in the article more directly to Rev Cave, but the Council does not believe that the origin and nature of the piece would have been misunderstood by readers.

Once Mr Hampton had made his complaint the newspaper offered him the chance to write a longer article that he could have used to rebut Rev Cave's views. It is hard to see what else *The Press* should have done.

The complaint is not upheld.

Global warming a hot topic – Case 962

Professor Michael Mann of the Department of Environmental Sciences at the University of Virginia complained about two articles in *The New Zealand Herald* relating to climate change and published on August 7, 2003. Both were by science reporter Simon Collins.

The Press Council has not upheld the complaint.

The first article, *Climate study just hot air say critics* on Page 5 of the paper's first section, used US sources for the story. It reported comments to a US Senate committee hearing that were critical of both Auckland University geographer Dr Chris de Freitas and of a controversial study in the journal titled *Climate Research* of which Dr de Freitas is one of the editors. The *Herald* story reported that the published study argued against the view there is increasing global warming, that some of the journal's editors including the editor-in-chief had resigned because the study was published, and that there were serious criticisms of the study and Dr de Freitas.

Professor Michael Mann was quoted in testimony to the Senate Committee on Environment and Public Works, saying "Chris de Freitas, the individual in question, frequently publishes op-ed pieces in newspapers in New Zealand attacking IPCC [the Intergovernmental Panel on Climate Change] and attacking [the] Kyoto [Protocol] and attacking the work of mainstream climatologists in this area."

A pointer at the bottom of this article, *Herald Feature: Climate Change*, referred readers to Page 20 in the paper's first section and the article *Warmth – It's a hot topic* which was largely an interview with Dr de Freitas in his Auckland University office. It traced Dr de Freitas's change of viewpoint from being a scientist warning about global warming in *Listener* articles published in the 1980s to his present stance where he describes himself as "a global warming agnostic, not a sceptic." This feature canvassed his views as he gave comparative examples of temperature studies which supported his conclusion that "global temperature has not risen appreciably in the last 20 years". The feature also quoted graphs produced by Professor Mann in the IPCC's latest report in 2001 which showed by contrast a "sharp kick-up [in Northern Hemisphere temperatures] in the 20th century."

After quoting Dr de Freitas's opinion that "although the future state of global climate is uncertain, there is no reason to believe that catastrophic change is under way," the feature went on with the assertion: "This is clearly a minority view," with supporting quotes from Jim Salinger of the National Institute of Water and Atmospheric Research (NIWA) and Professor Mann again. The feature ended on an inconclusive note that "if the changes in our era are much faster than any others in the past few thousand years, human beings may be chiefly to blame. In that case, we still have something to worry about."

Professor Mann exchanged emails about the articles with the reporter and consequently submitted to the features editor on August 9 by email a 1300-word rebuttal of Dr de Freitas's views headed "Greenhouse Gases and Global Warming." Professor Mann stated forcefully in his article, "The overwhelming weight of opinion among the world climate scientists is that the evidence for global warming is unequivocal."

He criticised "the myths that de Freitas hoists upon us" including that there was evi-

dence from satellite measurements for global cooling, whereas the satellite measurements were corrected for errors due to the slow steady decay of their orbits and found to indicate instead rates of warming.

Professor Mann noted in his article that Dr de Freitas asserted that in medieval times, England was warm enough to support 50 vineyards. But that compared with 350 vineyards today, which was “hardly evidence of unusual warmth in medieval times.” Professor Mann found “egregious” Dr de Freitas’s statement that no one disputes that the world was about 2 degrees Celsius warmer about 5000 to 10,000 years ago and says nothing in that statement is remotely correct and he cites evidence for his views. He even supplies photos of the substantial retreat of the Franz Josef glacier over 100 years. “Glacier retreat is driven by two factors: the amount of snowfall and the temperature ... If rising temperatures were not a factor in the retreat of the New Zealand glaciers, then the amount of snow falling on the glaciers should have been half of what has actually been measured. In fact, however, the snowfall did not reduce,” says Professor Mann.

The Herald did not run Professor Mann’s article nor respond to his two emails on August 13 and August 24 enquiring whether the article would be published. He wrote a letter of complaint to the editor-in-chief on September 7, and subsequently complained to the Press Council on October 21.

The grounds of Professor Mann’s complaint are that the two articles were inaccurate, lacked balance and showed excessive advocacy. Under lack of accuracy he said the overall tone of the articles left readers with the false impression that the jury was still out on global warming and climate change where, as far as the vast majority of the world’s climate scientists were concerned, it is not. He gave particular examples of the inaccuracies he observed, along the lines of those cited in his article.

Under lack of balance, he was concerned broadly that the articles gave greater weighting to the opinions of Dr de Freitas than to the considered opinion of the IPCC. His criticism of “excessive advocacy” said sound science and open debate was to be encouraged but “unfortunately, the platform for the promotion of misinformation provided by *The Herald* to the dissenting view of Dr de Freitas falls far short of sound science or open debate.”

The editor-in-chief in defence of the newspaper said the first article was essentially a news item with a report on the nature of accusations against Dr de Freitas. The bulk of the article contained criticisms of Dr de Freitas, and the second background article explained the views which had received such criticism. He denied any advocacy on the part of the newspaper or the reporter. He said if Professor Mann’s article had been run, the paper would be faced with a demand for right of reply from Dr de Freitas, and an endless debate. Professor Mann was unsatisfied with the editor-in-chief’s explanation about the weighting of the articles, reasserting his opinion that “de Freitas’s claims have no place in any serious scientific discussion.”

Professor Mann drew the attention of the Press Council to a further article on de Freitas that the Council was aware of, but the article, mostly a human interest story, does not alter the decision.

The press has a difficult job in reporting on complex subjects with a technical base. Yet there is the public interest in such topics as climate change, genetic modification, immunisation and any number of scientific debates, and such articles have to be clear and

simple, and appealing to read. Professor Mann may have expected too much from the newspaper in this instance in what was a generally well-handled exposition of a topical debate, coupled with a personal backgrounder that gave a local angle to the subject.

Newspapers are not journals of peer review. They generally cannot pronounce on the merits of scientific arguments with expert authority, nor run the full exposition of each view in every article. Readers probably expect at best a broad general outline of multilayered arguments, possibly some human interest and at least signposts to sources of the detailed arguments and specialists in the field.

The press's requirements ensure a more popular and general approach to the most arcane subjects, and wide-ranging, mass-readership publications will report minority views and even opinions that may be manifestly counter to the prevailing wisdom, or even wrong. Flat Earth Society advocates may appear in a newspaper article. The general elements of newspaper balance – the other viewpoint – can be observed in all these situations, and were followed here by *The New Zealand Herald*. Advocates of a particular standpoint may not find the press always serving their purpose, but then the function of the press is to serve their readers in the broadest terms.

The one aspect *The Herald* could have handled better would have been to give Professor Mann the courtesy of a reply to his correspondence about his submitted article. Given that Professor Mann writes well for a newspaper readership, the newspaper may have even lost an opportunity to run a well-constructed article that added to a current debate – editors certainly have the prerogative to stop such discussions at any time.

The complaint is not upheld.

In defence of John Mitchell – Case 963

Mr J R Braithwaite complained about an opinion piece published in *Hawke's Bay Today* on December 11, 2003 under the byline of Anendra Singh. Mr Braithwaite wrote that he had “read with contempt” a description of the former All Black coach John Mitchell in terms which he described as “highly personal”, “unbalanced” and “abusive” and an “excellent example of why people in the public eye desire as little contact with the press as possible”.

The complaint was not upheld.

The editor of *Hawke's Bay Today* was candid enough to agree that the article in question was in poor taste and did not meet required standards. He had spoken to the author accordingly. He went on to say, however, that a columnist is under no obligation to be balanced and that the whole point of such columns is often to express an opinion as forcibly as possible. Mr Singh's article “was but one of a chorus nationwide making uncharitable comments about Mr Mitchell”. It was unfortunate that in this case the criticism was “not redeemed by a higher standard of wit”.

The Press Council agrees. The Council has consistently upheld the right of writers of opinion pieces to express their views in strong, even distasteful terms. In an essay on “Freedom of Speech” in the Council's 2002 Annual Report a writer in *The Times* of London, commenting on opinion pieces, was cited as making the point: “It has to be said at regular intervals that press freedom is empty if it means freedom to be caring, compassionate, thoughtful, sensitive and sensible. True freedom of the press can only mean the

freedom to be vulgar, stupid, ignorant, offensive and just plain wrong ...”. The Council stresses that the “right to be wrong” refers only to opinions not to facts.

This said, writers of opinion pieces should be wary of making elaborate analogies and stretching attempts at humour beyond breaking point. The article in question was not funny and at times the thread of the argument disappeared entirely in the effort to needed to sustain a disagreeable comparison of Mr Mitchell with the Christmas turkey.

The Council does not uphold Mr Braithwaite’s complaint.

In defence of the royals – Case 964

The New Zealand Press Council did not uphold an objection lodged by Noel Cox to an opinion piece printed in *The New Zealand Herald* in November 2003. The article, *The curse of a disappointed wife*, was contributed by Beatrix Campbell, a columnist for *The Independent* in London where the article had first appeared.

The opinion piece observed the wide ranging effects of disclosures by Paul Burrell, Princess Diana’s butler, at his trial late last year, and the impact of these allegations on the Royal household. The columnist considered that “Power, sex, secrets and lies are the stuff of the royals’ present troubles”. She observed that “Despite democracy, despite the erosion of deference, the royal system has prevailed. Now it is under threat from the legacy of a disappointed wife and from vengeful servants”. Prince Charles was described as “a pointless prince who has loitered on the threshold of absolute personal power, [but who] must surely know that he can’t have the prize for which he, poor man, was made”.

Noel Cox took exception to the columnist’s portrayal of the royal household. He found her article offensive, claiming that *The New Zealand Herald* should not have been part of such a travesty. He regarded the author as having a biased starting point with little or no objectivity. He also argued that the rumours surrounding Prince Charles were ill-founded and that they were an unacceptable intrusion on his private life. Noel Cox claimed that even opinion pieces should adhere to certain minimum standards of accuracy, fairness and balance.

The Editor-in-Chief of *The New Zealand Herald* pointed out that the article was published on the Perspective page which is clearly and exclusively the domain for opinion and comment. The basic purpose of such opinion pieces is to allow a writer the opportunity to present a point of view and to enjoy the right of free speech. Beatrix Campbell’s article fell squarely into this category. She was at liberty to make assumptions about the effect of Paul Burrell’s allegations on the Royal lifestyles and to draw her conclusions about the future of the Royal household. The Press Council acknowledges that Noel Cox is entitled to defend and support the Royal household. The Council also recognises the acknowledged right to free expression of a columnist’s clearly stated opinion. In this case the article was unmistakably attributed as an opinion piece.

The complaint is not upheld.

Mr Jim Eagles took no part in the consideration of this complaint.

A tenancy tale – Case 965

A complaint by Sue Evans of Christchurch against five items published in *The Press* between July 25 and September 24, 2003 has not been upheld.

Sue Evans claimed that the newspaper's reporting of the eviction of a family had been inaccurate, misleading and unbalanced. Her strongest objection was to the July 25 statement that she had alerted the media to the impending eviction and had invited them to watch as she emptied the tenants' possessions onto the street.

The eviction was illegal. When the tenants took their grievance to the Tenancy Tribunal a key element in the financial settlement made between the tenants and the landlord, a company owned by Sue Evans's son-in-law, was the landlord's acknowledgment that the family had been subjected to unjustified public ridicule. Sue Evans blamed this outcome for the landlord on *The Press's* July 25 statement that she had alerted the media.

Sue Evans insisted that she "did not ring the media, only ZB." She had visited a Mr Paterson, a contact given to her by the Canterbury Property Investors Association, and informed him of her intention to "evict a bad tenant the following day". Mr Paterson had then contacted *The Press*, and Channels One, Two and Three. As a result, she had been rung by several media people the evening before the eviction, and the event itself had received extensive coverage. *The Press's* report of the eviction included a photo of the tenants standing on the footpath surrounded by their possessions.

The editor responded to Sue Evans's initial complaint by saying that her close association with the process of alerting the media justified the newspaper's characterisation of her as a major participant in it. In his statement to the Press Council the editor emphasised that she had made direct contact with one media outlet, had sought contact with Mr Paterson, had done nothing to discourage the media interest generated by his activities, and had willingly made statements to *The Press* and other media at the scene of the incident and afterwards.

In regard to this aspect of the complaint the Press Council considers that the newspaper's description of Sue Evans's relationship to the media had sufficient substance behind it to make it justifiable. The complainant's actions, especially her notifying her intentions to Mr Paterson, an advocate for landlords' rights, led to the swirl of media interest in the eviction, even if, as she maintains, she did not personally "alert the media" – other than ZB.

There were several other elements to the complaint. For instance, Sue Evans said that she was identified as the landlord when she was only an agent; that the property concerned was put in the wrong suburb; and that some of the detailed reporting of the eviction incident and of the subsequent Tenancy Tribunal proceedings was inaccurate. There were errors in the newspaper's handling of some subsidiary items but the Press Council does not think they were materially significant enough to require formal censure. They could have been dealt with by the complainant in the letter for publication that she was invited to submit. She refused this opportunity.

Sue Evans also complained about the rude and unprofessional treatment she had received from one of the newspaper's staff. The editor rejected this accusation and vigorously defended the senior journalist. The Press Council has no way of determining whether there is any substance to this aspect of the complaint.

The complaint is not upheld.

In defence of Dutch peacekeepers – Case 966

On December 20, 2003, the *Waikato Times* printed an article concerning the trial for

war crimes of former Yugoslav President Slobodan Milosevic, specifically mentioning the murder of 7000 Moslem men and boys by the Bosnian Serbs. Referring to Srebrenica where the massacre took place, the article said, “it was under the ‘protection’ of 110 lightly armed Dutch peacekeepers, who offered no resistance when the Bosnian Serbs stormed in. Requests for air strikes were somehow lost or delayed by bureaucracy. The failure of the international community to come to the rescue of Srebrenica is one of the darkest stains on the history of late 20th century Europe.” *The Times* of London provided the article.

The complaint was not upheld.

Mr Herman Jans felt the reputations of the Dutch peacekeepers were unfairly treated by the article. He wrote to the *Waikato Times* in their defence. His letter was published in abridged form on January 8, 2004. In his published letter he defended the honour of the Dutch soldiers. He explained they faced impossible odds and the bloodlust of the thousands of heavily armed soldiers.

Mr Jans wrote to the New Zealand Press Council on January 9 complaining about the abridgement. He felt his letter should have been published in full.

The editor said Mr Jans’s letter had been considerably longer than that allowed in the paper. He had taken care to ensure the essence of his complaint was encapsulated in the available space.

The Times has an international reputation. Their article put responsibility squarely on to the international community and there was no suggestion that the Dutch peacekeepers, without support, could have done any more than they did. The *Waikato Times* reprinted a high-quality international news story and they have no complaint to answer in regard to the article.

Editors often need to abridge letters that exceed the allowed space. The alternative to abridgement is omission. Readers are advised of this possibility and of the size restrictions that apply. The Press Council recommends editors identify abridged letters when published. The *Waikato Times* identified the letter as abridged; their editing was done carefully and professionally. Mr Jans’s energetic defence of Dutch honour was maintained in the published letter. There is no case to answer concerning the abridgement.

The complaint is not upheld.

Suggestion of impropriety offensive and wrong – Case 967

Carol Rankin, Senior Parliamentary Officer, complained to the Press Council, as the senior staff member named in an article in the *Sunday Star-Times*. The article on September 28 was headed *Bureaucrat contra deal raises eyebrows* and referred to training given to public servants who provide advice directly to select committees.

The complainant made personal representations to the Press Council meeting and clarified that while the complaint was personal it had the full support of the Office of the Clerk of the House of Representatives. The assistant editor of the *Sunday Star-Times* said the newspaper had no wish to have a representative appear in person.

The Press Council has upheld the complaint.

Carol Rankin complained in particular about the opening paragraph as being materi-

ally incorrect and leading readers to an inaccurate conclusion that was damaging to her reputation as a named individual.

The paragraph said: “Top parliamentary officials face fire for privately coaching high-paying bureaucrats on how to answer MPs’ questions.”

The article went on:

“The Office of the Clerk and a private training consultancy have set up a contra deal that ducks rules against accepting cash payments.

Bureaucrats pay \$210 each for half-day seminars hosted by Change Training Consultants, where officials coach them on advising select committees.

The office said it did not expect ‘payment or reimbursement in any form’ but after *Star-Times* inquiries, acknowledged receiving free training from Change – training worth \$6930.

The deal avoids tax liability or accusations of officials taking payments, by effectively paying under the table.

Corporate services manager Peter Carr confirmed senior parliamentary officer Carol Rankin and other clerks were providing coaching.”

The reporter contacted MP Rodney Hide who was quoted as being surprised that the Government could sanction a “taxpayer money-go-round of backdoor compensation” and said he would be demanding answers from Speaker Jonathan Hunt. The next day Mr Hide submitted three written questions for answer to the Speaker who rebutted the suggestion in the questions that the Office of the Clerk was providing advice to paying clients “in return” for free staff training.

Mr Hunt explained that Change Training Consultants began organising public sector machinery-of-government seminars when the State Services Commission’s Training Works unit was closed. Though the Office of the Clerk, like other government agencies, provided speakers to seminars dealing with select committee processes to help raise public servants’ knowledge of parliamentary procedures, the Office did not contribute to seminars on how to be a witness before a select committee or provide coaching on how to answer MPs’ questions. The nature of the training was set out in the Office’s annual report.

In singling out the opening paragraph, Carol Rankin complained about each phrase, finding the terms “face fire”, “high-paying” and “bureaucrats” disparaging. She said that the word “privately” in the way it was used “suggests the work is over and above official duties, not that the training provider is in the private sector”. Equally, the word “coaching”, says Rankin, “is not a word we would contemplate using in the context of the training we do. It implies working with a team, all of whom have the same interest and loyalties. I work for Parliament, whereas public servants work for the Executive. This is a fundamental constructional separation that we in this Office take pains to maintain.”

She said the most damaging part of the paragraph was the phrase “on how to answer MPs’ questions”, saying it was clear from the reporter’s written questions to the Clerk’s Office that he understood to provide such training on how to answer questions could undermine committee processes. “We made it very clear that we do not provide training to witnesses on how to answer committee questions.” The training which the Clerk’s office provided at Change Training Consultants’ seminars concentrated on “general committee

procedures, ethical expectations and the content of reports to committees to best meet committee needs.”

Carol Rankin said this training (advertised in Change Training seminars entitled “Advising Select Committees”) was given to advisers to the committees, and the role of advisers was largely unknown to the public compared to the occasions when public servants appeared as witnesses before committees to answer questions, often in very testing circumstances. “It would be a betrayal of our responsibility to Parliament to be providing ‘coaching’ to public servants on how to manage such engagements with committees.”

The arrangements between the Office of the Clerk and Change Training Consultants were clearly explained in an exchange of emails between the *Sunday Star–Times* reporter and the Manager, Corporate Services, of the Office of the Clerk prior to the story. The emails were submitted to the Press Council.

It was explained that the Office had contributed speakers to Change Training Consultants’ machinery-of-government seminars for several years and a speaker to seminars about select committees for about a year. Carol Rankin, a Senior Parliamentary Officer in the Select Committee Office, had most involvement in that she arranged and contributed to the seminars. Other staff, usually clerks of select committees often attended to contribute and gain experience.

The Office had no involvement in fees charged by Change Training and received no money. The Office provided speakers for Change Training seminars as a way to promote knowledge of parliamentary procedures to public servants. The cost to the Office was the time of the speaker to prepare and deliver the seminar. There was no reimbursement.

Change Training offered the Office unfilled places on other seminars free of charge and 11 staff had attended machinery-of-government seminars.

Sniffing out a story, the reporter asked how did staff in training witnesses and advisers to appear before select committees avoid undermining the select committee processes. The answer was that training was limited to procedural matters to give public servants a better understanding of how to work in the select committee process. The training did not deal with subject areas, and in its relationship with Change Training, the Office specifically avoided providing training for public servants about how to be a witness.

The reporter asked what conflict of interest issues arose, eg can a staff member act as a clerk to a committee when a witness they have trained is appearing, or must they excuse themselves? The Office answered that no conflicts of interest arose because training was limited to procedural matters. The Office did not provide training about how to be a witness except for general guidance to the wider public on making a submission. Change Training provided a course on being a witness, but the Office had chosen not to be involved.

Change Training did not provide credits to the Office of the Clerk for other training in lieu of payment, the seminars offered to the Office by Change Training had no monetary value because they were unfilled places, and as for any public sector policy on “such barter-type arrangements”, that question needed to be directed to the State Services Commission, but the Office did not have any barter arrangement with Change Training and [the Office] training was delivered without any expectation of payment or reimbursement in any form. In her personal submission, Carol Rankin reaffirmed that the appearance by

Office staff at seminars to educate public servants on the select committee process would continue as a public service education whether or not there were free places offered at Change Training seminars for Office staff. There was no tax liability and no tax paid.

In an email one hour after the first, the Office of the Clerk added in further responses that staff of the Office spoke at seminars as part of their duties to the Office. Rather than undermining the select committee process, such training enhanced it by making public servants aware of the constitutional importance of the process. To impart such information through a range of seminars and conferences (not by any means limited to Change Training) was seen as a core function of the Office of the Clerk.

No conflict of interest could occur in providing information about the parliamentary process as it was the right of every New Zealander to have such information. More emphatically, it was stated while Change Training provided a course on being a witness, the Office was not involved. The Office was not tied to sourcing all its staff training through Change Training. Staff were trained through a number of different forms.

In the newspaper's defence, the acting editor and assistant editor relied on the plain meaning of the words used, claiming words such as "coach" and "training" were simply synonyms, and saying that nowhere did the article say that training was "about how to be a witness" and that nowhere in the emailed responses from the Office did it say that training did not involve answering MPs' questions.

In reply, Carol Rankin reasserted that the statement in the first paragraph was damaging to her reputation and the article named her in association with an activity she specifically avoided, that the article was about a routine activity carried out in the public interest but it had been described in a sinister way, providing no balance.

It is clear from the detailed answers from the Office of the Clerk to the newspaper that there is nothing untoward in either the training or the arrangement with Change Training Consultants. So what is the news? That some parliamentary officials have taken part in some seminars over some years? No, the newspaper tried to find some unseemly activity and, while defending the words used, has nevertheless presented them in a context suggesting improper goings-on. Having "perk-buster" MP Rodney Hide lend weight to their interpretation does nothing to dispel that view.

Though the Office of the Clerk accepts the report of the acceptance of free training, the complainant does find the suggestion of impropriety offensive. The build-up of innuendo from the words "contra deal" in the heading to the point about "privately coaching" and the phrase "effectively paying under the table" make the whole article an attempt to create the suggestion of something fishy. The language and framework used has reflected badly on the ordinary work of the Office of the Clerk where integrity is essential to the proper running of Parliament. It is enough to create for an average, reasonable reader a sense that some inappropriate activity is being described. This gave rise to a justifiable complaint.

The complaint is upheld.

No Iraqi dead? – Case 968

Philip Rama complained to the Press Council about an article in the *New Zealand Herald* on November 14, 2003 that reported on the death toll amongst coalition forces in

Iraq. The article was accompanied by a graphic, sourced to Reuters and *The New Zealand Herald*, which enumerated combat/non-combat deaths of United States, British and other coalition defence forces respectively.

Mr Rama complained that the newspaper failed to publish any equivalent graphic enumerating casualties among Iraqi forces and civilians and this, he complained, breached Principle 1 of the Statement of Principles. It was his view that the newspaper should have reported the statistics from each side of the Iraqi conflict in order to provide readers with a fair and complete picture of this military action.

He complained to *The New Zealand Herald* by letter dated November 19, 2003. This letter was not acknowledged in any way by the newspaper. He reiterated his complaint by letter dated December 12, 2003 requesting a response as well as information about how to proceed with a complaint to the New Zealand Press Council. Again, his letter was not acknowledged in any way by the newspaper. He then complained to the Press Council which sought a response from the editor of the *New Zealand Herald*.

The editor argued that the story was about the effect the rising toll of casualties was having in the countries that had contributed military personnel to the coalition forces. There had been calls for the withdrawal of the troops from at least some of these countries and, accordingly, the editor determined the statistics that had contributed to these calls were a necessary component of this story.

The editor did not contest Mr Rama's general view that readers should be made aware of the death toll among Iraqi forces and civilians, but he did maintain that this information was not directly relevant to the article about which Mr Rama complains. It was not, therefore, included in the particular article complained about.

The issue is whether the article was inaccurate. The Press Council concludes that it was not and it does not uphold the complaint. The article was one with a specific and narrow focus. It was an accurate article within that focus.

Nevertheless, the Press Council does express disquiet about the newspaper failing to acknowledge, or respond to, Mr Rama's two letters of complaint. There has been no explanation from the editor about the reason for this omission. The Press Council reiterates its previously expressed view that it is desirable for a newspaper to respond to complaints prior to any independent process of adjudication being embarked upon. In making these comments the Council does not overlook the difficulties faced by the editor of a large daily newspaper that receives a large volume of letters each day and on the face of some letters it is sometimes not clear that the letter is one of complaint not general comment.

Mr Jim Eagles took no part in the consideration of this complaint.

Who is Crunchy the clown? – Case 969

North Shore city councillor Andrew Williams wrote the New Zealand Press Council late last year to complain about several reports that had appeared in the local community newspaper, the *North Shore Times Advertiser*.

At its March meeting, the Press Council decided not to uphold the complaint.

Cr Williams' ire was roused by a series of items in the *Advertiser* that referred to "Crunchy The Clown". He was unhappy at the paper's handling of his complaint and lodged a complaint with the Council.

Some background: Late last October, the *Advertiser* had made available to it reports on about 200 meetings held in the Auckland region by Auckland Regional Council about its annual plan. One of those reports said that comments had been shared between ARC officers about North Shore city councillors, “including Crunchy the Clown”. The reports did not identify the person to whom the ARC staffer was referring.

Coincidentally, the man who had been the original Crunchy the Clown – an entertainer who was asked to perform at mall openings, for example – died in Australia a few days later. The paper marked his passing and, in that article, referred again to the anonymously bestowed epithet in the ARC meeting reports.

The matter was alluded to a third time a few weeks later when the *Advertiser* published a roundup of the previous month’s news.

Cr Williams saw the articles as insulting, misleading and inaccurate. His attempts to get *Advertiser* editor Ivan Dunn to apologise publicly to all councillors and reveal the “clown’s” identity were unsuccessful.

The councillor then approached the Press Council and argued that the articles were mischief-making as well as casting a slur on the good names and reputations of all North Shore city councillors.

He shared with the Press Council who he believed the “clown” to be and said that he, along with another councillor, had made that identity known to Mr Dunn by email and to an *Advertiser* reporter at a city council committee meeting. In later correspondence with the Press Council, Cr Williams also implied that “Crunchy’s” identity was made known at a city council meeting.

Despite having this information, the councillor said, the paper had not published it, which left all councillors slurred.

He suggested to the Press Council that Mr Dunn had deliberately protected the council member whom he – Cr Williams – believes to be “Crunchy the Clown” because the pair had a close personal relationship.

In his defence, Mr Dunn provided the Press Council with copies of emails he had exchanged with Cr Williams. In one, he says that there was nothing in committee minutes to back the councillor’s statement. He continued: “We do not regard tea-time tittle-tattle as reliable information”.

He also told the council that the paper had checked with two councillors who might have been in a position to know “Crunchy’s” identity. Neither could help.

He said he stood by his decision not to pursue to whom the ARC had been referring because it would publicly humiliate that person and, perhaps, leave the paper open to legal action.

Mr Dunn also stoutly rejected Cr Williams’ claim that a close relationship existed between him and the person that the councillor believed to be the butt of the ARC staff’s humour.

The Press Council understands that, at times, tensions are apt to rise between media outlets and local bodies. Particularly in the run-up to election year, it is not uncommon for local politicians to become more sensitive than usual to reporting by their local newspaper.

In this case, however, some of the information provided to the Press Council indicates that Cr Williams has been unhappy with reporting by the *North Shore Times Adver-*

tiser for some time. The “Crunchy the Clown” incident seemed to be the straw that broke the councillor’s back.

Nonetheless, the Council cannot fault Mr Dunn’s decision to not accept mere gossip among councillors as to the “clown’s” identity. His caution was understandable given the private checking his staff had done on his behalf and the best practice among journalists that sensitive information needs to be thoroughly checked out.

In an aside, the Press Council suggested that local body politicians who are unhappy with the coverage of themselves or their council should, in the first instance, pick up the phone and discuss the matter with the editor. It said that its experience showed that highly coloured personal invective sent by email – whether from a complainant or a news organisation – rarely improved already tetchy relationships.

The complaint is not upheld.

Who can’t spell? – Case 970

Napier City Councillor David Bosley was mentioned in a letter to the editor published in *Hawke’s Bay Today* on February 5, 2004. Cr Bosley wished to refute what the letter-writer had said about him and wrote to the editor. On February 10 his letter was published in abridged form. The published letter contained two spelling mistakes, which had been introduced by the paper and an error of fact introduced by Cr Bosley. On February 12 the paper attempted to put these matters right by publishing a corrected version of the abridged letter, albeit further abridged, with a footnote explaining the previously published letter had contained typographical errors.

On February 14 Cr Bosley complained to the New Zealand Press Council that the editor had “over-abridged” his letter and had not made it clear when publishing the correction that the spelling errors had not been made by him.

Cr Bosley is a seasoned letter-writer and has had many letters published over many years in *Hawke’s Bay Today*. During the tenure of two editors he has complained often to the paper and the Press Council.

As the Press Council has always defended an editor’s right to select letters for publication, it would have been easy for the editor to quietly ignore letters from Cr Bosley and avoid any ensuing complaint procedure. However, at some personal cost, the editor has ensured that Cr Bosley received the same consideration as other readers.

On the main issue of this complaint there is no case to answer. Editors have the discretion to abridge letters, provided they acknowledge the abridgement. The paper routinely publishes rules for letter-writers which state “Preference will be given to letters of fewer than 200 words. Those that exceed this length are liable to be abridged.” As a seasoned letter-writer Cr Bosley should have been well aware his letter was liable to be abridged or not published.

On the other complaint that the paper did not identify clearly who had made the spelling mistakes, it is noted that the paper has a long history of publishing corrections and admitting mistakes. On this occasion, with no finger pointing, the paper republished the letter with its own and Cr Bosley’s error removed.

The complaint is not upheld.

'Reputable' study on sexual reorientation challenged – Cases 971 and 972

Two people laid formal complaints about an article “Going Straight” which was published in the November 9 edition of the *Sunday Star-Times*. The complainants addressed their concerns individually to the newspaper (and eventually the Press Council) but the newspaper responded with the same defence in the same terms to each person and to the Press Council. The complaints are dealt with here together.

The Press Council has not upheld either of the complaints.

The article used as its starting point a syndicated report from Britain's *Sunday Telegraph* on a controversial research paper by American psychiatrist, Professor Robert L Spitzer of Columbia University. The paper was published in October 2003 in the *Archives of Sexual Behavior* journal. The standfirst to the *Sunday Star-Times* article stated “A reputable American study has found that gays can change their sexuality. Lauren Quaintance meets Kiwi sexual converts.” The article summarised, “Of 200 former homosexuals in Spitzer's study, 78% of males and 95% of females who voluntarily underwent therapy reported a change in their sexuality. And of the 143 men and 57 women, 66% of males and 44% of females had achieved what Spitzer described as ‘good heterosexual functioning’.”

The *Sunday Star-Times* followed fairly usual journalistic practice and looked for a local human interest angle to illustrate the summarised research. The article included interviews with three New Zealanders who were among “a low-profile group of former homosexuals and lesbians who believed they had changed their sexual orientation”.

As well, the newspaper reported that “reorientation therapy” was shunned by the majority of mainstream psychiatrists and psychotherapists, and quoted Dr Gavin Stansfield as a New Zealand psychiatrist who works with gay men and who said that such therapy was “dangerous and harmful because what it does is reinforce the shame and self-loathing that some people have about their homosexual feelings.”

While detailing the experiences of the New Zealanders who reported changing their orientation to heterosexuality, the newspaper also asserted that the claims of “ex-gays” were rubbished by gay groups, and that although most ex-gays were Christian, for some that was only part of the problem and the cure. The article also said, unsurprisingly 93% of the participants in the Spitzer study described themselves as devoutly religious, but Spitzer said that while that made them “highly motivated” they nonetheless met his definition of heterosexuality.

Dean Spooner and Christopher Dempsey made separate formal complaints at different times to the editor about the article. Among their many carefully considered points, Spooner disputed the newspaper's description of the study as reputable, saying of the 200 self-selected subjects a significant number had been referred to Dr Spitzer by conservative Christian groups specialising in “converting” gays and lesbians. He said it was not accurate for the newspaper to report the survey in such broad terms when the context, the small number involved and the debatable nature of the change were overlooked. The fact the survey was conducted only by phone interviews made it unreliable.

Mr Dempsey said the editor of the journal that printed the study wrote in a lengthy

editorial that he insisted on detailed peer review commentaries being published at the same time, and received 26 commentaries from 42 people of whom 32 were critical of the study. He was personally annoyed that the newspaper defended itself simply as reporting the study, without critically engaging with it and investigating it more thoroughly.

Mr Spooner said the broad opening assertion of the article that the study found “gays can change their sexuality” was misleading because the study found only a tiny percentage changed from gay to straight, and quoted an interview with Dr Spitzer in which he was reported saying “... the kinds of changes my subjects reported are highly unlikely to be available to the vast majority of [gays and lesbians]...”. Both complainants were critical of the generalisations about homosexuals and lesbians expressed by the interview subjects, and felt the article unbalanced and unfair and likely to encourage intolerance towards gay and lesbian New Zealanders as well as personal unease among them.

The editor defended the article to the complainants (whom she invited to write letters for publication) and to the Press Council. Her points included that the study was described as reputable because it was by a professor at a mainstream, respected university. The story revealed the “devoutly religious” orientation of the subjects, and whatever interviews with Dr Spitzer were reported, it was indisputable that his main conclusion was that some gays and lesbians were able to change core aspects of their sexual orientation. Nor were the interviewees chosen to reinforce “myths” but simply asked about their life stories, and their experience was faithfully reported. The editor repeated the report from the American magazine *Psychology Today*, which defended the rights of therapists to offer sexual reorientation therapy.

In summary, she told the Press Council the purpose of the story was not to deconstruct the Spitzer study but rather to localise a *Sunday Telegraph* story by interviewing New Zealanders who believe they have been able to change their sexuality. In that regard, the Spitzer study was a springing-off point; the profiles of the “ex-gays” were the substance of the story. She said because it was not possible to interview Dr Spitzer, it was unrealistic to expect that they would be able to critique the methodology used in the study.

The arguments of the complainants are as much with Spitzer’s study and the views of those interviewed as they are with the newspaper. In fact, the newspaper was caught in the dilemma facing all publications reporting on expert areas, particularly academic papers in fields such as medicine, science or psychiatry. In whatever way the press tackles these subjects, proponents for all sides of any issue will be critical that their purpose is not being served with sufficient advocacy. The editor rightly says in her defence that journalists cannot be experts in a field, whether it is psychology or physics, and are forced to assess the credibility of institutions and the academics who undertake the studies they report.

However, while there were references in this article to acknowledge some of the issues raised, perhaps more attention could have been paid to the sensitive social and political currents that swirl around an ostensibly scientific study such as this. One of the dangers of relying largely on secondary sources is that the original debate can be missed. That the study was about a minority and evoked much criticism could have been more clearly dealt with by the article with more balancing information, even while the focus was local human interest. Some of the fundamental criticisms of Spitzer’s methods and findings

were available independently of interviewing the study's author. However, the treatment of the study in the article does not reach the threshold for the complaint to be upheld.

The complaints are not upheld.

Unsavoury flavour in court reporting – Case 973

Christchurch man Brian Hartley has complained to the New Zealand Press Council about a comment made in a court report and published in *The Press*, Christchurch.

The Press Council has not upheld the complaint.

Mr Hartley's is essentially a third-party complaint (a complaint on behalf of another) about the final sentence of a report published in *The Press* on February 6 this year. The article, headed *No time inside for al fresco drink*, carried the subsidiary heading, *Court Sentences*, and appeared under the court reporter's byline.

The article complained of highlighted a case in which a 62-year-old man had been arrested and charged with breaching Christchurch City Council's liquor ban in Cathedral Square. The district court judge was reported as saying he had taken into account the man's guilty pleas, his time in custody and the fact that he had not appeared before the court for about 12 years.

The *Press* report noted that the defendant's previous convictions had mainly been for drink-driving.

The judge convicted and discharged the defendant on one charge but on the second, that of breaching the liquor ban, fined him \$125, plus \$130 in court costs.

The reporter ended his column with: "He could have bought a lot of wine for that" – the words to which Mr Hartley took strong exception.

In his complaint to the Council, Mr Hartley said that he had written twice to the editor of *The Press* and received no reply.

He said he believed that the final line in the court report had been highly gratuitous, had an unsavoury flavour and was totally unnecessary. Earlier, in his letters to *The Press*, he also said that the final sentence made light of the adverse circumstances that appeared part of the man's life.

Responding, *Press* editor Paul Thompson explained to the Council that several years ago the newspaper made a deliberate decision to change its style of court reporting. Previously, reports were strictly factual, with no comment or background added by the journalist.

"Now, in at least some instances, reporters are given free rein. They can set cases in context and make pertinent comments," Mr Thompson said. This was particularly so in the *Court Sentences* column, in which the words about which Mr Hartley objected, appeared.

He rejected Mr Hartley's contention that his reporter had made a gratuitous remark. "In the context of the case, I do not think it was," the editor told the Press Council.

The Press Council, having considered submissions from both sides, said that it accepted that *The Press*'s court-reporting style was not the standard recitation of facts to which some publications restricted themselves but that it could not fault the newspaper for that.

However, the Council said editors needed to remain conscious of the dangers posed

by diverting from standard court-reporting techniques. In this case, the words that offended Mr Hartley could be regarded as cruel in the circumstances, albeit unintentionally.

Nonetheless, the Council found that the report in question fell well short of breaching journalistic ethics and its own Statement of Principles.

The complaint is not upheld.

Not quite ‘blow by blow’ – Case 974

A complaint brought by Mr Barry Lawrence against the *Waiheke Marketplace* was not upheld.

Mr Lawrence complained that an article headlined *PHO Blow by Blow* which appeared in the November 5, 2003 edition of the newspaper was unfair and unbalanced. In particular, he takes issue with the omission from the article of any reference to the submissions made by him at the AGM and regular monthly meeting of Waiheke Health Trust, which articulated his concerns about the conduct of Waiheke Health Trust and its involvement in the establishment of a Public Health Organisation (PHO).

Mr Lawrence complained to the publisher of the newspaper by letter dated November 10, 2003. He appears to have done this because a representative of the publisher was also an elected member of Waiheke Health Trust and had been present at the AGM which the newspaper article reported on.

The publisher did not respond to, or acknowledge, Mr Lawrence’s complaint so he sought to have the matter adjudicated upon by the Press Council. He enclosed with his letter of complaint various other items upon which he relied on to establish the substantive validity of the concerns he had raised at the AGM.

The editor and publisher of the *Waiheke Marketplace* confirmed that they had discussed Mr Lawrence’s complaint but concluded that it did not have any merit. They were of the view that the issues raised by Mr Lawrence at the AGM had “no substantive effect” and, accordingly, the newspaper did not report them.

The article published in the newspaper records the election of two office holders and then provides a summary of the address given by the guest speaker at the AGM. The article does not purport to traverse any discussion that might have arisen as a result of his address. Insofar as it comprises a report of that address it cannot be considered either unfair or unbalanced.

The Council notes that it is perhaps unfortunate that the headline to the article does not accurately reflect the actual content of the article. That does not of itself, however, result in the article infringing the Statement of Principles.

It is not the role of the Press Council to in any way determine, or even evaluate, the substantive arguments that Mr Lawrence has raised concerning Waiheke Health Trust. The Council’s role is confined to considering the article complained of. The larger part of the article is devoted to a factual report of the overview of PHOs provided by the guest speaker.

The Press Council sees nothing in the article that requires censure and it does not uphold the complaint.

Political motive rejected – Case 975

Stuart R Lowery has complained that a *New Zealand Herald* article of February 26, 2004, headlined *Gloves come off over u-turns*, lacked fairness and balance, misled and misinformed readers, and “lacked professionalism”.

For the following reasons the complaint is not upheld.

The article, by a *Herald* political reporter, is in the form of a “round-up” of the day’s proceedings in the House. Mr Lowery has concerns about one part of the piece only. In quoting Prime Minister Helen Clark’s response to a question from NZ First leader Winston Peters as to whether National leader Don Brash had ever raised Treaty of Waitangi or race issues before his Orewa speech, the reporter wrote: “‘I’ve been round politics a long time,’ said Helen Clark, clearly relishing the chance Mr Peters had thrown her. ‘And I can certainly remember no such previous interest by Dr Brash – never’.”

Highlighting that Dr Brash had in fact earlier referred to a “need to head off the dangerous drift to racial separatism in New Zealand” – in a speech after he became leader of the National Party – Mr Lowery says that the report, by reason of omission, is “sloppy journalism” and “irresponsible”. He says further that the omission of the detail contradicting Miss Clark could be construed as deliberately done in the interests of a “good story”.

Replying, *Herald* deputy editor David Hastings “utterly rejects” what he says are insinuations that his paper had a sinister motive in its coverage. “Not only is [Lowery] grossly overstating his case but to prove any case at all he must show that the report stated as a fact that Dr Brash had never said these things before. Of course it did no such thing, it merely quoted the Prime Minister as saying she could not remember.”

The Press Council does not uphold the complaint. The use of the word “such” allows a reasonable conclusion that the earlier speech, not subsequently followed through by Dr Brash in any sustained way before Orewa, does not contradict Miss Clark’s recollection. But even if the descriptor had not been used, *The Herald*’s cover would still have been justified. Should they have been concerned about the accuracy of the statement, opposing politicians were free to challenge Miss Clark. It would stretch the resources of a newspaper impossibly to be required to research the accuracy of every political opinion given, regardless of how minor.

In this case, the reporter was merely reporting the proceedings of the House and there is no evidence to suggest that his piece was anything but an accurate account.

Mr Jim Eagles took no part in the consideration of this complaint.

Quotes cherished for their pungency – Case 976

The Press Council has not upheld a complaint against *The New Zealand Herald* by Steve McCormack of Napier about the inclusion in a *Myword* column in the *Weekend Herald* of February 7-8 of a quotation taken from remarks by the Leader of the Opposition, Dr Brash. Mr McCormack complained that publication of this single sentence, in isolation and out of context, breached the Press Council’s principles as to accuracy, fairness and balance and the need not to “deliberately mislead or misinform.”

The quotation disputed by Mr McCormack was first published in an article in *The Herald* on February 5, 2004 in a report on Waitangi Day issues: *Many employers, faced*

with the choice of hiring a Maori or a non-Maori of equal qualifications, equal merit, might very well choose the non-Maori, because of the risk that the Maori would be away for a significant chunk of time. The remarks attributed to Dr Brash were apparently taken from an interview he had given to Newstalk ZB radio.

Mr McCormack contended that in using the above quotation the *Myword* column deliberately misled readers by omission. The column should have provided balance by including an immediately preceding sentence from Dr Brash's remarks: *.. new holidays legislation that would give Maori wider rights to take leave, would work against Maori.*

Mr McCormack claimed that omission of reference to the holidays legislation gave the impression that Dr Brash advocated that "employers discriminate between potential employees on the basis of race" – which would be in breach of the Treaty of Waitangi, the Human Rights Act, the New Zealand Bill of Rights Act and the Employment Relations Act. It would moreover suggest that Dr Brash endorsed race-based discrimination when the opposite is the case, in that Dr Brash advocates ending race-based policies.

The *Myword* column in *The Herald* is a selection of quotations taken from remarks in the public arena during the previous week. The deputy editor of *The Herald* described it as "a compilation of quotable quotes from the week's news." Quotations are, by definition, likely to be capsular and succinct. Collections of quotations are widely used in newspapers, to cast a spotlight on issues or simply as lively and often amusing commentary on news and views as expressed locally or around the world. Quotations make a point and to that extent lack balance. But they can also highlight the essential quiriness and complexities of human affairs. If required to carry the full argument on an issue, quotations would no longer be quotable. They are, by contrast, often cherished for their very pungency.

The Press Council obviously takes no position on the political issues inherent in this complaint. Placement of a quotation of this kind in a quotations column, however, simply highlights a passing remark that might otherwise be lost from sight. The quotation in question was a contribution to an issue under public discussion. The Council does not read it as deliberately misleading or inaccurate. The Council indeed does not find that the sentence in question carries the implications Mr McCormack reads into it. There is no inference that Dr Brash advocates discrimination. Readers would in any case have been most unlikely to conclude that a single sentence quote in a quotations column would carry the full weight of Dr Brash's views on the matter. This is the more so because those views – in respect of the holidays legislation – had been adequately reported two days beforehand in the issue of February 5 from which the quotation was taken.

Mr McCormack raises a further point in contending that "each article ... should independently bear scrutiny to a minimum standard of journalism (ie accept the principle of accuracy)". Obviously accuracy must be maintained. The Council does not, however, accept Mr McCormack's contention that publication of a quotation constitutes an "article" for this purpose. Equally the Council does not agree with Mr McCormack's extension of this argument to suggest that "for Press Council complaints resolution processes" each edition of a newspaper stands alone so that coverage of an issue as a whole (or over time) may not be taken into account. It would place an impossible burden on newspapers and readers alike to require that every article, report or quotation in each issue cover all

sides on every topic. Balance is all, and it is acceptable – even good – journalistic practice to achieve balance and to come at a story from different angles in follow-up issues.

The complaint is not upheld.

Mr Jim Eagles took no part in the consideration of this adjudication

No interview, no attribution – Case 977

This complaint has been made by *Mountain Scene*, a community newspaper published in Queenstown each week, against the Invercargill-based daily newspaper, *The Southland Times*.

On October 30, 2003 *Mountain Scene* on its front page published a story of great interest to the Queenstown community, and because the subject was the airport at Queenstown, also of considerable regional interest. The banner headline was *AIRPORT SET FOR TAKE OFF* and below that in a subheading *Exclusive by Philip Chandler*. Mr Chandler is the editor of the newspaper.

The essence of the exclusive centred on the fast growth of airport business. It was authoritative in that the principal source of the information was an interview with the Queenstown Airport Corporation (QAC) chairman Mr John Davies. The main point of the article was that Queenstown Airport is due for “a major rejig” to accommodate the ability of the airport to provide adequate services in the near future in the light of the present and reasonable forecasts of growth. To illustrate the urgency the chairman was quoted as saying the first stage is likely to be a 50% enlargement for the '05 ski season at a cost of \$3m to \$4m. An important quote from Mr Davies was that the airport’s gone from “a famine to a feast very rapidly.” The terminal that was opened in 2001 at a cost of \$6m was meant to service the airport for 10 years but it’s already suffering increased congestion and will now probably double in size over the next 10 years. The article was fully researched and considerable background material was supplied in support of the central point of growth. Altogether an excellent good-news story for Queenstown and the region.

Five days later on November 4, 2003 *The Southland Times* published an article under the headline *Frankton terminal faces \$4m expansion* bylined to a Queenstown-based journalist employed by *The Southland Times*. The piece opened with “QUEENSTOWN – The Queenstown Airport Corporation plans to spend between \$3 million and \$4 million expanding its airport terminal building in time for the 2005 ski season, chairman John Davies said yesterday.” As will become clear there was no interview with Mr Davies on November 3 on the subject of the airport.

The article using the authority of the claimed interview with Mr Davies then went on to mention many salient features about the development that indisputably came from the article of October 30 published in *Mountain Scene*. Although not a matter complained of, it is notable that several of the quotes were altered in the *Southland Times* story. Some statements from the original story were incorrectly attributed to Mr Davies. Haste or carelessness is no doubt the reason for one statement of Mr Davies about the scale of expansion (“It’s gone from a famine to a feast”) appearing twice in *The Southland Times* story changed to “It’s gone from a feast to a famine.”

Other persons not mentioned in the *Mountain Scene* article were named by *The Southland Times* as interviewees, but there was no escaping that Mr Davies was said to be the

source of the main points, or that most of the important facts had appeared first in *Mountain Scene*. There was no attribution that salient material for the *Times* story had originated from *Mountain Scene*.

The complaint by *Mountain Scene* against *The Southland Times* is basically that the *Times* behaved unethically in its use and presentation of the *Mountain Scene* story.

Applying the concept of plagiarism to the media world is not a simple task. News is clearly in a different category from literary, artistic or musical works. The Press Council acknowledges the accepted practice within the media world, news is news wherever it comes from, and is able to be used freely. Everything turns on the scale and detailed wording of the suspect material.

If the story had been correctly attributed to *Mountain Scene* there would have been no basis for the complaint. The media today regularly pull together a vast number of sources – wire services, syndicated articles from overseas newspapers, magazines to which clipping rights are owned, rival newspapers and the electronic media, as well as staff reporters – for a single story.

Nevertheless, it is accepted newspaper practice that when using direct quotes taken from another source, rather than obtaining them directly from the person quoted, a publication must attribute those quotes. This is partly for the protection of the newspaper, which often has no way of knowing whether the quotes are accurate (though that was not the case in this instance because Mr Davies apparently told the *Times* reporter that the *Mountain Scene* article was “word perfect”). But it is also because readers are entitled to know the source of the material they read. That can be achieved by specifically stating “Mr Davies was reported as telling *Mountain Scene*”, by giving the source a credit in the byline, such as “by staff reporter and Reuters”, or by giving a credit at the end, such as “additional material from *NZPA*.” The *Southland Times* article did not do any of those things and so its readers would have been under the false impression that the material was directly collected by the paper’s own staff.

This impression could only have been reinforced by the claim that the *Times* had interviewed the chairman of the QAC on November 3, 2003. No interview on the subject of redevelopment of Queenstown Airport had taken place.

The complainant supplied a letter from the chairman denying that he had been interviewed by the *Times*. The editor of the *Times* in response to the complaint insists that the journalist had spoken to Mr Davies that day but he had refused to be drawn on the airport issue and simply stated what was in the *Mountain Scene* article was “word perfect”. These facts may ameliorate the gravity of the failure but do not excuse it as the readers would have gathered from the *Times* article that a separate interview with Mr Davies on the subject had taken place.

On the general issue of non-attribution by the *Times*, the editor said it was a grey area at least and he denied breaching any industry practice.

To sum up, the use of the *Mountain Scene* story by *The Southland Times* breached acceptable standards of journalism.

The complaint is upheld.

Fine points of franchise debated – Case 978

A complaint by André Wardenaar about an article entitled *Pakeha men ideal target for National* published in *The New Zealand Herald* on February 13, 2004 has not been upheld.

The article, by Dr Danny Keenan, of Massey University, was a response to Don Brash's Orewa speech on race issues. The passage complained of read: "When New Zealand won self-government in 1852, Maori were again denied the vote. The vote went to Pakeha males. Fifteen years later, in 1867, Maori were finally granted four special seats."

The complainant wrote to the newspaper saying that the article "does in my opinion not report the facts and by publishing this article your paper has aided and abetted Mr Keenan to deliberately mislead and misinform readers by commission and omission." He said that the article contravened both Principle 1 (Accuracy) and Principle 6 (distinguishing fact from opinion).

Mr Wardenaar pointed out that the right to vote in 1853 was defined not by race but according to sex, age, nationality and the possession of property. Many New Zealand residents did not qualify to vote in the elections that year.

Mr Wardenaar's claim that the article deliberately misleads and misinforms readers by omission is centred on the third sentence of the passage complained about. "Mr Keenan fails to inform us that the granting of four special seats in 1867 was a special right for Maori only and that other New Zealanders, not qualified to vote (apart from gold miners), were not given this right."

The deputy editor said that the placing of the article on the *Perspectives* page made clear that it was an opinion piece. He did not address the issue of accuracy himself, but referred the complaint to Dr Keenan who made a lengthy response. This led to a further statement from the complainant. Both writers discussed wider aspects of the article than the three sentences directly complained about.

The Press Council notes that the official Elections New Zealand website includes the following statement:

"New Zealand's 1853 electoral franchise was theoretically 'colour-blind'. But in reality very few Maori could qualify under the property requirement because they possessed their lands communally (as iwi, hapu or whanau groups) and not under individual freehold or leasehold title like Europeans. ... In 1853 about 100 Maori (mostly tribal leaders) were enrolled to vote – out of a total electorate of 5849."

In regard to the third sentence complained of that website says:

"After much debate, in 1867 Parliament agreed to set up four electorates specifically for Maori. This solution was similar to the 'special representation' introduced for gold miners earlier that decade. To avoid difficulties with property ownership, all Maori men over 21 were eligible to vote (and stand for Parliament)."

The Press Council rejects the allegations that the article deliberately misled and misinformed readers by commission and omission. This might be Mr Wardenaar's opinion, but there is nothing to substantiate such a serious charge.

The Council finds nothing amiss in the third sentence cited: “Fifteen years later, in 1867, Maori were finally granted four special seats”. In the complainant’s opinion Dr Keenan should have amplified that statement to say more about what was “special” about the four seats, but there was no obligation on him to do so and no ethical issue arises.

It is clear from the official Elections New Zealand website material quoted above that the first two sentences complained of express a strongly-felt interpretation of the practical effect of the 1853 arrangements, not the formal franchise provisions.

Mr Wardenaar insisted that the precise terms of the franchise did not deny Maori the vote. He also rejected the use of the word “again” as implying that an earlier franchise provision had also had that same intent. It appears from Dr Keenan’s reply to the complaint that his use of the word “again” is best understood as referring to the proposed 1848 Constitution Act, which would have limited voting rights to those who could read and write English.

The Press Council thinks that if the newspaper had published a brief paragraph clarifying the factual background to Dr Keenan’s interpretation that would have sufficed to do justice to the complainant’s vigilant concern that the theoretical enfranchising of Maori in 1853 be acknowledged.

Considering the complaint as a whole, and weighing its rejection of a large part of the allegations, the Press Council thinks it would be quite disproportionate to take any formal action in regard to the failure of these two sentences to capture the full detail of the historical circumstances. It could have been adequately dealt with by the complainant submitting an entry for the well-established Corrections and Clarifications section or writing a letter for publication.

The complaint is not upheld.

Mr Jim Eagles took no part in the consideration of this adjudication.

Editor’s discretion on publication of media releases endorsed – Case 979

Anna Wilding laid a complaint against *The Press* because the editor, Paul Thompson, would not interview her or publish her media releases sent to him in February and March this year. The Press Council did not uphold her complaint.

Anna Wilding had returned to Christchurch from Los Angeles where she is based. She expected *The Press* to publish her photos and details of her professional career as a local interest story. The Secretary of the Press Council advised Ms Wilding that the Council had consistently stated that editors were responsible for deciding the content of their publications and that such a complaint was unlikely to succeed. However, she wished to pursue her complaint on the basis that other media overseas had published a portion of her press release, proving that it was newsworthy.

Paul Thompson responded to Anna Wilding’s complaint that, as editor, he had sole discretion on the content of *The Press* and was not obliged to publish any news releases or interview her.

The Press Council agreed with Paul Thompson and saw no grounds on which the complaint could be upheld.

Name-calling ruled out in letter – Case 980

The Press Council has not upheld a complaint from Mr John Bent of Palmerston North that the Manawatu *Standard* altered two of his letters to the editor in a way that changed their meaning and substance.

Mr Bent said one had been altered with no acknowledgment that it had been abridged and he said the *Evening Standard* had an inconsistent approach to what it considered was derogatory or “name calling”.

The letters were written and published in August last year and February this year. Both Mr Bent and the editor had been advised that the August letter was outside the time limit for lodging complaints and therefore could not be considered a valid complaint.

Mr Bent’s February letter concerned a difference between Palmerston North City Council and the Railway Land Action Group.

Mr Bent used a derogatory nickname for the mayor and said it and other descriptions were an acceptable literary device to draw attention to the points he was making.

The editor Clive Lind said they were derogatory and had been deleted because they amounted “to little more than name-calling”.

Otherwise, he said only minor editing changes had been made for the purposes of clarity.

Mr Bent said this was inconsistent when the paper had published a cartoon showing the Prime Minister as a headless chicken and a letter referring to the President of the United States and his supporters as “Dubbya’s boys”.

The deputy editor Jo Myers said cartoonists traditionally had more artistic freedom to lampoon and caricature well-known people, particularly national political figures, and the reference to Dubbya made fun of American pronunciation in a way that was not in the same league as Mr Bent’s “name calling”.

She said Mr Bent’s description meant the mayor could have “rightly accused” the paper of holding him up to ridicule and contempt, whereas the likelihood of being sued over the use of Dubbya was remote.

The Press Council agrees that with only minor editing, the message of the letter was not changed.

Decisions about whether or not to publish and to edit letters – in this case on grounds of good taste or for legal reasons – are the editor’s.

The complaint is not upheld.

One-sided story distorts – Case 981

Alan Cato complained about an article headed *Derby win would wipe away bitter memories* in *The New Zealand Herald* of December 23, 2003. The subsidiary heading was *RACING: Tony Cole was devastated when blamed for poisoning his horses*.

This was a difficult case with arguments both for and against the merits of the complaint about a human interest story of a horse trainer battling adversity that was built into a race preview. But even human interest stories need to observe the basic tenets of balance and here the newspaper did an incomplete job. The complaint is upheld.

The story briefly previewed the chances of the horse Philamor in the New Zealand

Derby to be run on Boxing Day at Ellerslie, canvassing the history of a case of selenium poisoning of horses in the care of Philamor's trainer Tony Cole in 2002. The story quoted only the trainer's version of the history.

The complaint that the story lacked accuracy, fairness and balance came from Alan Cato who, with his wife Heather, owns Maximilian, one of the horses that suffered selenium poisoning.

From the information provided by the complainant, it was clear there was another side to the story, which the newspaper would have been aware of, especially as the journalist was a specialist in racing reporting.

The editor defended the story saying neither the Agriculture and Forestry Ministry nor New Zealand Thoroughbred Racing had pressed charges against Mr Cole. Rather than being a relitigation of a long civil dispute the article was a human interest story about one person involved in that case. The editor asserted that the newspaper had reported the broad issues, the inquiries and allegations over the selenium case over the past two years fairly and in a balanced fashion. But Mr Cato responded that the Herald's racing correspondent was the only one from the major daily newspapers not to establish direct contact with the Catos to ascertain "our side" of the story.

The Press Council believes the editor was correct when he wrote in reply to Mr Cato that this was a distressing matter for all concerned. But where other parties are affected adversely in a complicated and contentious story – and have another version – it would be naturally fair and balanced, even within a single story, to acknowledge that there is another side.

When newspapers in the course of an article refer to a many-layered story with an extended history, editors need to be aware that, though different interpretations of the past can be reported, the facts remain unvarnished.

The complaint is upheld.

Mr Jim Eagles took no part in the consideration of this complaint.

Choice of letters editor's prerogative – Case 982

Mark Sadler complained to the Press Council about the selection of letters for publication in *The Press*. His lengthy complaint dated April 19, 2004 explained his general views, backed up by specific examples. The catalyst for his complaint was a letter he had written on March 9, which did not get selected for publication.

Mr Sadler has been submitting letters for publication for 40 years and estimates he has had a thousand or so published. His complaint, whilst prompted by the non-publication of his recent letter, promoted the wider issues that there should be adequate public discussion of important issues, and that the importance of issues should be taken into account when selecting letters for publication. He felt this had not been done correctly with his letter.

There is no dispute about these worthy ideals. Both *The Press* and the Press Council agree with Mr Sadler that fair public discussion of important issues is vital to the health of a democracy and that some consideration should be given to the importance of an issue being selected for publication.

Mr Sadler alleges that large amounts of space are often given to fairly trivial issues,

while letters like his on larger issues are not given space at all. The basis for his complaint is, therefore, that Mr Sadler disagrees with the choices made by the letters editor.

The Press Council has never wavered from its position that decisions about which letters should be published, and on which topics, are entirely in the hands of editors. Their papers live or die by these decisions. More importantly, to allow an individual, group or regulatory body to interfere in the selection of letters would amount to censorship.

The complaint is not upheld.

The right to report on Parliament – Cases 983 and 984

The New Zealand Immigration Service lodged complaints against *The Press* and *The New Zealand Herald*, respectively, arising out of both newspapers publishing the name of a man claiming refugee status who had been identified by Mr Winston Peters in the House of Representatives in the course of a Parliamentary debate.

The Press Council's job is not to set legal precedents. It is primarily to decide ethical issues on complaints received. It therefore accepts the complaints from the Immigration Service to that extent.

It does not uphold the complaints for the reasons now set out.

The central point of the complaints against both newspapers was that publication of the man's name was prohibited by s129T (5) of the Immigration Act 1987 and is a breach of a claimant's right to confidentiality. The Service also complained about the tone of the response of the editor of *The Press* to their first letter of complaint. The response was robust but no more, and this complaint is not upheld.

Section 129T of the Immigration Act states:

“Section 129T. Confidentiality to be maintained –(1) Subject to this section, confidentiality as to the identity of the claimant or other person whose status is being considered under this Part, and as to the particulars of their case, must at all times, both during and subsequent to the determination of the claim or other matter, be maintained by refugee status officers, the Authority, other persons involved in the administration of this Act, and persons to whom particulars are disclosed under subsection (3) (a) or (b)....

(5) A person who without reasonable excuse contravenes subsection (1), and any person who without reasonable excuse publishes information released in contravention of subsection (1), commits an offence.”

There was a further and separate complaint against *The New Zealand Herald* in that it had published the name after there had been a court order prohibiting publication of the identity of the person. Both complaints against both newspapers can conveniently be dealt with in one adjudication.

The facts are these. There was a debate in the House on immigration issues on November 12, 2003 and in the course of that debate Mr Peters disclosed the name of one individual who had on arrival in New Zealand claimed refugee status at the border. Next day on November 13, 2003 both *The Press* and *The New Zealand Herald* published reports of the debate and both included the name of the claimant. There is no complaint about either the accuracy or fairness of the respective reports, only that the name was published.

After a traveller claims refugee status there is a procedure that follows to deal with the claim, but that does not concern us here, except that on November 19, 2003 when the named person appeared in Manukau District Court the judge made an express order suppressing publication of the identity of the person. By this time both newspapers had published reports of the November 12 parliamentary debate that included the name, and application by claimant's counsel in seeking the order had clearly been influenced by the prior publication. Also on November 19, 2003 there was another debate in the House when Mr Peters again repeated the name of the claimant for refugee status. Only *The New Zealand Herald* published the name in the course of reporting the further debate of November 19. The complainant alleges this publication on November 20, 2003 amounted to contempt of court. In a separate part of the same edition *The Herald* on November 20, 2003 reported the court proceedings and the fact of the suppression order having been made. *The Press* in its report of the further debate on November 19 and the court proceedings did not repeat the name of the claimant.

The Press in its response to the complaint stated it was not prevented from publishing the report of the proceedings in Parliament by s129T (1) and (5). *The Press* said it "had more than a reasonable excuse for publishing the statements by Mr Peters. Accurate reports of parliamentary debates have never been objected to in New Zealand."

The New Zealand Herald takes the position that the Press Council has no jurisdiction to entertain the complaint made by the Service and says that no breach of the Council's Statement of Principles has been named. That is true, but the objection is covered by the Preamble to the Statement, which is part of the Principles: "A complainant may use other words, or expressions, in a complaint, and nominate grounds not expressly stated in these Principles."

Close analysis of section 129 T was made in the Council when it received the response of the editor of *The Press*. The preliminary conclusion was that the defence would succeed, but as it was a question of statutory interpretation the Council sought the opinion of Mr W M Wilson QC which on this point was as follows:

"Sub-section (1) does not impose a blanket prohibition on any disclosure by any person of the name of the applicant. To the contrary, the sub-section specifically provides that it is only those within a series of specified categories (Refugee Status Officers, the Refugee Status Appeal Authority, others involved in the administration of the Act and those supplied with information under sub-section (3a) and (b) who are subject to the obligation of confidentiality. The newspapers which published the name of the applicant in question do not come within any of these categories and, accordingly section 129T has no application to them."

That is not the end of the matter for then the Council must go to sub-section (5) to decide whether the newspapers had a reasonable excuse for publishing the name. Whilst acknowledging this was a matter for the Council, Mr Wilson was of the opinion that as a matter of law an accurate report of the Parliamentary proceedings could constitute a reasonable excuse for the purposes of s129T (5). In the circumstances of publishing an accurate report of the debate in the House the Council finds that was a reasonable excuse within the terms of the statute and therefore no breach was committed in publishing the name.

The position in regard to the contempt of court issue of publishing the name following a specific court order is more complex. This part of the complaint relates only to *The New Zealand Herald* and its report of November 20. *The Press* never published the name after the court order of November 19, 2003, but *The Herald* did so on November 20, 2003.

Before laying the complaints with the Press Council the NZIS had apparently asked the Solicitor General to prosecute *The New Zealand Herald* for contempt. In the complaint against *The Herald* the Service said: "Legal advice is that in such circumstances the reporting of Mr Peter's comments amount to a *prima facie* case of contempt." The supplier of this opinion was not expressly named. However, a few sentences on from that remark the Service said: "The Crown Law Office have advised that contempt prosecutions are rare and reserved for the most serious of breaches. In the circumstances they have advised that they do not intend to proceed with prosecution in this case." There is an ambiguity in the way this has been made part of the Service's complaint to the Press Council against *The Herald*. It is unclear which legal adviser said the "comments amount to a *prima facie* case of contempt". Clarification was sought from the Service about these statements but it refused to supply verification claiming legal privilege. It seemed to the Press Council that the Service had already waived privilege when it made the opinion of the Solicitor General part of its case to the Press Council. In the circumstances it is unclear what the exact position of the Crown Law Office was and therefore it must be put to one side for our purposes.

Mr Wilson's opinion was that the law is uncertain as to how any conflict between the legislature and the courts is to be resolved in a situation where there is an accurate publication of what was said in Parliament that could otherwise amount to a contempt of court. The uncertainty is reflected in this country's leading text on media law, Burrows and Cheer's *Media Law in New Zealand* (4th ed.) at page 242:

"A matter yet to be determined is the effect of parliamentary privilege on name suppression orders. On several occasions Members of Parliament have openly stated in the House the names of persons whose names have been suppressed by a court. Moral considerations aside, there is no doubt that those MPs are protected from legal action by the absolute privilege of Parliament. But there is much greater doubt whether the media are safe in publishing such statements made in Parliament. The media's qualified privilege to report Parliament may have no application outside the law of defamation. While direct broadcasts of such statements are probably protected, delayed reports in the media may be more at risk."

The starting point for the consideration of the relationship between Parliament and the Courts requires examination of Article 9 of the Bill of Rights 1688, which is in force in New Zealand and states:

Freedom of speech – That the freedom of speech and debates or proceedings in Parliament ought not to be impeached or questioned in any Court or place out of Parliament.

Relevant authority is the reasoning of Lord Denning M.R. in *Attorney-General v Times Newspapers Ltd* [1973] 1 All ER 815 at 823, which mentions the Bill of Rights and quotes Article 9, and on the same page goes on to say: "Whatever comments are made in Parliament, they can be repeated in the newspapers without any fear of an action for libel or

proceedings for contempt of court.” This statement of the law was agreed to by Lord Justice Scarman and not referred to when the case went on appeal to the House of Lords.

Another matter for the Press Council to decide is whether the publishing of the name by the *Herald* on November 20 carried any inference that the motive for publishing the name was to circumvent the court order. The Council finds that no such inference can be made in the circumstances of the publication.

In the absence of direct New Zealand authority the Council considers it prudent to follow the English case. To do otherwise might suggest primacy of the courts over Parliament. The Council will not take that step and leaves it to be decided elsewhere.

The final matter to be disposed of is the point of the newspapers that the complaints of the Immigration Service were lodged a few days after the expiration of the three months from publication specified in the Council’s procedure. The Council decided in a complaint of this importance, and because there was a reasonable excuse on the part of the Service for the delay, it would go ahead and accept the complaints for disposal.

For the foregoing reasons the complaints against both newspapers are not upheld.

Ms Ruth Buddicom and Mr Jim Eagles took no part in the consideration of this complaint.

White supremacist or not? – Case 985

The National Secretary of the New Zealand National Front (NZNF) Mr K R Bolton complains that in a feature interview piece of an NZNF member, Kyle Chapman, headlined *A picture of white supremacy*, the *Sunday Star-Times* has breached the Statement of Principles in five categories, namely, accuracy, corrections, comment and fact, discrimination and photographs.

The Press Council does not uphold the complaint.

The feature interview complained of was published by the newspaper on May 9, 2004. By a letter dated May 10, 2004, Mr Bolton (in his official capacity) wrote to the editor outlining his organisation’s complaints about the article and seeking to have an opportunity to publish correcting information in a position with the same prominence as the original article. He foreshadowed that if agreement could not be reached, a request for the Press Council to adjudicate would follow.

Rather than respond to this letter of complaint, the editor published an edited version of Mr Bolton’s letter from the NZNF in the Letters to the Editor section of the following week’s newspaper, despite it being clearly indicated it was the first procedural step in the complaint process.

NZNF proceeded to lodge its complaint and Kyle Chapman, as a third party to part of the complaint, consented to the Press Council adjudicating on the third-party issues raised by NZNF in its complaint.

By way of summary, the NZNF contend that the feature was inaccurate in portraying the NZNF as a white supremacist organisation; that it demonstrated bias and animosity towards NZNF; that it incorrectly alluded to a link between NZNF and the British NF; and that the portrayal of Kyle Chapman was effectively an “incitement to violence”.

The editor of the *Sunday Star-Times* upheld the use by the newspaper of the term “white supremacist” recording that Mr Chapman advocated racial separatism, organised a

counter-rally to an anti-racism march in Christchurch and repeatedly criticised other racial groups during the interview while praising the white race. The editor recorded that the newspaper had been unable in its own research to find proof of several claims Mr Chapman made about NZNF. Additionally, the journalist had spent two hours speaking with, and listening to, Mr Chapman and was entitled, on that basis, to record his own observations arising from this interview. The newspaper concedes it associated the NZNF with National Socialism, and the Editor reported a review of newspaper research going back 20 years supported the view the NZNF was modelled on the British NF.

The editor noted a side-bar to the article made reference to gangs and that the article referred to some members of the NZNF having been gang members as well as reporting that Mr Chapman acknowledged his own criminal history including a firebombing of a marae and other racially based incidents but mentioned he has reformed. The author of the article made an observation that Mr Chapman cuts an “intimidating figure” and suggested that “[i]f an Asian saw him coming down a Christchurch street, they would probably turn and run”. This observation was based on the reporter’s meeting with Mr Chapman.

The Council is satisfied that the article has not breached the principle of accuracy. The article traverses a number of different perspectives on the NZNF. The Council finds nothing in the complaint to satisfy the threshold that published information was materially inaccurate and, accordingly, the complaint under the second principle also fails. The Council does make the observation, however, that the letter to the editor from Mr Bolton was identifiably a precursor letter to a Press Council referral. The decision to publish a significantly edited version of the letter, when Mr Bolton’s letter was clearly so marked, was an unfortunate one.

The Council does not find that the article failed to make proper distinctions between comment and fact. The NZNF complaint appears to be premised rather more on the organisation’s distaste for the comment made.

The Council does not uphold the complaint under the discrimination principle. In light of the activities of the NZNF at the time the article was published (particularly in Christchurch), it was both relevant and proper for the newspaper to report and express opinions on the activities and origins of this minority group.

Finally, the NZNF complaint about the photograph that accompanied the article is found not to offend Principle 11. It is apparent from the text of the article itself, that Mr Chapman was an active participant in determining where he would be photographed. It is also apparent that he consented to this photograph being taken.

The complaint is not upheld.

Report of ERO report inaccurate – Case 986

A complaint has been made that an article published in *The Press* relating to an Education Review Office report on Samoan pre-school Tafesilafa’i contravenes Press Council principles upholding accuracy and clear distinction between comment and fact.

Pre-school management committee chairwoman Maria Frew, Catholic Diocese financial administrator Paddy Beban and Catholic Education Office manager Mike Nolan say that the tone of the article and headline is negative, the detail misrepresents the true

situation and, by way of inaccuracies and omissions, the piece has hurt the mana of the pre-school community.

For the following reasons the complaint is part upheld.

The April 5, 2004 story *Bad report for Samoan pre-school* is a straightforward summary of the review office's significant findings. It leads with a summary of one review finding, reporting that the education of the pre-schoolers is being jeopardised by inadequate space and resources. It then states that the school has been "told it must move to bigger premises if it is to provide a quality education".

The complainants argue that reporting the school has been told it must move to bigger premises to provide quality education is incorrect. They say the sentence, "if the centre is still operating from the present premises at the end of 2004, ERO will conduct another review at that time", has a quite different meaning. Rather than stating a *requirement* in such an eventuality, they say, the office has called for strategic planning to resolve things.

Other complaints are that the use of the word "savage" to describe an earlier review finding (2002) was unjustified, given that that report praised the school's commitment to good education; and that the headline *Bad report for Samoan pre-school* unfairly reflects the negative, failing to be a fair summary of the 2004 report, which found most matters identified in the 2002 report had been successfully addressed.

Although *The Press* article confirmed the addressing of the 2002 issues, by using "concerns" when the report had used "matters", and by omitting "successfully" from the phrase "successfully addressed", it had failed to reflect the report's positive tenor, described in the report as "a picture of a successful educational community that is working through matters".

Press editor Paul Thompson concedes the report did not specifically say the school must move to bigger premises but says it was clear that the management committee was working towards a new school and that it was facing difficulties. Had the committee spokeswoman returned several calls made to her by the paper, he says, she "could have addressed this point". The committee was being "over sensitive" to regard the paragraph as negative.

Mr Thompson defends the use of "savage" in the 2002 report, saying the report "in effect" said the school provided an unsafe environment for children and was not giving them high quality education. The omission of "successfully" did not disguise the point made in the story that the review office acknowledged progress had been made; and the headline reflected the fact that the review office continued to have serious concerns. He saw no reason to apologise.

The concerns expressed are understandable from the perspective of a small school struggling to establish itself. Despite identifying various areas needing improvement, from a need for more qualified staff to better financial management, the review office report also came up with significant positives. Most notably, it found that the pre-school had addressed most of the matters of concern raised by the earlier report. This is not a report of a substandard school, but of a young venture finding its way.

The circumstances required careful attention to accuracy in the reporting. The paper's conclusion that the school had been told that it must move to bigger premises was based on a wrong inference. The report clearly enunciates that, "in the event that the centre does

not relocate, it will be imperative that management substantially improves the physical environment and resources” – a quite different meaning. This part of the complaint, about accuracy, is therefore upheld.

The complaint that the headline is unduly negative, however, fails. In an abbreviated space for summary, it is hard to imagine how the paper could have better described the major findings. Despite the positives, the report was not a good one. The use of “savage” is similarly not ruled against, though it pushed the boundaries of acceptance. The newspaper might be careful about using over-extravagant language – in all but the loosest colloquial usage, “savage” means “barbarous”. But the 2002 report, along with praise for the “happy and settled” state of the children, did have a serious list of concerns, including about safety of climbing equipment and the dearth of qualified staff.

The further complaints about substituting “matters” with “concerns”, and the omission of “successfully”, cannot be read to have seriously affected correct understanding.

Apart from the issue of accuracy, *The Press* needs to take care in any critical report to also well report the positives: it is questionable whether one favourable sentence toward the end achieved this fairly. But it should not be upbraided for zoning in on the criticisms. The language was, one word aside (“savage”), dispassionate. It is a substantial part of a newspaper’s job to identify things that are wrong or need rectifying. A mistake often made by those outside the industry, is to view this task as “being negative”, when in fact the paper is pursuing the important and the newsworthy with a positive intent.

The complaint pertaining to accuracy is upheld; the other elements of the complaint are not.

Student mag complaint part-upheld – Case 987

An Otago University PhD student, Glenn Peoples, has complained to the New Zealand Press Council about actions of the university students’ association magazine, *Critic Te Arohi*.

The Press Council, which receives few complaints about student magazines, nonetheless was happy to accept this one. *Critic Te Arohi* some time ago indicated its willingness to come within the Council’s jurisdiction.

The Press Council has part-upheld the complaint.

Mr Peoples advanced four particulars in his complaint, which centres on an article in the April 26 magazine, Issue 8. That article refers to a number of apparently fictitious letters to the editor about the Otago University Students Association’s purchase of the university bookshop from Whitcoulls. The matter was of interest because the association spent \$740,000 of student funds on the purchase.

In the previous issue, *Critic* devoted three pages to the bookshop purchase, which were largely supportive. The next week, in Issue 8, *Critic* returned to the topic, this time concentrating on reaction to the purchase.

It also published four letters on the subject, including one each from Mr Peoples and his wife Ruth. Its news coverage, written by news editor Holly Walker, bore the heading, *Critic bombarded with falsified letters*. That report was accompanied by a sidebar, *A litany of lies*, which named the letter writers whose details *Critic* staff could not verify.

It was the Walker article and publication of his letter that brought Mr Peoples to the

Press Council after *Critic* editor Hamish McKenzie refused to act on his complaint.

The “falsified letters” article told readers that, after publication of Issue 7, *Critic* received 14 letters on the bookshop sale that expressed broadly similar sentiments. These sentiments echoed those in Mr Peoples’s letter – he is the national spokesman for Student Choice, a lobby group that opposes mandatory association membership for tertiary students – and in that from his wife. She signed her name only as “Ruth Elizabeth”. Both letters were published, Mr Peoples’ with his student ID number printed below, Mrs Peoples named only as Ruth Elizabeth, and two others whose details had been confirmed.

Critic’s Letters to the Editor rules – spelled out each week on its letters page – stipulate: “It’s okay to submit a letter for publication under a pseudonym but all letters (including emails) must include full contact details, even if you don’t want them printed. We discourage the use of pseudonyms for serious topics”.

In her “falsified letters” report, Walker wrote: “When it was put to Peoples that an organised campaign of falsified letters to *Critic* had been undertaken by people sympathetic to the views of Student Choice, he replied: ‘If it has, I have had no part in it.’”

Mr Peoples told the Press Council that he was chiefly concerned that *Critic* implied he was behind the letters whose details could not be confirmed. He believed he was being accused of dishonesty, an accusation that, given his position with Student Choice, “undermined my integrity and damaged my public image”. Mr Peoples sought a public apology from *Critic* for having created an erroneous impression.

He also wanted public acknowledgement that a misunderstanding during a phone conversation between him and Walker had left the public impression that he had provided contact details for someone who had not written to the magazine.

Finally, he sought a published apology for *Critic*’s having printed his student ID number, and an apology to his wife for Walker’s having used her full name as one of the letter-writers whose identity she was able to verify.

Mr McKenzie made clear to the Council his and the magazine’s concern with the provenance of the 10 letters whose writers’ details could not be confirmed. He rejected Mr Peoples’s claim that Walker’s article in Issue 8 created the impression that he and his wife were responsible for, or contributed to a letter writing campaign.

He rejected Mr Peoples’ request for a public acknowledgement of a misunderstanding between the parties over a misheard name (which he conceded had occurred), saying it was not germane to the complaint. He also defended his use of Mr Peoples’s ID number, saying he believed Mr Peoples would have wanted it used to prove he was a bona fide student given comments in his published letter.

As far as Ruth Peoples’ full name being used in Walker’s article, Mr McKenzie argued that was a matter of fact.

The Council upheld Mr Peoples’ complaint against *Critic*’s having left uncorrected the impression that he had given the magazine the contact details of someone who had not written to it at all.

In terms of the complaint’s other three legs, however, the Council did not find that the magazine acted unethically. *Critic* had been justified in checking its suspicions about the dubious letters with Mr Peoples, given the tone of his own letter and his involvement with Student Choice. It set out his denial clearly within the article.

Its use of his student ID number – though unusual – was, the Council said, quite reasonable considering that Mr Peoples was emphasising to another letter writer that he was, in fact, a student and he himself had included it under his signature without any qualification about its use.

None of the information provided to the Council indicated whether or not Walker made clear to Mr Peoples that their conversation about fictitious letters was for quoting in an article.

Without such information, the Council cannot uphold Mr Peoples's final complaint that *Critic* wrongly published his wife's full name in that article. The magazine had kept faith with its letters policy by using only the name "Ruth Elizabeth" under her published letter. In the article, however, it had done no more than state a fact – that Ruth Elizabeth and Ruth Peoples were one and the same.

The Council commended to *Critic* – and to all publications published for public consumption – that, bar the most unusual of circumstances, their journalists make all interview subjects aware at the outset of their conversation that the resulting interview is intended for publication, where that is the journalist's intention.

The complaint is, therefore, part upheld.

Mental health services questioned – Case 988

This is a complaint of a person whose identity has been disclosed to the Press Council but whose anonymity is preserved for reasons that will become clear. The complaint was lodged on his behalf by his lawyer, about a front-page article published in *Mountain Scene*, a Queenstown weekly newspaper on June 24, 2004. The principal subject of the article concerned supposed deficiencies by the Southland District Health Board over its handling of the complainant on the weekend of June 19-20, 2004.

The complaint is not upheld.

The facts, which the Council has had to ascertain from the article, the written complaint, and the response of the newspaper, have been more than usually difficult to establish with confidence. This state of affairs has been contributed to by the fact that two central players namely SDHB and the Police have had no direct input into this complaint. Although SDHB is the main target of criticism in the article it has chosen not to be a complainant.

A first and primary fact in this complaint is that at no point in the article was the identity of the complainant specifically stated. Whether there was sufficient material published enabling the public to identify him is a matter of dispute and will be dealt with hereafter.

One further preliminary observation is called for and it is that the range of issues broadened markedly as the exchanges over the complaint continued. The responsibility for this was largely that of the newspaper. Nevertheless the Council must exercise control by allowing only the briefest references to the broader picture as contained in the responses of the newspaper. The newspaper has been conducting an ongoing campaign against SDHB over its treatment of mentally disturbed persons and in particular its alleged failure to provide the Wakatipu district with its full share of the amenities due.

The following is an account of the facts as ascertained from the papers. The com-

plainant presented at Invercargill Kew Hospital on Saturday June 19, 2004 with a leg injury apparently sustained while he was hunting. The extent of the injury was not explained but it can be deduced it was of reasonable severity as the medical staff wished him to remain in Kew hospital for two or more days to receive antibiotic treatment. This did not occur, as apparently he became difficult to manage through being mentally disturbed and levelling trenchant criticisms at the staff. Police were called at Kew and their notes describe his behaviour as “very paranoid”.

The response of the medical staff at Kew was to decide the patient should be transferred to Frankton Lakes District Hospital, which is a satellite hospital under the jurisdiction of SDHB. A reason may have been because he was regarded as a Wakatipu patient, but it is unclear. LDH has markedly inferior services available and one gathers particularly in relation to mentally disturbed persons. At some stage the Police at Invercargill took the precaution of removing the bolt from the rifle he had in his vehicle.

After the decision to send the patient to LDH some further puzzling decisions were then made. First it was arranged for the patient to drive himself to LDH and even more curious the Police returned his rifle bolt to the patient before he left. The Council simply records those facts without further comment.

On Saturday afternoon he duly drove himself to Queenstown LDH and was admitted into the hospital. The staff at Kew rang LDH to warn them that a disturbed person was on his way and also to tell them about the rifle in his possession. It was not until later that it was established that the bolt had been returned to him before he left for Queenstown.

The behaviour of the patient deteriorated and he became aggressive and paranoiac. He apparently threatened staff and Queenstown Police needed to be called and they removed him from the hospital. On Monday afternoon he was escorted by two police officers to Dunedin for further psychiatric assessment.

Exactly how this whole episode was resolved finally is not recorded in the article under question. There are a few further facts that need to be mentioned. The article stated that the newspaper had information that the patient was a drug user but again no details. Further there was balancing comment that the Police had said that there was no bullet and that the rifle had never been used in any way by the patient at Queenstown. This appeared in the article notwithstanding the use made in the piece about the gun, as mentioned hereafter.

It emerged in the response of the newspaper that they had obtained information from persons identified in the article as “local health sources”. The newspaper has not identified them but strongly maintained they were reliable sources whose information the newspaper trusted. The facts as detailed above were not in serious dispute even by the complainant. It is agreed that the newspaper had not contacted the complainant at all in the few days that elapsed between the incident and publication on the Thursday. An attempt was made to get verification from hospital staff but no one was prepared to talk to the newspaper.

The essence of the complaint centres on the identification of the patient notwithstanding that his name was not used in the article. If it is accepted that he could be identified then the content of the article was primarily a breach of his privacy and damaged his reputation. As already stated there is no particular complaint about factual errors although

not all that were stated in the article are accepted as true by the complainant. This applies to the allegation of drug use and one supposes to the more serious accusations of aggressive behaviour and threats. There is a denial he used physical abuse as stated in the article but threats might constitute physical abuse.

The complainant argues firmly that there was sufficient material in the article to identify him and he says his friends apparently had no trouble and communicated that fact to him. The newspaper in its defence said they deliberately avoided information that would identify the person mentioned in the article and even if a few of his friends were able to name him the vast majority of the 30,000 readers of the newspaper would not have been able to identify the person. This is plainly a decision on fact that cannot be confidently resolved by the Council. It seems reasonable to the Council that many of his friends in a relatively smallish community would have known who the person was but who can say for them that information came exclusively from the article. The Council is satisfied that the newspaper did not wantonly provide facts that would lead inevitably to his identification and did not, consistent with truth to the facts of the total incident, provide unnecessary personal information. On balance the identity issue is decided in the newspaper's favour.

There is also complaint about confusion of fact and opinion and that the article lacked balance and fairness. Support for these allegations is not available in view of the dearth of factual evidence of the severity of the patient's conduct.

That takes us to the content of the article. The complaint is that the individual had sufficient personal details supplied so as to embarrass him before those known to him and that his privacy was invaded. The complainant states that the headline *LDH gun drama* placed particular emphasis on this aspect when in fact the actual gun had played little part in the incident. The gun had been promoted in the article by use of hypothetical and exaggerated possibilities, none of which had a material factual base. However, the use of the headline was an editorial choice and was not entirely inappropriate.

The complaint is not about the central part of the feature article that was that SDHB failed in its duty to protect the public from possible harm by a mentally disturbed person having access to a rifle and being obliged to travel unaccompanied from one hospital to another in view of the known mental condition of the patient.

Complaint is also made that in a separate piece on page 2 best described as an editorial signed by the publisher the patient was said to have a "screw loose".

Whilst less than ideal use of language it does not cross the boundary of contravening, by placing gratuitous emphasis on mental disability, Council's Principle 8 on "Discrimination"

Having said that and stepping back and viewing the article as a whole the object for criticism was not the patient but SDHB for the way it handled him. Overall the article was mostly factually correct and quite clearly in the public interest particularly with the background of the tragic Burton case still fresh in the immediate community's memory. There were indeed some inexplicable decisions made in regard to treatment by those in authority and there might be mitigating circumstances of which the Council is unaware. Nevertheless the newspaper was performing a well understood journalistic mission of questioning, probing, and bringing to light failures on the part of bureaucracies operating in such

an important area as public mental health. It is difficult to achieve successful outcomes on such ambitious projects without in some way attracting peripheral damage, which occurred in this case.

The complaint is not upheld.

Expert comment or plug for services – Case 989

The New Zealand Press Council has not upheld a complaint about coverage in *The Press* of a fatal climbing accident on Mount Aspiring.

The report, which appeared on April 21, actually originated from the New Zealand Press Association and featured extensive comments by professional climbing guide Paul Rogers, of Wanaka. Mr Rogers had actually been, the night before, at the hut from which the three climbers departed on their fatal climb, and had offered them some advice.

Mr Rogers said that from his observations he formed the impression that the group members did not know each other well. “You should know the people that you tie in with and you should have an agreed plan . . . they were a dysfunctional group of people on the mountain.”

Geoff Stephens, of Christchurch, complained to *The Press* that he had noticed a pattern for articles about mountain-climbing accidents, like this one, to include comments from a professional guide which, in his view, often amounted to an advertisement for guiding services.

Mr Stephens also complained that the criticism of the climbers in this case lacked any balance such as a comment from a group member who survived.

The Press responded by publishing Mr Stephens’ criticisms as a letter to the editor with a footnote that an attempt had been made to get comment from the survivor who had declined to respond.

Not satisfied, Mr Stephens complained to the Press Council, emphasising that the essence of his complaint was that the critical comments by Mr Rogers had not been balanced by friends or relatives of the group members.

The editor responded that it was a longstanding practice to seek expert comment on any tragedy and the comments by Mr Rogers were particularly apposite because he had seen and spoken with the climbers immediately before the fatal climb. Those comments were in no way a plug for professional climbing services. Mr Rogers had merely outlined what happened and how he believed the tragedy could have been avoided.

The editor said *The Press* had carried an article quoting family and friends of the climbers a few days previously and had approached the survivor about Mr Rogers’ comments but he had declined to be interviewed.

The Council believes it was entirely proper for *The Press* to have reported Mr Rogers’ comments, giving as they did an expert and close-up view of what happened.

Certainly newspapers need to avoid gratuitous criticism of accident victims but this report represented a constructive follow-up, offering a useful pointer to how similar tragedies might be avoided.

The complaint is not upheld.

Embargo breached – Cases 990, 991 and 992

The Press Council has upheld three separate complaints namely from Associate Transport Minister Hon Harry Duynhoven; aviation safety specialist Peter Rhodes; and Transport Accident Investigation Commissioner Hon Bill Jeffries, over non-compliance by the *Sunday Star-Times (SST)* with an embargo issued by the Transport Accident Investigation Commission (TAIC).

A TAIC report on the crash of a light passenger aircraft on approach to Christchurch Airport in June 2003, in which eight people died, was issued to selected addressees, including a *SST* reporter, over March 11-12, 2004. All of these copies were marked that it was subject to an embargo against publication and public discussion before 1 am, Tuesday March 16. The *SST* nevertheless reported on the TAIC's findings, on Sunday March 14. No other media breached the embargo although one major daily newspaper with an in-depth analysis in preparation felt obliged to go to print a day early, after the *SST* jumped the gun.

Mr Duynhoven maintained that the newspaper had acted unethically, in that the embargo had been put in place to allow those affected by the accident to come to terms with the report before it was publicly released.

Mr Rhodes, an independent air accidents investigator with a "thorough working knowledge of international standards in other ICAO, states," considered the newspaper's conduct to be "seriously deficient". ... "The purpose of a TAIC report is to find the cause, with a view to prevention, rather than to find blame. This is an international requirement under ICAO Annex 13, to which New Zealand is a signatory." Media are given "advanced access ... to permit careful accurate analysis of the findings and consultation with the aviation safety specialists involved to permit accurate and useful public dissemination of, often, complex technical investigations". Moreover, he claimed the embargo gave those directly affected a breathing space in which to come to terms with the report "free of media contact". Mr Rhodes noted an international dimension to the case. "The aviation industry in New Zealand is very small by international standards. We need the input of other aviation states to measure our own safety standards against." The actions of the *SST* "seriously dented the likely flow of safety information by the inappropriate publishing of a sensational, non-analytical version of a thoroughly conducted air accident report."

Mr Jeffries asserted, in a memorandum to the Press Council of May 20, "the *Sunday Star-Times* had breached an embargo to which it was a party by approaching and discussing the report's contents with next of kin and publishing its story before the embargo was lifted." The breach was compounded by a failure to give notice to TAIC of the intention to publish. Subsequent exchanges with the *SST* had not "to any degree" satisfied the Commission's complaint. "Relevant Press Council principles appear to be Confidentiality, Subterfuge, and Privacy (dealing with those suffering from trauma or grief) taken together with the accepted conventions surrounding the use and observance of embargoes by newsmakers and the media"

Mr Jeffries outlined TAIC practice in releasing reports of this kind. "Interested Parties", persons directly involved with the technical issues, or whose conduct may have been a cause of the accident, are able to see a draft copy of the report "in the interests of natural justice, and enhancing accuracy and fairness." This group would, however, re-

ceive the final report “at the same time and under the same embargo conditions as other recipients”.... “Survivors and next of kin of any dead are not included in the draft stage unless they happen also to be an Interested Party (in other words, generally crew) and receipt of the report is the first time that they see details of the investigation, its findings or recommendations.” The embargo on public discussion of the final report is generally for 3-5 days. “Briefings and news media conferences may occur during the embargo period, with the content subject to the same embargo.”

The *SST* and the TAIC made written submissions and also attended a formal hearing. The Press Council agreed to both sides making personal appearances, according to its established procedures. The newspaper was represented by legal counsel, Mr Peter McKnight; the editor, Cate Brett; and news editor, Miriyana Alexander. The TAIC was represented by its chief executive, John Britton; and media and victims liaison officer Peter Northcote. The Minister and Mr Rhodes did not attend.

In the course of the exchange of the parties’ respective submissions a factual dispute about statements supposedly made at an informal social gathering arose. The TAIC provided an affidavit in support of its view, which was responded to by an affidavit from the *SST* challenging it. The final resolution of the factual matter was, in the view of the Council, unnecessary as it was not germane to the essential decision the Council had to make and, as the parties were advised at the hearing, was put to one side.

Mr Britton argued that the *SST*, by accepting a copy of the embargoed report, had implicitly accepted the terms of the embargo. These included the stipulation that if a newspaper did not intend to respect the embargo, it should disclose its intentions to the TAIC. He also made the point that the newspaper was not able to escape the prohibition of the embargo by seeking, from another source, another copy identical to the one sent to the newspaper.

The *SST* acknowledged that the embargo was known to the newspaper and that a Christchurch-based reporter received a copy of the TAIC report under the embargo arrangement. Ms Brett said that, nevertheless, staff did not draw from the report supplied officially to the newspaper in Christchurch when preparing the article in question on the Saturday. Rather, “a source of one of our Wellington reporters ... provided him with a copy of the report.”

The editor informed the Council that a reporter had been assigned to look for a copy on the Saturday morning. Counsel for the *SST* contended that the reporter had been completely unaware of the embargo. The editor said she believed the newspaper could, in any case, make use of the information in the report because no undertakings had been given as to the embargo in respect of that particular copy.

The *SST* further argued that, since the TAIC report was to be made public in a day or two, the material in it could not be confidential. Nor did it have “(an) element of temporal confidentiality”. Thus the paper contended there was no legal impediment to publication. Was the embargo necessary “for the protection of persons who might be adversely affected by the report’s findings?” The newspaper maintained that this could not be so, since “TAIC’s standard procedure ... was to send a draft report for comment and submission before the final report could be released.” Recipients “would therefore have been well aware of the likely findings for some considerable period prior to the release of the

final report”. Moreover aviation industry contacts had assured the newspaper that there was nothing in the TAIC report of a technical nature to justify an embargo. Accordingly the *SST* concluded that “administrative convenience was an important factor in imposing an embargo”. The editor has also argued in a letter to *The Listener* – supplied to the Council by the TAIC – that the right of free speech justified her decision to ignore the limitations on public discussion imposed by the embargo.

The newspaper’s case essentially rested on the proposition that it had accepted the terms of the embargo in respect of the copy of the report distributed officially by the TAIC, but not on another copy – that fell otherwise into its hands. This is to make a distinction without a difference. All pre-release copies of the report, no matter who received them, or how, were marked as subject to the embargo.

The Press Council does not accept the argument advanced by counsel for the *SST* that “*the wording of the embargo was not sufficiently wide to bind those parties that received copies of the Report independently of the TAIC*”. All copies of the report originated with the TAIC; all copies issued subject to the embargo were so designated.

An embargo will plainly never be used to protect information of a secret or confidential nature. It is only a temporary constraint. The Press Council accordingly finds that the newspaper’s argument that the embargo could be breached because there was nothing secret or confidential about the information, does not stand up. The official purposes behind an embargo lie elsewhere – to permit timely evaluation, absorption of detail and the implications of a study or process (or a government pronouncement – like the Budget).

Nor was it correct to contend that all those affected by this particular report had ample time to adjust. Next-of-kin and others whose involvement was of a personal nature received the report only within the 3-5 day time-scale dictated by the embargo. The *SST* claimed that since nobody in this group had complained to the newspaper about the article, none had felt aggrieved. But the TAIC said it received a number of anguished complaints. Equally the Press Council sets aside the view of unnamed aviation experts that there was nothing in the report of such a technical nature as to justify an embargo. Their opinions hardly outweigh the interests of the general public, or of the broader aviation community, as determined by the duly accredited authority, the TAIC.

This particular report carried much freight, bearing on the safety of public transport and the grief of many people. For the Press Council the ethical issues were the key. The Council agrees with the TAIC that there were good and valid reasons for the embargo: to promote informed analysis of technical findings and to protect next-of-kin and others from the shock of learning about painful findings through only partly digested newspaper reports. There was nothing to suggest that it had been imposed as a matter of “administrative convenience”, as alleged by the newspaper. By short-circuiting the embargo the *SST* disregarded legitimate ethical concerns – as asserted by Mr Duynhoven. The newspaper’s assertion that the dismay of next-of-kin was unlikely to have been made worse by being unexpectedly sought out by reporters three days earlier than scheduled illustrates the point.

Press freedom is of course fundamental. Clearly there are circumstances where an embargo might attempt to suppress free comment. This was not one of them. Editors, in considering their response to any embargo, must weigh the justification for subjecting the information to temporary protection and therefore whether they wish to respect the terms

of that embargo. Accepting a copy of a report of this kind effectively commits editors to the terms under which it is issued. There is no legal sanction. But there is an obligation to respect the wider public interest. In this case TAIC asked all recipients to inform them if they did not intend to respect the terms of the embargo. This would have allowed the agency to make other arrangements to warn next-of-kin and prepare them for early release of the information from the report. The *SST* failed in this regard.

In many cases embargoes can serve the interests of the media – and this factor too should be considered by editors. Restraint on the natural journalistic instinct to pursue a “scoop” might sometimes be appropriate. Haste might lead to failure to do justice to the issues.

By failing to take sufficient account of grief or trauma, the issues of aviation safety and the wider political and social context, the *Sunday Star-Times* breached Press Council principles to do with the need to uphold the highest standards of ethical journalism. The Council upholds all three complaints.

The Press Council also draws the attention of editors to the importance of responding in person to individual complainants. The complainant, Mr Rhodes, clearly had a background in international aviation safety and a point of view that lent legitimacy to his contentions. It is unsatisfactory and contrary to agreed complaints procedures for him to have received no more than copies of material sent to other complainants.

The Chairman, Hon Sir John Jeffries, took no part in the Council’s deliberations.

Editor accused of anti-Catholicism – Case 993

The New Zealand Press Council did not uphold either of the complaints laid by Mr P Carmody against a *Dominion Post* editorial of May this year and a Tom Scott cartoon in June.

The editorial, titled *A church and its dirty little secrets*, dealt with the Catholic Church’s lack of response and mishandling of the complaints by pupils who had been abused by Alan Woodcock, a teacher at a number of the church’s schools. One of Woodcock’s victims took a civil case against him and by going public, brought the matter to the attention of the police and the public.

Mr Carmody reacted to the editorial by way of a published Letter to the Editor part of which read, “So why write an editorial and headline implying anyone but the Catholic Church would have done it better? And worse, why construct reports and opinions to tar the whole church when a few bad apples never mean the whole box is bad”. Over the next few days *The Dominion Post* printed a considerable number of letters from readers adversely reacting to Mr Carmody’s criticism of the editorial in question.

Following on from this series of critical letters Mr Carmody again wrote to the editor objecting that he should have restricted his accusations to Woodcock, and his employer, the Society of Mary, a Catholic Order and not besmirched the whole Catholic Church. He claimed that the newspaper had an anti-Christian agenda. This letter was not published. Four weeks later a Tom Scott cartoon appeared in *The Dominion Post* also alluding to the Woodcock case. Mr Carmody once more wrote to *The Dominion Post*, this time complaining about the cartoon.

Mr Tim Pankhurst, the editor of *The Dominion Post*, replied that the subject of the

complaints – the sexual abuse by a Catholic priest of children within his care and the Church’s handling of that over a period of time – were matters of considerable public interest. He denied Mr Carmody’s claim that *The Dominion Post* had an anti-Christian agenda – he believed that the Catholic Church, as well as the former priest had much to answer for and did not resile from his editorial comments. He conceded that Tom Scott’s cartoon was tough but said that he was encouraged to give his cartoons a strong current affairs edge – good cartoonists can mock or encapsulate public sentiment or figures in a way mere words often cannot.

The Press Council does not uphold Mr Carmody’s two-part complaint. Mr Carmody’s original letter to the editor – objecting to the editorial – gave him the opportunity to have his personal views published. His follow-up correspondence attacked the editorial in a similar vein to the material in his original letter. The second leg of his complaint against the Tom Scott cartoon is not upheld either. Cartoonists have a wide licence to use their skills to feature the news of the day, humorous or not. Editorials and cartoons are universally recognised as opinion pieces and are published at the discretion of the editor.

Ms Suzanne Carty took no part in the consideration of this complaint.

Editor accused of pro-Catholicism – Case 994

The President of the New Zealand Secular Society, Mr Wayne Church, complains that the editor of *The Dominion Post* has wrongly exercised his discretion in publishing statements of Cardinal Williams, Archbishop of Wellington, in an article headlined *Civil union anger a bit sad, says PM*. He further complains that his letter to the editor, critical of Cardinal Williams’ statements, was not published.

The Press Council does not uphold the complaints.

The article complained of was published by the newspaper on June 27, 2004. It contained quotations from a “strongly worded article on the ‘spiritual bankruptcy’ of liberalism” by the Catholic Archbishop of Wellington, Cardinal Thomas Williams.

On June 29 Mr Church wrote a letter to the editor criticising the Archbishop, and the remarks quoted from the Archbishop’s article. This letter was not published.

Mr Church wrote to the editor on July 12, 2004, noting that his letter had not been published and asking for an explanation about non-publication. The editor did not reply to this letter. Subsequently, Mr Church laid a formal complaint with the Press Council.

Mr Church has made lengthy submissions to the Press Council. In essence, these submissions allege wrongful use of editor’s discretion. He maintains that the editor’s decision to quote Cardinal Williams’s statements in the article is discriminatory against minority groups, particularly “gays”. He also complains that the non-publication of his letter to the editor, which criticises the Cardinal’s statements and attitudes, is further indication of editorial discrimination.

In response to Mr Church’s complaints, the editor maintains that the views of Cardinal Williams to the Civil Union Bill are newsworthy and should have been published. The Press Council agrees.

The editor has furnished the Press Council with copies of published letters to the editor about the Civil Union Bill. Some of these letters, published after publication of the article in question, relate specifically to the words attributed to Cardinal Williams, and are

highly critical. Indeed, their substance is very similar to Mr Church's unpublished letter. The editor maintains the newspaper has presented a range of views in the letters published.

The Council is satisfied that Cardinal Williams' remarks, although strongly worded, are presented within an article in which a range of views about the Civil Union Bill is presented. The Prime Minister's response to Cardinal Williams is reported in some detail, and comments from other political leaders are also included.

The Council, therefore, does not uphold the complaint because it is the editor's right to publish newsworthy comments.

Additionally, the Council's Principle that selection and treatment of letters for publication are the prerogative of the editor, who is to be guided by fairness, balance and public interest in the correspondents' views, has not been breached by the non-publication of Mr Church's letter.

Ms Suzanne Carty took no part in the consideration of this complaint.

Mob connection and poaching implied - Case 995

Lynmarie Edwards complained about the way *The Dominion Post* used a photograph of a Gisborne-based diving group that included her. Her complaint was that the photograph and caption implied by association with the accompanying story that she and those in the photograph had Mongrel Mob connections and were involved in poaching and/or the abuse of customary fisheries regulations. Ms Edwards denied vehemently that those things were true, and said her reputation had been damaged. She complained that the newspaper had breached Press Council principles relating to accuracy, correction, subterfuge and manipulation of photographs.

The Press Council has upheld the complaint.

The photograph and story headed *Maori fish scams* appeared in the *Weekend* section of the March 20, 2004 *Dominion Post*. The caption to the photograph said "Dive training: A member of a Gisborne-based dive course flashes the Mongrel Mob sign as he emerges from the sea." Though the man referred to was in the front of the photograph, Ms Edwards points out she is clearly identifiable in the group, as evidenced by derogatory comments she reported receiving about "fish stealing" after the story appeared. The group comprised seven persons.

A second photograph of crayfish ran with the story and was captioned "Seized crays: More than 500 crayfish, many undersized, confiscated recently on the East Coast. It was claimed they had been caught according to customary rights."

The story was largely based on an interview with Ministry of Fisheries team leader Martin Williams. Quoting Mr Williams saying the coast was being plundered, the newspaper reported concerns that known poachers were setting up bogus Maori trust boards to issue permits for substantial amounts of paua and crayfish, that permits were being written after a catch to legitimise poaching and that taxpayer-funded diving courses were being used by organised criminals to provide a ready-made poaching labour force. The newspaper quoted Mr Williams: "Half the local Mongrel Mob have been through [the courses], hardly anyone gets a job so the loans don't get paid and they use their dive skills and gear to go poaching."

If a different photograph had been used with the story, the complaint might not have arisen as Ms Edwards is not referred to in the story. The photograph is the nub of the complaint. Photographs identify, and photographs used with a story inevitably take on the colour and substance of that story, links that the average reader automatically looks for.

Ms Edwards through her lawyers challenged aspects of the story but was principally concerned about the damage to her reputation through the photograph. Her complaint outlined the way in which the photograph was taken. A photographer and reporter approached the dive school students on the beach. After agreeing to be photographed, the course members had to walk and pose several times, being told to look as if they were having fun, before the photographer was satisfied. Ms Edwards says they were not told what kind of story was being written.

When the dive school operator found out that the out-of-town journalists were working on a story about “Maori fishing scams” he contacted the reporter with a request that the photograph of his diving school students not be used. Ms Edwards told the Press Council the reporter informed the dive school head that the photographs were for a business story he was doing apart from the fishing scams report, but nonetheless the photograph appeared with the scams story.

The newspaper disagreed through its lawyers that any of the implications suggested by Ms Edwards could be taken from the use of the photograph with the story. The editor, in rebutting Ms Edwards’ points to the Press Council, said the reporter no longer worked for the newspaper so they had been unable to discuss details of Ms Edwards’ complaint with him. However, as the first complaint alleged defamation and the newspaper’s lawyers were of the opinion the complainant had not been defamed, no correction or apology had been forthcoming.

In respect of the complaint to the Press Council, the editor defended the story in general and said the newspaper did not take the same meanings Ms Edwards took from the photographs and accompanying story. “We did not say the unidentified course members in the main photograph accompanying our story were Mongrel Mob members or that they were involved in organised crime or enrolled in dive courses to gain skills to undertake illegal activities. We did not suggest that [the dive school in question] is used by gangs and organised crime to train poachers; we did not identify any dive school or person either in the photograph or the story.”

But the photograph is linked to the story by the caption referring to a dive course and to a “Mongrel Mob sign”. Whether the hand sign with thumb and little finger extended is a Mongrel Mob sign or not – held up to ear and mouth, it is a popular sign for a phone call – the fact the newspaper identified it as such without qualifying or isolating the person using it would lead a reasonable reader to the clear inference that this group is associated with the Mongrel Mob.

The only dive courses mentioned in the story are those used by criminals connected with fishing scams and the only reference to the Mongrel Mob is in association with dive courses for the purposes of moving on to poaching. No evidence in the story connects the people in the photograph to these claims to justify the use of the photograph in question.

The call for a report to the Cabinet on the allegations of customary fishing rights abuse, and actions and comments by the Government, which followed the story, show the

newspaper highlighted an issue of concern. But that good was undone by the offhand use of the photograph, taken with a degree of subterfuge, that showed people not connected by any concrete evidence in the story to the allegations cited, and by a caption implying links with the story that were not proven.

The complaint is upheld.

Ms Suzanne Carty took no part in the consideration of this complaint.

Kosovo, a long-running story – Case 996

Dr Tanja and Dejan Mitrovic of Christchurch complain that *The Press* – in an article published in March – “violates the first principle of journalism: ... accuracy”.

They said it did this by omitting all references to Serbs as victims of the recent violence in Kosovo and by printing photographs and captions that gave the impression the only victims were Albanians.

The Press Council does not uphold the complaint.

The article that led to it was headed *Raids seek reason for violence* and was published on March 25.

Tanja and Dejan Mitrovic – members of the Christchurch Serbian community – said the article was a textbook example of manipulation of information by the news media because it did not say the violence was the result of organised attacks by Albanian extremists on the remaining Serbs in Kosovo.

They expected *The Press* to apologise and publish an article – selected by “representatives of the Serbian community and *The Press* editorial team”— from a “world respected” newspaper.

The editor said it would be a mistake to judge coverage of the Kosovo violence – a “complicated and long-running story” – by referring to a few articles only.

He said *The Press* had no interest in anything other than a fair, accurate account of the Balkans conflict and its coverage did not favour one ethnic group over another. Copies of a number of articles it had printed were provided to back this up.

In a subsequent letter the acting editor said when coverage of events in Kosovo in March was read in total it showed the culpability of the Albanians was discussed.

That did not satisfy Tanja and Dejan Mitrovic – any more than fulfilment of their expectations would have satisfied the editor and his editorial team.

After years of civil war, terrorism and massacres in the Balkans any coverage has the potential to offend one or other of the protagonists.

In this case it seems the offence is the reference to 10,000 ethnic Albanians being killed in the war that ended in 1999, which was a recapitulation of past events at the end of the story.

However, the article that prompted the complaint, included an apology from a Swedish Brigadier-General, who told a meeting of Serb community leaders the potential for violence should have been anticipated and “... we got it wrong. For that I am very sorry”.

Though he is not reported to have said anything directly about Albanian culpability, it is most unlikely there would have been an apology if there had been no Serb victims.

Taking that in to account, as well as other coverage by *The Press* of a continuing conflict with deep historical roots, the complaint is not upheld.

Editing of letter and attack on writer earn rebuke – Case 997

Brenda Ryan has complained that an article about a soccer brawl published in Capital Coast Newspapers' *Wainuiomata News* breached standards requiring accuracy and clear distinction between comment and fact. Mrs Ryan further complains that the treatment of her subsequent letter to the newspaper breached standards requiring accuracy, distinction between comment and fact, and the correction of errors. The complaint is part upheld.

The July 15 article, headlined *Violence mars soccer match*, is a clearly personal account of an incident by the newspaper group's sports reporter. The piece is written in a colourful style, but takes pains not to attribute overall blame. The incident is introduced with the carefully chosen words: "All of a sudden a brawl ensued".

What the writer does impart subjectively is from his own observations: that before the game a player from the home side called the visiting team, "the boxing team", and that, in the melee, a named home player (with an addendum the given name is not believed to be real) set upon, and bloodied, the referee.

The published, abridged letter from Mrs Ryan accused the writer of "appalling" reporting and untruths, saying he had jumped to conclusions, omitted relevant information, made untrue statements, and given an impression that the [Wainuiomata] women's team was "made up of violent thugs". Published on July 22, the letter was footnoted with a defence from the reporter that included: "Shame on you for even attempting to condone this, whether your side was the less guilty party or not". Below this, was a further news story, reporting a Capital Soccer fining and banning of evicted players, and the placement of both sides on good behaviour bonds.

Capital Coast Newspapers' group editor Peter Bartlett vigorously defends the report as proper and calls the complaint baseless.

For the following reasons the complaint in respect to the article is not upheld. The article was clearly a first-hand account, its introductory paragraphs observational and leading into the unambiguous statement: "I was at the game". Though far from dispassionate, the piece in no part attempts to get to the bottom of the affair or apportion blame. Rather, it expresses "shock" at violence seen through the eyes of the journalistic observer.

Mrs Ryan's anguish at the lack of description about the origin of the brawl was understandable but nevertheless the piece was merely expressing horror at an example of sports violence.

This part of the complaint is not upheld.

The treatment of the letter, however, is a different matter. In it, Mrs Ryan takes umbrage at the reporter's failure to inquire about the origins of the fight, apparently to show the culpability of the other side. In her complaint, she offers concerns about her letter's abridgement, saying the published version omitted comments about a Wainuiomata player's inability to defend herself against "swinging fists" and "many punches" being thrown by the other team's players. Assuming the paper's intent was to excise comment attributing blame, most of the cuts might be judged legally wise. But the newspaper loses for editing out Mrs Ryan's comment, "I do not condone Karen's behaviour" then severely criticising her for "attempting to condone" violence. The omission and the subsequent attack on Mrs Ryan cannot be justified. This part of the complaint is upheld.

Arising out of the complaint, the council feels obliged to make further comment about the manner in which Mr Bartlett, in his complaint correspondence, rounded on Mrs Ryan. So obscene and abusive were the words used by Mr Bartlett, that the Council took the unusual step of editing his reply before forwarding it to Mrs Ryan. The action was to no avail – Mr Bartlett had forwarded a copy of the original to her, with all the offensive language intact. The language was, to say the least, abusive, offensive and unprofessional. Mr Bartlett has recently accepted a new position, editing a community newspaper in Australia, but the Council must emphasise the unacceptability and unprofessionalism of using such language in dealing with readers. No complainant should have to put up with such abuse. As a footnote, the reporter has also left the publication for an Australian appointment.

‘Free’ or not? – Case 998

The Press Council has upheld a complaint from Mr Grant Birkinshaw of Lower Hutt against the *Sunday Star-Times*.

Mr Birkinshaw complained that the banner *Free Magazine* on the front page of several issues of the *Sunday Star-Times* in June and July 2004, promoting its new magazine supplement, was misleading.

He stated: “I object most strongly to the false and dishonest advertising on television and in the *Sunday Star-Times* which proclaims that the *Sunday* supplement is *free*. It is not free as it is a high gloss expensive supplement. The cost of it is met by the purchaser. Also, I would like an explanation as to if it was ‘Free’ why did the newspaper increase its cost an extra 20 cents, or was this just ‘coincidence’...”

In his letter of response to Mr Birkinshaw’s complaint, David McKenzie, the general manager of the Fairfax Sunday Newspapers group, described the new magazine as a “business improvement” and argued that the increase of the cost of the newspaper and the launch of the magazine supplement were coincidental. He further pointed out that there was no increase of price to subscribers, and that the price increase was a budgeted increase, in line with those made on other newspapers from time to time.

Mr Birkinshaw responded to this explanation by pointing out that the cost of the new magazine was being passed on to the consumer, and that the magazine was not free.

Since Mr Birkinshaw’s complaint, the *Sunday Star-Times* has dropped the word “free” from its banner advertising the magazine supplement, and the Press Council is pleased to note this. However, the Press Council has concluded that the public perception of a price increase of the *Sunday Star-Times* at the same time as the launch of a new supplement does appear to mislead the public.

The complaint is therefore upheld.

Hitler joke in poor taste – Case 999

Two complaints against the *Rural News* were lodged by Anne Braun-Elwert on behalf of herself and her husband. She claimed that her husband, Gottlieb, had been made fun of because of his German origin and had been likened to Hitler. She also said that *Rural News* had incorrectly reported that her husband had had several run-ins with local farmers.

Neither complaint was upheld.

On September 7, 2004 *Rural News* featured Gottlieb Braun-Elwert in two sections of the paper, once in a front page report *Access group questioned* and secondly in the editorial headed *Come clean on access*.

The front-page article dealt with the Opposition's questioning the impartiality of the Government's controversial report into greater access to private land. One of the appointments to the 11-member group to help guide government policy on land access was Mr Braun-Elwert, a professional mountain guide with his own Alpine Recreation business, who had accompanied Prime Minister Helen Clark on a number of tramping expeditions. His name had been originally left off the list of appointees issued by the Government and *Rural News* was investigating the implications of this omission.

The editorial repeated most of this front-page article. In addition the editor stated he had gathered sufficient information on Mr Braun-Elwert's run-ins with high country farmers to believe that any anxiety the farming community had about his involvement in the land access debate was probably justified.

In response to the front-page article and the editorial, Mr Braun-Elwert wrote to *Rural News* asking for an apology and correction of the information. *Rural News* published this letter on September 21 in an abridged form.

On October 5, *Rural News* continued with its theme that Mr Braun-Elwert was a controversial choice for the land access policy group. The paper published as an opinion piece a page of "Ag-mails" headed *Go take a hike Fraulein Clark*, being a series of mock email correspondence supposedly written between Mr Braun-Elwert, John Acland and David Carter, the Opposition spokesman for land access. The first email was headed *Subject: – Sour Kraut*, and was addressed to Herr Carter from Gottlieb with a number of basic German words sprinkled through the body of the email. The supposed response from Mr Carter to Mr Braun-Elwert stated "Meanwhile, I remember reading about another German – in the 1930s – who saw little harm in having greater access to the countryside (Poland, I believe) and look at the mayhem that caused!"

The emails did have a kind of disclaimer at the bottom of the page but the editor advised that these disclaimers were part of the joke. The same article on the *Rural News* website did not have a "joke" disclaimer.

In response to the complaint, *Rural News* said that humour is completely subjective and what some readers find funny will be offensive to others. The managing editor justified the use of the mock emails on the grounds that Mr Braun-Elwert is a government appointee to the land access reference group and is fair game, as is any such public figure.

Responding to the complaint that *Rural News* had been inaccurate about Mr Braun-Elwert's run-ins with local farmers, the editor stated that *Rural News* had received assertions both on and off the record from a number of high country farmers that Mr Braun-Elwert was not on good terms with them.

The Press Council did not uphold the first part of the complaint about likening Mr Braun-Elwert to Hitler in the mock emails. The Council felt that the "joke" about Hitler was in very poor taste but allowed the editor's right to publish. The rest of the opinion piece was within the bounds of satire.

The Press Council did not uphold the second leg of the complaint about Mr Braun-Elwert's relations with high country farmers. His letter to the editor had been published

giving his point of view on his reputation with his neighbours. *Rural News* had gathered other local farmers' differing views on their personal relationships with Mr Braun-Elwert and their attitude to his appointment to the land access policy group. Decisions about publication of such material must always lie with the editor. It is not the Press Council's role to weigh the merits of either side of the argument.

Editor's choice how elections are covered – Case 1000

Dr Robin Gwynn complained about the *Hawke's Bay Today's* coverage of the 2004 local body elections, in particular that the newspaper had failed to observe the principle requiring accuracy, fairness and balance.

The complaint is not upheld.

Dr Gwynn's complaint, although broad in its scope, was confined to the election coverage. It was founded primarily on what he perceived to be omissions in the newspaper's reports of the election campaigns, a matter about which Dr Gwynn had personal knowledge, because he was a candidate for the Napier City mayoralty and the local council.

His specific complaints included claims that the newspaper failed to report on candidates' meetings, closed its letters column to candidates (subject to one exception), ignored media releases, restricted comment by candidates to set topics identified by the newspaper, made inaccurate editorial assertions about the elections, failed to afford candidates any real opportunity to advance their own policies or ideas, and reported the campaigns in a personality-based manner rather than an issue-based manner.

The editor of *Hawke's Bay Today* rejected Dr Gwynn's criticisms and maintained that the newspaper's election coverage was fair and unbiased. He suggested that Dr Gwynn might have been disappointed because he had an "unrealistic expectation" of a newspaper. Dr Gwynn provided the Council with considerable material, which he maintained supported his claims. This material included copies of press releases issued by Dr Gwynn to the newspaper, academic comment on the polling undertaken by the newspaper, comparative data for two other newspapers' coverage of the local body election, as well as the correspondence between Dr Gwynn and the editor of *Hawke's Bay Today*.

In addition, two other people wrote independently to the Council and voiced their support of the complaint made by Dr Gwynn. Each of these correspondents expressed their own concerns about what they perceived to be a lack of balance and/or bias in the coverage of local body politics in *Hawke's Bay Today*. The Council referred their comments to each of the parties to the adjudication. The editor of the newspaper claimed that each correspondent was disaffected with his newspaper and he took the position that their letters were of no relevance to this case. While it is apparent to the Council that there is some "disaffection", the Council does, nevertheless, see the letters as having some, albeit limited, relevance.

In support of his complaint, Dr Gwynn also appeared in person before the Council and skilfully presented his case. He endeavoured to introduce further correspondence to the Council notwithstanding earlier advice that it was not open for him to do so. The Council records that those documents were not taken into account in any way in this adjudication.

Dr Gwynn acknowledged that none of the specifics of his complaint, in itself, suf-

ficed to make out a breach of the Council's principles. He agreed that it was the cumulative effect that resulted in the breach he alleged. His complaint in this regard is an unusual one and is made even more so by the fact that he relies primarily on what he perceived as "omissions" by the newspaper. The poll complaint was the exception. It was apparent that Dr Gwynn felt aggrieved by the coverage given to his not inconsiderable efforts and that he felt the electors in his region had been given insufficient information through *Hawke's Bay Today* to enable them to make an informed choice when casting their votes.

However, it is not the role of the Council to determine what is newsworthy or what angle a particular newspaper should take on any story. That is entirely a matter for the editor to determine. The Statement of Principles is clear that publications (newspapers and magazines) should be guided by at all times by accuracy, fairness and balance, and should not deliberately mislead or misinform readers by commission or omission. In the judgment of the Press Council, *Hawke's Bay Today* did not breach that principle. It is the editor's prerogative to ignore press releases issued by a candidate and that prerogative extends to cover even those press releases that might appear to someone else to be particularly newsworthy.

It follows from the same point, that there can be no requirement to attend candidate meetings held in a newspaper's region. Similarly, it is open for editors to determine the policy regarding candidates' letters during election campaigns and to determine what profiles (if any) they might give to candidates. There is no requirement on editors to allow space in their newspapers for candidates to air their own campaigns and editorial comment is a matter entirely for the editors to determine. Editors can choose to report the elections as they determine. A failure by a newspaper to set out a poll's margins of error is not necessarily fatal to its election coverage as a whole. Some other aspects of the poll could be validly criticised, but no more.

Newspapers are not a uniform group and nor are their readers. What occurs in one region is not indicative of what should occur in other regions. The differences might be surprising, but nevertheless the Council supports the right of editors to decide the type of coverage given in their regions.

Given Council's rejection of the specific complaints, it follows that the Council does not find them cumulatively to make out a breach of the Press Council principles.

Dr Gwynn's complaint is not upheld.

Mr Jim Eagles took no part in the consideration of this complaint.

Subterfuge and manipulation of photo ruled out – Case 1001

Mr Neil Hayes has complained about an article, headlined *Children play with guns at Auckland show*, published on page 4 of the *Sunday Star-Times* on 3 October 2004.

The complaint is not upheld.

The article comprised a prominent photograph, a headline, and a short article. The photograph shows a group of people at a stall in the Auckland Arms Fair, including a young person working the stall and a boy looking down the sights of a rifle. The article centres on comment from various "family" interest groups on the fact that children were

“playing with firearms” at the fair and the detrimental effects of exposing children to guns. Fair organiser Tony Daw is reported as saying that security was tight at the event and children were not allowed to “handle guns”. Mr Daw is then quoted as saying “It’s not like kids pick [guns] up and play with them”.

Mr Hayes complaint is that the article breaches principles 1 (accuracy), 11 (manipulation), and 9 (subterfuge). The papers before the Council include correspondence from Mr Philpott, the owner of the stall photographed and the father of the young person supervising it at the time. The correspondence has all been addressed or copied to Mr Hayes, and he has Mr Philpott’s permission to use it in support of his complaint. Those parts of Mr Philpott’s correspondence that are relevant to Mr Hayes’ complaint have been taken into consideration.

Subterfuge: The paper is entitled to photograph any person in a public place and to publish that photograph. The Fair was a public event: it was open to the public on payment of a fee. Mr Hayes asserts that the paper had no right to take photographs at the Fair because cameras were expressly barred from the event. He has provided a copy of a notice stating that “cameras, videos and carry bags” were not allowed “for security reasons”, which he says was prominently displayed at the entrance to the fair. The photographer says that he did not see any poster, that he openly carried his camera and took photographs at the fair, and that nobody took issue with him doing so. In any event, the camera ban does not seem to have been directed at the press, indeed Mr Philpott notes that another reporter was given a tour of the fair and that TV footage was taken. For this reason, the complaint of subterfuge is not upheld.

Manipulation of the photograph: Mr Hayes and Mr Philpott both assert that the photographer “conned” or “forced” the boy to pick up a gun and “staged” the photograph. The photographer denies any manipulation and asserts that the boy pictured was merely one of several children he observed “handling” weapons at the Fair. Mr Philpott claims to have personally witnessed the photographer manhandling the boy and forcing him to pick up a gun and pose for the camera. However, Mr Philpott does not say he challenged the photographer at the time about the fact he was taking pictures or the manner in which he is alleged to have done so. Further, the picture itself does not support the allegations made: neither the stallholder (Mr Philpott’s daughter) nor the other adults pictured appear at all concerned. The Council does not accept Mr Philpott’s account. The complaint of manipulation is not upheld.

The headline and accuracy, fairness and balance: The *Sunday Star-Times* is entitled to adopt a forthright stance and advocate a position on the issue of children and guns (see principle 7). The only restriction is that, when reporting on that issue, it must be guided by accuracy, fairness and balance, and should not deliberately mislead or misinform readers (see principle 1). That includes headlines, which should accurately and fairly convey the substance of the reports they are designed to cover (see principle 10).

Mr Hayes and Mr Philpott both argue, contrary to the family advocates’ views reported in the article, that it is healthy and wise to educate children about guns. That view was not presented in the article but an alternative argument about gun sports and collecting was put forward by Mr Daw. It cannot be said that the article lacked balance.

There is one matter that has given pause. The headline refers to children *playing with*

guns whilst the article refers to both “playing” with and “handling” guns. It might be argued that the two terms are materially different: the former evoking images of unsupervised children with weapons potentially hurting themselves or others, whilst the latter evokes a controlled situation. However, that is not the case here. The article uses the terms interchangeably as is shown by that part of the article reporting Mr Daw’s comments. On that basis, it cannot be said that the headline or the article as a whole is inaccurate or unfair.

The complaint is not upheld.

Editor’s relationship with District Council questioned – Case 1002

A complaint by a Foxton Beach woman, Christina Paton, has spurred the New Zealand Press Council to issue an adjudication reiterating one of its principal objectives – to preserve the established freedom of the New Zealand press.

Mrs Paton’s approach to the Council stemmed from comments in the August agenda for Horowhenua District Council’s development committee meeting, made by development manager Linda Archer. The comments that unsettled Mrs Paton read: *Item 6, Relationship with the media. Update: Monthly meetings with the Editor of the Chronicle arranged to go over previous month’s articles. Meetings in relation to editorials that were counter-productive.*

On the face of it, Mrs Paton wrote, “this looks as if a local body that does not like honest reporting of its meetings is hobbling the press.

“I’m asking you”, she wrote to the Press Council, “to investigate whether the *Horowhenua-Kapiti Chronicle* is having to compromise investigative, accurate reporting with the threat of the [council] taking away a considerable advertising budget.”

Editorials, she said, should be the soul of a publication and set a high standard. If the district council saw an editorial as being counter-productive, then surely the editor had hit a soft spot, exposed a “running sore” and deserved praise for his forthrightness.

In reply, editor Bernie Whelan, said that Mrs Paton’s comments indicated the need for him to illustrate how editors interacted with all readers.

In any given month, he said, he welcomed and had meetings with a range of people and organisations in the community who might, or might not, be happy with material published in the *Chronicle*.

“They have a right to express their opinions about any story and, within the bounds of the time I have available daily, I am happy to give them that opportunity.”

Though he had had contact with Ms Archer on a range of issues, he said he did not have scheduled monthly meetings with her to go over the previous month’s *Chronicle* articles. He had, he said, verbally pointed out to Ms Archer and the council’s chief executive what Mr Whelan, called the “unfortunate terminology” of the wording in the committee’s activity report.

It was good, he said, to see members of the community taking an active role in issues in their local media and their local council.

The Press Council wholeheartedly concurs. At its final meeting for 2004, the Council said that it had no reason not to take Mr Whelan’s word for the nature of the newspaper’s

relationship with the district council. But it was cheered by Mrs Paton's commitment to a free press, a commitment the Press Council clearly shares.

The Press Council says that, in its experience, most local bodies and politicians endeavour to persuade their local paper to give them positive coverage. That is the transactional nature of much political journalism in 2004. However, newspaper editors are generally wise to these stratagems because providing good publicity is not the role of the print media.

The job of the local paper is, the Press Council said, chiefly to reflect back to its community the diverse actions and views of those who make up that community. That responsibility included having a sometimes robust relationship with the community's political leaders and their staff.

The Press Council said Mrs Paton had provided no evidence that the relationship between Mr Whelan and the council was any different from that which existed between most local papers and their local councils or MPs.

Nonetheless, because a free and independent press is one of the pillars that underpins any democracy, it is good to know that this concept has backing from both Mrs Paton and the *Chronicle's* editor. Freedom-of-the-press watchdogs are valuable and sometimes scarce commodities, the Council concluded.

The complaint is not upheld.

Bias against Racing Club rejected – Case 1003

A complaint has been lodged by Stratford Racing Club (Inc) against *The Daily News* about a by-lined article appearing in the July 5, 2004 edition of the newspaper. The article was written by the newspaper's racing journalist, Tony Bird, under the heading *Inquiry to look at Stratford club*. The letter of complaint was signed by the club president and vice-president.

The complaint is not upheld.

The terms of the complaint in a letter dated July 15, 2004 contain "The latest source of indignation..." and then refer to the article of July 5. Such a statement clearly enough flags that the real issues for complaint are about what happened in prior years about which no complaint was made. The details of the complaint about this article are few. A reported statement about Constitutional changes of Guy Sargent, New Zealand Thoroughbred Racing chairman, is called a lie. Constitutional changes were in the past proposed. However, that is a minor issue compared with others that have arisen and need not detain us. The real substance of the grievance is about what was said in the newspaper in previous years.

The formal complaint about the July 5, 2004 article is made seemingly to bring itself within the Rules of the Press Council that a complaint must be lodged within three months of publication, or it is out of time. The essence of the article of July 5 was to report that New Zealand Thoroughbred Racing had established an independent committee to inquire into the affairs of Stratford Racing Club. The article complained about is non-inflammatory and briefly recapitulates the trials and tribulations of the club, over many years. It made mention of some of the central issues of conflict such as deliberate exclusion by the club management of apparently otherwise acceptable applications for membership. The article mentioned the constitutional changes referred to above. Also that there had been a

previous investigation into the affairs of the club. From the copious material supplied with this complaint these are simply matters of fact about which there is no doubt of the occurrence of the facts.

It is indisputable that the real grievance of SRC is that the newspaper had in the past published material and written editorials (September and October 2002) highly critical of the conduct of the club's affairs by its management, particularly for refusing membership applications from persons who would have been acceptable in other racing clubs. The clear implication was that these refusals stemmed from fear that the new members would challenge the authority of the present management. There was also the proposal to change the constitution that the club said was only lost by a single vote not by a wide margin as reported. In the context of the main issues one of which is so-called "blackballing" this is a minor matter. Apparently the proposals of the club about training fees had stirred up resentment.

In 2002, or after, SRC did not respond to the newspaper itself or take any other steps to complain about its treatment at the hands of the newspaper.

The central issue of the complaint is that the club says the newspaper over the years has been biased in its published items on the club's activities. By alleging bias the club clearly implies unfairness and prejudice in its reporting. The editor in a reply to the club does not deny the reporting, "... does appear to paint a damning picture of bias in our coverage of recent issues involving your club", but argues the facts justify such reporting. Looking at the situation objectively, especially noting the past failure of the club to complain, the Council believes the criticisms of the club by the newspaper were allowable and were not in any sense "biased" by being unfair and prejudiced.

It is difficult to avoid the conclusion that the management of SRC was galvanised into the action of complaining to the Press Council after the news was released on July 5 that New Zealand Thoroughbred Racing had decided to establish an independent inquiry into the club's affairs. That committee received quite wide-ranging terms of reference and did inquire into the affairs of the club and reported to NZTR in a report dated September 2, 2004. The Report was highly critical of the past conduct of the club. Notwithstanding the report SRC has continued with the complaint to the Press Council.

In several recent adjudications the Press Council has firmly said that it is not its function to examine in detail a dispute of the magnitude of this one. (See Immunisation Advisory Centre and *Investigate Magazine* Case 847, 2001.) In any event that inquiry has been completed and produced a 38-page report with three pages of recommendations. SRC did not take any part in the inquiry and we have been informed does not acknowledge the validity of the report.

The complaint is not upheld.

Changes to contributed piece castigated – Case 1004

The New Zealand Press Council has upheld a complaint over *The Dominion Post's* handling of a contributed opinion piece and reminded newspapers that they must not put words into the mouths of expert commentators.

In the case before the Council, Mr Jim Traue, a former Chief Librarian at the Alexan-

der Turnbull Library and a lecturer in librarianship at Victoria University, submitted an article expressing concern at planned changes to the university library.

The Dominion Post advised him that the article was too long and said it could either be trimmed by its editorial staff or he could do it himself. Preferring to retain control over the changes Mr Traue chose the latter.

Nevertheless, when the article appeared on July 8 additional changes had been made. The introduction had been altered from a question asking why many people were upset at the library plans to a statement that Mr Traue was outraged.

More significantly in terms of the complaint, a reference to the university “dumping 30,000 books” was added to the second paragraph, whereas Mr Traue’s draft had referred in the first paragraph to plans to “dispose” of the books.

In addition, the article was illustrated with a photograph of some old books, with a caption stating that they were “among some of the thousands of surplus books the university library is going to give away or dump”, when in fact those particular books were to be retained.

The day the article appeared Mr Traue sent a note to the paper by hand objecting to the insertion of the word “dumping” and to the erroneous caption and asking for a correction.

The next day the paper replied suggesting – somewhat confusingly – that “because of the delay between the article’s publication and the arrival of the letter asking for a correction” Mr Traue should make his points in a letter for publication. Mr Traue duly wrote such a letter and it appeared on July 16.

There the matter rested until on July 30 *The Dominion Post* published an article from Professor Warwick Clegg, pro-vice chancellor at the university, defending the university’s plans for the library. The final paragraph observed that a former academic like Mr Traue might have been expected to offer “a more balanced viewpoint, informed by library practice worldwide”.

Mr Traue wrote to Professor Clegg challenging his comments.

In reply on September 6 Professor Clegg apologised for the delay in replying, advising he had been out of New Zealand. He listed 11 points in Mr Traue’s article with which he took issue, among them being the reference to “dumping 30,000 titles” and the incorrect caption. Professor Clegg said he had noted that both points had subsequently been corrected in Mr Traue’s letter but “regrettably the damage had by then been done, and it had been done over your name”.

Mr Traue then wrote to the editor of *The Dominion Post* noting that Professor Clegg obviously felt the publication of the letter was “insufficient to repair the damage done to the university” by the two errors and sought a meeting to discuss what further action might be taken to remedy the situation.

The editor responded that the paper had corrected the situation by publishing the letter and assumed in the absence of further comment from Mr Traue for nearly two months that the matter had been resolved. Professor Clegg’s article and letter had covered many other matters and the paper felt it was up to the two to resolve their differences directly.

Mr Traue then complained to the Press Council.

The Council has considerable sympathy with Mr Traue. It is not acceptable for a news-

paper to make significant changes to an opinion article without the approval of the author.

The Council does not agree with the contention of the editor that “it was not a simple matter of correcting a factual mistake, but rather one of nuance and the difference between dispose and dump”. The ordinary reader would have taken a very different message from the article as a result of the change – a difference underlined by the wording of the paper’s own photo caption – and Mr Traue should have been allowed to retain the meaning he wished.

Nor does the Council agree with the editor that the photograph and caption were merely “misleading”. They were wrong.

Mr Traue was entitled to expect the paper to publish corrections on both points.

In the circumstances, for the paper to merely ask Mr Traue to write a letter expressing his view was an abrogation of its obligation to correct errors fully and freely.

The editor is correct in pointing out that the argument between Mr Traue and Professor Clegg – which led to the matter being brought to the Council – was not the result of the errors made by the paper.

Professor Clegg’s article made no mention of them. His subsequent letter to Mr Traue did refer to both but they were only two among a list of 11 concerns. It seems clear that Professor Clegg would have responded vigorously to Mr Traue’s article even if the paper had not erred or if it had published a prompt correction.

Nevertheless, that does not alter the fact that the paper made two significant errors – most notably in putting unwanted words into the mouth of a highly qualified contributor – and then failed to adequately acknowledge its error.

The complaint is therefore upheld.

Ms Suzanne Carty took no part in the consideration of this complaint.

Poll more popular than statistically scientific – Case 1005

Variety – The Children’s Charity run by Variety Club of New Zealand complained about an article in the June 2004 edition of the *Reader’s Digest*, which was headed *New Zealand’s Most Trusted*. The article had a standfirst which said “Which charities do New Zealanders trust most? Which brands? The results of our exclusive poll will surprise you.” There was a small box as a strap line on top of the first page which said “RD Poll”. The initials “RD” are run on the top of alternate pages as an abbreviation for *Reader’s Digest*.

The complaint is not upheld.

Quoting a mixture of academics and random New Zealand consumers, the article explored the degree to which New Zealanders trusted various charities, product brands, occupations and government services. Asking how big a factor trust was in New Zealanders’ decisions to support the names listed, the article said: “To find out, we surveyed more than 600 *Reader’s Digest* customers. (The results were later weighted to represent the general population). We asked respondents how important trust is to them as consumers, and invited them to rate several charities, brands, government services and occupations. Our lists were by no means exhaustive; we chose subjects that would be well known to most New Zealanders, and reflected a fair cross-section of today’s marketplace.”

The magazine flagged the story on its cover as “The *Reader’s Digest* Trust Poll: Win-

ners and Losers”. Several publications took up the results and ran them as stories or generated comments of their own on the findings.

A full list of the names chosen by the magazine and their ranks in different categories was run at the end of the article. Small graphics reproduced as illustrations through the article showed the top five and bottom five in each category as chosen by the poll. These were labelled Most Trusted and Least Trusted.

In the summary graphic headed Charities, the five Most Trusted were ambulance services, Royal NZ Plunket Society, SPCA, Cancer Society and Royal NZ Foundation for the Blind. The Least Trusted in this category were listed as Greenpeace, Amnesty International, Variety Club, World Vision and Save the Children.

Local identification and longevity were two characteristics that academics believed contributed to the high ranking of the charities which came out at the top of the poll.

In its letters of complaint to the editor of *Reader's Digest* and to the Press Council, Variety – The Children's Charity criticised the methodology of the poll and said it was irresponsible journalism that it was unfairly portrayed as one of New Zealand's least trusted charities. “The most unfortunate thing about the article is the damaging effect it can have on an organisation whose very purpose is to demonstrate humanitarian concern which is founded implicitly on trust, good character and transparency.

“We are proud of the integrity and history of our organisation both in New Zealand and throughout the world. Variety runs a transparent financial system and grants system which would be equal to that of any not-for-profit organisation.

“We take great care of our brand and are extremely proud of the work that we do here in New Zealand. We have conducted our own qualitative brand audits and the ‘trustworthiness’ of our organisation has never been called into question.

“Whilst we do not expect the public to understand the detail of the work done by an umbrella charity such as Variety, neither do we expect organisations like *Reader's Digest* to present information that is unfair and does not communicate how their outcomes have been achieved. A reputation takes years to build and only seconds to destroy.”

Editor-in-chief Tom Moore defended the story, saying the way the poll was taken was revealed in the story, and that the magazine did not make any pretence that their survey was more than they said it was. He wanted to include charities in their survey “because they compete for public trust as much as commercial brands and public services”.

He pointed out that while Variety complained about being among “the least trusted” of all charities in New Zealand, all the magazine reported in its story was that the charities at the bottom of those surveyed were the least-trusted among the “well-known” charities they asked respondents to rank. Stating results as winners and losers was common journalistic practice.

The editor-in-chief felt readers would not regard *Reader's Digest* as a “sensationalist” publication wanting to do a “sensationalist” story, as charged by Variety. He had offered Variety the chance to put their views in a letter for publication in the next edition and on the magazine's website, as an unhappy Greenpeace had done for the Australian edition, but Variety had declined.

Polls and lists generated by magazines are a staple of magazine journalism because of their proven reader appeal, whether they be lists of best-dressed, worst-dressed, richest,

most powerful, most trusted, or man or woman of the year, decade or century. Magazines tend to control the whole process editorially themselves to retain the exclusivity and recognisable style of the publication. The categories of “most” and “least” are generally treated by readers to be comparative within the survey structure set up, and not absolutes.

The *Reader's Digest* has followed this process in the story in question. It was clear in the story how they conducted the poll (“To find out, we surveyed more than 600 ...”) which was more popular than statistically scientific. It was also clearly stated that consumers were invited to rate “several charities ...” not a complete list, that the “lists were by no means exhaustive” and that “we chose subjects”, making it evident the editorial staff controlled the selective lists.

Variety complains, to a degree, that the *Reader's Digest* story does not serve its purposes, but journalism directed towards the public will not often match the controlled purposes of organisations featured in such stories. Variety was offered the chance by the magazine to reach a wide audience with its point of view through an explanatory letter that presumably would have challenged the premises on which the poll was based. It was a pity that the organisation did not take up this reasonable offer of redress following a fairly normal journalistic exercise.

The complaint is not upheld.

Decisions 2004

<i>Complaint name</i>	<i>Newspaper</i>	<i>Adjudication</i>	<i>Publication</i>	<i>Case No</i>
Denis Hampton	<i>The Press</i>	Not Upheld	12.02.04	961
Michael Mann	<i>New Zealand Herald</i>	Not Upheld	12.02.04	962
J R Braithwaite	<i>Hawke's Bay Today</i>	Not Upheld	29.03.04	963
Noel Cox	<i>New Zealand Herald</i>	Not Upheld	25.03.04	964
Sue Evans	<i>The Press</i>	Not Upheld	25.03.04	965
Herman Jans	<i>Waikato Times</i>	Not Upheld	29.03.04	966
Carol Rankin (and the Office of The Clerk of the House of Representatives)	<i>Sunday Star-Times</i>	Upheld	26.03.04	967
Philip Rama	<i>New Zealand Herald</i>	Not Upheld	29.03.04	968
Andrew Williams	<i>North Shore Times</i> <i>Advertiser</i>	Not Upheld	25.03.04	969
David Bosley	<i>Hawke's Bay Today</i>	Not Upheld	14.05.04	970
Dean Spooner	<i>Sunday Star-Times</i>	Not Upheld	16.05.04	971
Christopher Dempsey	<i>Sunday Star-Times</i>	Not Upheld	16.05.04	972
Brian Hartley	<i>The Press</i>	Not Upheld	14.05.04	973
Barry Lawrence	<i>Waiheke Marketplace</i>	Not Upheld	14.05.04	974
Stuart Lowery	<i>New Zealand Herald</i>	Not Upheld	14.05.04	975
Steve McCormack	<i>New Zealand Herald</i>	Not Upheld	14.05.04	976
<i>Mountain Scene</i>	<i>The Southland Times</i>	Upheld	6.05.04	977
André Wardenaar	<i>New Zealand Herald</i>	Not Upheld	14.05.04	978
Anna Wilding	<i>The Press</i>	Not Upheld	14.05.04	979
John Bent	<i>Manawatu Standard</i>	Not Upheld	2.07.04	980
Alan Cato	<i>New Zealand Herald</i>	Upheld	6.07.04	981
Mark Sadler	<i>The Press</i>	Not Upheld	1.07.04	982
New Zealand Immigration Service	<i>The Press</i>	Not Upheld	1.07.04	983
New Zealand Immigration Service	<i>New Zealand Herald</i>	Not Upheld	1.07.04	984
K R Bolton	<i>Sunday Star-Times</i>	Not Upheld	15.08.04	985
Maria Frew, Paddy Beban and Mike Nolan	<i>The Press</i>	Part Upheld	12.08.04	986
Glenn Peoples	<i>Critic TeArohi</i>	Part Upheld	13.08.04	987
Complainant	<i>Mountain Scene</i>	Not Upheld	30.09.04	988
Geoff Stephens	<i>The Press</i>	Not Upheld	12.08.04	989
Associate Minister of Transport	<i>Sunday Star-Times</i>	Upheld	3.10.04	990
Peter Rhodes	<i>Sunday Star-Times</i>	Upheld	3.10.04	991
Transport Accident Investigation Commission	<i>Sunday Star-Times</i>	Upheld	3.10.04	992
P J Carmody	<i>The Dominion Post</i>	Not Upheld	30.09.04	993
Wayne Church	<i>The Dominion Post</i>	Not Upheld	30.09.04	994
Lynmarie Edwards	<i>The Dominion Post</i>	Upheld	30.09.04	995
Tanja and Dejan Mitrovic	<i>The Press</i>	Not Upheld	30.09.04	996
Brenda Ryan	<i>Wainuiomata News</i>	Part Upheld	30.09.04	997
Grant Birkinshaw	<i>Sunday Star-Times</i>	Upheld	26.12.04	998
Anne Braun-Elwert	<i>Rural News</i>	Not Upheld	26.12.04	999
Robin Gwynn	<i>Hawke's Bay Today</i>	Not Upheld	30.12.04	1000
Neil Hayes	<i>Sunday Star-Times</i>	Not Upheld	26.12.04	1001
Christina Paton	<i>Horowhenua-Kapiti Chronicle</i>	Not Upheld	24.12.04	1002
Stratford Racing Club	<i>The Daily News</i>	Not Upheld	24.12.04	1003
Jim Traue	<i>The Dominion Post</i>	Upheld	24.12.04	1004
Variety The Children's Charity	<i>Readers Digest</i>	Not Upheld	30.12.04	1005

Statement of Principles

Preamble

The New Zealand Press Council was established in 1972 by newspaper publishers and journalists to provide the public with an independent forum for resolution of complaints against the press. It also has other important Objectives as stated in the Constitution of the Press Council. Complaint resolution is its core work, but promotion of freedom of the press and maintenance of the press in accordance with the highest professional standards rank equally with that first Objective.

There are some broad principles to which the Council is committed. There is no more important principle than freedom of expression. In a democratically governed society the public has a right to be informed, and much of that information comes from the media. Individuals also have rights and sometimes they must be balanced against competing interests such as the public's right to know. Freedom of expression and freedom of the media are inextricably bound. The print media is jealous in guarding freedom of expression not just for publishers' sake, but, more importantly, in the public interest. In complaint resolution by the Council freedom of expression and public interest will play dominant roles.

It is important to the Council that the distinction between fact, and conjecture, opinions or comment be maintained. This Principle does not interfere with rigorous analysis, of which there is an increasing need. It is the hallmark of good journalism.

The Council seeks the co-operation of editors and publishers in adherence to these Principles and disposing of complaints. The Press Council does not prescribe rules by which publications should conduct themselves. Editors have the ultimate responsibility to their proprietors for what appears editorially in their publications, and to their readers and the public for adherence to the standards of ethical journalism which the Council upholds in this Statement of Principles.

These Principles are not a rigid code, but may be used by complainants should they wish to point the Council more precisely to the nature of their complaint. A complainant may use other words, or expressions, in a complaint, and nominate grounds not expressly stated in these Principles.

1. Accuracy

Publications (newspapers and magazines) should be guided at all times by accuracy, fairness and balance, and should not deliberately mislead or misinform readers by commission, or omission.

2. Corrections

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

3. Privacy

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

Publications should exercise care and discretion before identifying relatives of persons convicted or accused of crime where the reference to them is not directly relevant to the matter reported.

Those suffering from trauma or grief call for special consideration, and when approached, or enquiries are being undertaken, careful attention is to be given to their sensibilities.

4. Confidentiality

Editors have a strong obligation to protect against disclosure of the identity of confidential sources. They also have a duty to take reasonable steps to satisfy themselves that such sources are well informed and that the information they provide is reliable.

5. Children and Young People

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

6. Comment and Fact

Publications should, as far as possible, make proper distinctions between reporting of facts and conjecture, passing of opinions and comment.

7. Advocacy

A publication is entitled to adopt a forthright stance and advocate a position on any issue.

8. Discrimination

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

9. Subterfuge

Editors should generally not sanction misrepresentation, deceit or subterfuge to obtain information for publication unless there is a clear case of public interest and the information cannot be obtained in any other way.

10. Headlines and Captions

Headlines, sub-headings, and captions should accurately and fairly convey the substance of the report they are designed to cover.

11. Photographs

Editors should take care in photographic and image selection and treatment. They should not publish photographs or images which have been manipulated without informing readers of the fact and, where significant, the nature and purpose of the manipulation. Those involving situations of grief and shock are to be handled with special consideration for the sensibilities of those affected.

12. Letters

Selection and treatment of letters for publication are the prerogative of editors who are to be guided by fairness, balance, and public interest in the correspondents' views.

13. Council Adjudications

Editors are obliged to publish the substance of Council adjudications that uphold a complaint. Note: Editors and publishers are aware of the extent of this Council rule that is not reproduced in full here.

Complaints Procedure

1. If you have a complaint against a publication you must complain in writing to the editor first, within 3 months of the date of publication of the material in issue. Similarly complaints about non-publication must be made within the same period starting from the date it ought to have been published. This will acquaint the editor with the nature of the complaint and give an opportunity for the complaint to be resolved between you and the editor without recourse to the Press Council.
2. If you are not satisfied with the response from the editor (or, having allowed a reasonable interval, have received no reply) you should write promptly to the Secretary of the Press Council at PO Box 10-879, The Terrace, Wellington. Your letter should:
 - (a) specify the nature of your complaint, giving precise details of the publication, (date and page) containing the material complained against. It will be of great assistance to the council if you nominate the particular principle(s), from the 13 listed in the next section of this brochure, that you consider contravened by the material; and
 - (b) enclose the following:
 - copies of all correspondence with the editor;
 - a clearly legible copy of the material complained against;
 - any other relevant evidence in support of the complaint.
3. The Press Council copies the complaint to the editor, who is given 14 days to respond. A copy of that response is sent to you.
4. You then have 14 days in which to comment to the council on the editor's response. There is no requirement for you to do so if you are satisfied that your initial complaint has adequately made your case.
5. If you do make such further comment, it is sent to the editor, who is given 14 days in which to make a final response to the council. Full use of this procedure allows each party two opportunities to make a statement to the council.
6. The council's mission is to provide a full service to the public in regard to newspapers, magazines or periodicals published in New Zealand (including their websites) regardless of whether the publisher belongs to an organisation affiliated with the council. If the publication challenges the jurisdiction of the council to handle the complaint, or for any other reason does not cooperate, the council will nevertheless proceed to make a decision as best it is able in the circumstances.
7. Members of the Press Council are each supplied prior to a council meeting with a full copy of the complaint file, and make an adjudication after discussion at a meeting of the council. Meetings are held about every six weeks.
8. The council's adjudication is communicated in due course to the parties. If the

council upholds a complaint (in full or in part), the newspaper or magazine concerned must publish the essence of the adjudication, giving it fair prominence. If a complaint is not upheld, the publication concerned may publish a shortened version of the adjudication. All decisions will also be available on the council's website www.presscouncil.org.nz and in the relevant Annual Report.

9. There is no appeal from a council adjudication. However, the council is prepared to re-examine a decision if a party could show that a decision was based on a material error of fact, or new material had become available that had not been placed before the council.
10. In circumstances where a legally actionable issue may be involved, you will be required to provide a written undertaking that, having referred the matter to the Press Council, you will not take or continue proceedings against the publication or journalist concerned. This is to avoid the possibility of the Press Council adjudication being used as a "trial run" for litigation.
11. The council in its case records will retain all documents submitted in presentation of a case and your submission of documents will be regarded as evidence that you accept this rule.
12. The foregoing points all relate to complaints against newspapers, magazines and other publications. Complaints about conduct of persons and organisations towards the press should be initiated by way of a letter to the Secretary of the New Zealand Press Council.
13. The Press Council will consider a third-party complaint (i.e. from a person who is not personally aggrieved) relating to a published item, but if the circumstances appear to the council to require the consent of an individual involved in the complaint it reserves the right to require from such an individual his or her consent in writing to the council adjudicating on the issue of the complaint.

Statement of financial performance for the year ended 31 December 2004 (Audited)

2003		2004
	INCOME	
2,700	Union	2,700
140,000	NPA Contribution	140,000
5,000	NZ Community Newspapers	5,000
8,500	Magazine Contribution	8,500
958	Interest Received	968
157,158	Total Income	157,168
	EXPENDITURE	
418	Acc Levy	436
533	Accounting Fees	533
395	Advertising and Promotion	303
550	Auditor	680
15	Bank Charges	38
457	Cleaning	471
1,201	Computer Expenses	1,200
2,404	Depreciation	2,024
2,637	General Expenses & Subscriptions	2,033
2,375	Insurance	2,375
1,129	Internet Expenses	775
-	Legal Expenses	1,500
1,385	Postage and Couriers	2,013
2,057	Power and Telephone	1,576
10,264	Printing and Stationery	7,725
6,224	Reception	6,462
16,212	Rent and Rates	18,155
92,674	Salaries - Board Fees	90,902
12,022	Travel and Accommodation	15,661
47	Interest - Term Loan	-
152,999	Total Expenses	154,862
4,159	Income over Expenditure	2,306
37,556	Plus Equity at beginning of year	35,251
(6,464)	Prior Period Adjustment	(17)
35,251	Equity as at end of year	37,540

Statement of financial position

As at 31 December 2004 (Audited)

<i>2003</i>		<i>2004</i>
	Represented by:	
	ASSETS	
15,139	BNZ Current Account	7,175
19,803	BNZ Call Account	24,886
	Accruals and Receivables	-
1,096	Computer hardware (less depreciation)	634
12,434	Fit out (less depreciation)	10,871
48,472	Total Assets	43,566
<hr/>		
	LESS LIABILITIES	
430	Creditors and Provisions	586
6,855	GST	5,440
5,936	PAYE Payable	-
13,221	Total Liabilities	6,026
<hr/>		
	EQUITY	
31,092	Accumulated Funds	35,233
4159	Income over Expenditure	2306
35,251	Total	37,539
<hr/>		

Auditor's report

cornish
and associates ltd

accountants and business advisers

2 March 2003

To Whom It May Concern

The New Zealand Press Council

We have reviewed the accounts of The New Zealand Press Council for the period ended 31 December 2002 (12 Months).

In our opinion:

- Proper accounting records have been kept by the organisation so far as appears from our examination of those records, and the organisation's 2002 Financial Statements.
- The accounts comply with generally accepted accounting practice, and give a true and fair view of the financial position as at 31 December 2002 and financial performance and cash flows for the year ended on this date of the organisation.

Our review was completed on 2nd March 2003 and our unqualified opinion is expressed at this date.

CORNISH & ASSOCIATES LTD.



This document contains the Auditor's Report of Cornish & Associates Ltd. It is intended for the use of the members of the Council.

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