





**The 37th report of the**



**2009**

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# Chairman's Foreword

The Council issued 44 determinations during the year and upheld in whole or in part, 11 of the complaints. Two of those complaints were against websites of daily newspapers. One of the upholds was not unanimous. Two of the not upholds (about the same subject) were from a split six:four decision.

On more than one complaint there was an issue of a failure by the newspaper to take reasonable steps to establish "the other side". A message left on voicemail requesting a person to phone the reporter may in many circumstances be insufficient to obtain material to give a balanced report and may be unfair to the person reported on. Often urgency is not a factor and a newspaper would be prudent to delay publication and make further enquiries to ensure that the story is both balanced and accurate.

In one case, the Council was unimpressed by the truculent response of an editor to the Council when responding to a complaint. There is a difference between a courteous and firm defence of the newspaper's position and a truculent response, even if the newspaper has not infringed any of the Council's Principles.

A matter of frequent concern is the practice of some newspapers when dealing with mistakes. Cases come before the Council which would not have resulted in a complaint if the newspaper had been prepared to publish a correction of its error. Often the publication of a correction resolves the position to the satisfaction of the potential complainant and the matter goes no further. The Council would like to see greater application of the use of corrections. A newspaper which publishes a correction column diminishes the possibility of complaints against it.

There continue to be complaints relating to "letters to editors". If a newspaper or a periodical has a clear and known policy and if the complaint arises from an action consistent with that policy, the complaint will not succeed. The Council has and will in the future not accept some complaints relating to letters to the editors when they have no prospect of being upheld. Space requirements often necessitate the abridgement of letters and most editors reserve the right to abridge. Unless the abridgement alters the purport of the letter, a complaint will not be upheld.

While the Council's Principle on Letters requires editors to be guided by fairness, balance and public interest in the correspondents' views, that does not mean that a correspondent wishing to comment on either a letter published or an opinion piece is entitled to have the letter published. Nor does it mean that balance must be an arithmetic balance. Balance can be achieved by a reasonable cross-section of views without a requirement that each view has published an equal number of letters supporting that view.

One complaint was, in effect, a complaint by a journalist against an opinion column by another journalist which was critical of the first journalist. Although the complaint was not upheld, the Council was of the view that it was unfortunate that such a complaint had come to the Council. When the dispute is between journalists, there are other methods of resolving it.

In a complaint about a cartoon, the Council reiterated that a cartoon is entitled to



**New Zealand Press Council 2009:** From left Clive Lind (Wellington), Stephen Stewart (Wellington), Kate Coughlan (Auckland), Keith Lees (Christchurch), Lynn Scott (Wellington), Barry Paterson Chairman (Auckland), John Roughan (Auckland), Mary Major (Executive Director), Ruth Buddicom (Christchurch) at rear, Penny Harding (Wellington), Pip Bruce Ferguson (Hamilton) at front, Sandy Gill (Lower Hutt). Barry Paterson, formerly a judge of the High Court, is the independent chairman. The members representing the public are Ms Buddicom, Mrs Bruce Ferguson, Mrs Gill, Mr Lees and Ms Scott. Mr Lind and Mr Roughan represent the Newspaper Publishers' Association. Ms Coughlan represents the Magazine Publishers' Association. Ms Harding and Mr Stewart are the appointees of the media division of the New Zealand Engineering, Printing and Manufacturing Union (EPMU) representing working journalists.

greater leniency than a news article. A cartoonist has a licence for hyperbole.

There was more than one complaint by a territorial authority. There is often some sensitivity about the relationship between the media and a territorial authority, particularly in a non-major metropolitan area. A newspaper can not be criticised for being critical of actions of a territorial authority, provided that the criticism is based on fact. There is no reason why a newspaper can not advocate against a policy of a territorial authority but in doing so must be careful to base its advocacy on established facts and not on speculation. In particular, care must be taken in depicting and interpreting financial statements. Such articles may be robust but must be fair.

While the complaint was not upheld, a teacher complained about another teacher, who unknowingly was a reporter for a local newspaper, quoting a comment which the reporter heard in the school staffroom. The information published was harmless and did not identify the person who had made the statement. Nevertheless, the Council did not accept the editor's submission that the staffroom was a public place and considered a teacher making statements in the staffroom was entitled to consider that they were made in private.

There were complaints about review articles which were not upheld. A review is usually an opinion piece and the reviewer is entitled to express his opinion unless he does so on the basis of incorrect fact.

The Council was concerned that one daily newspaper failed to publish the sub-

stance of an adjudication that upheld a complaint. It has taken steps to ensure that this does not happen again.

Almost all of the recommendations of the review committee have now been implemented. Mary Major, formerly part-time secretary, is now the full time Executive Director of the Council. A revised Statement of Principles and a more streamlined complaint procedure have been developed throughout the year and are to be adopted in 2010. The remaining matter to be implemented is a formal constitution, which is in its final stages of agreement with the stakeholders. It is expected that the constitution will be registered with the Registrar of Incorporated Societies in the near future.

During the year, the Council made submissions to the Law Commission on two discussion papers, namely "Suppression Names and Evidence" and "Invasion of Privacy: Penalties and Remedies (Review of Privacy Stage 3)". It also made submissions to the appropriate agencies on the Electoral Finance Reform Act and the Sale and Supply of Liquor and Liquor Enforcement Bill. These submissions are made in accordance with its object to promote freedom of speech and freedom of the press in New Zealand. The submissions targeted aspects of the bills which, in the Council's view, could unnecessarily impinge on these freedoms.

During the year, the Council members undertook a training course in mediation and also a seminar on writing of adjudications. If thought appropriate, the Executive Director will in future refer a complaint to mediation.

During the year, the Council was addressed during luncheons by two Ministers of the Crown, the Honourable Murray McCully, Minister of Foreign Affairs, and the Honourable Simon Power, Minister of Justice. It also hosted at a lunch Tony Wilton, the EPMU Solicitor who has been closely involved with appointments of members to the Council and has been of assistance to the Council in other ways. Tony was thanked for his contributions over many years.

There were several changes to the membership of the Council during the year. Alan Sampson, an appointee of the EPMU, concluded his term and was replaced by Stephen Stewart. Aroha Beck, an independent member, retired from the Council and has been replaced by Sandy Gill. In addition, Pip Bruce Ferguson was appointed to fill the vacancy created by Denis McLean's retirement at the end of last year.

The Council is indebted to both Alan and Aroha for their contributions to the work of the Council. They both brought valuable skills to the Council and were valued members.

Mary Major, now Executive Director, continues to serve and support the Council in a professional and diligent way. She is the face of the Council to the complainants and continues to have the full support and respect of the Council.

The members of the Council are thanked for their support and contributions during the year.

*From time to time the Council receives distressing calls from the recently bereaved regarding actions of the press during a time of grief and trauma. Many, in fact most, callers do not go on to formally complain. This article is written in response to one such engagement.*

## **Death Knocks**

Grief makes the news these days in a way that it did not a generation ago. Newspapers used to be circumspect in their reports of death, seldom approaching bereaved relatives unless it was essential and often seeking no more than a photograph of the deceased. Those days are long gone. Today no account of a tragedy is considered complete unless the grieving family is approached. Often when family members have refused to comment, or could not be reached, the published report feels a need to mention that fact, presumably to indicate that the newspaper has at least made the attempt. The trend is not necessarily a bad one; death and grief are part of the human experience and sensitive reporting can help the grieving to express their loss and honour their loved one more widely. But the operative word in that sentence was “sensitive”. Doing a “death knock” may be routine for news reporters today but the principle remains that grief must be treated with special care. That principle is upheld by the Press Council under the ambit of privacy, where it is noted that those suffering from grief or trauma call for special consideration and ... careful attention is to be given to their sensibilities.

People in grief can be vulnerable to approaches they would otherwise have repulsed and say things they may later regret. Reporters and editors need to be sensitive to this and protect them to a degree. Special care needs to be exercised when dealing with personal revelations made in moments of raw emotion.

Death sometimes occurs in circumstances that propel a previously ordinary and private life into an event of genuine public interest. When that happens it can be hard for relatives to accept the attention of news media, and hard for publications to justify their coverage. One such case came to the Council’s attention this year though the complaint did not proceed.

It involved a road accident in which an unnamed 66-year-old woman died. The accident was reported in a local newspaper and its account mentioned that the woman’s name was expected to be released later that day. Her name was duly released by the police and two days later it appeared in the paper.

A family member complained to the editor that after the original report she had approached the newspaper asking that the name not be published so that the family would have time to “grieve in privacy”. The editor denied any knowledge of her request and no doubt made it clear that he would not have acceded to it in any case, for reasons that everyone in the press would understand. Once the police had released the name it was liable to be carried on radio and other media. The newspaper could not be expected to withhold it from its readers. But this explanation did not impress the family member who accused the editor of “rudeness and arrogance when we rang

you and asked your reasons for releasing (the woman's) name....." She said the police had apologised to the family for the release and the editor's staff had been "wonderful and helpful" when she had made her request to the paper. "We thought that due to the circumstances and nature of the accident you would have more compassion and understanding of our distress and given us time to grieve in privacy," she said, adding that was, "a hard thing to do in such a small town and with a well-known community member as a parent."

The complaint is a classic illustration of the gulf that can open between human values and news values where grief is involved. It will be clear to perhaps everyone except the family member in this case that no grounds existed for suppressing the dead woman's name except one of compassionate deference. If she was well known in the small community the news that she was the woman in the accident would have quickly travelled regardless of the newspaper's decision to publish it. It is hard to see what the family would gain from the absence of her name in the newspaper, except perhaps that they would have to receive some expressions of condolence that would not be expected if her name had not been published. That is hardly a hardship to warrant interference with a paper's right to report news and to maintain its worth in a small town where word of mouth is its main competitor.

The Press Council intervened and the editor wrote a suitably sensitive letter explaining how the name was released by the police and other media outlets that reported it.

He also presumed to tell the complainant that he did not believe the Press Council would uphold the complaint and appealed to her to save his time and the Council's. This is not a practice the Council wants to encourage. It is important that the Council is seen to be independent and impartial and it is not helpful for publications to confidently warn potential complainants they would be wasting their time.

The Council might have listened to this complaint more sympathetically than the editor supposed. It came very close to upholding a complaint about a newspaper's treatment of a grieving person in a case reported in 2006. The father of a teenage girl killed when her car collided with a bus complained that the newspaper contacted the girl's mother after an inquest during which there had been a suggestion the girl was using a cellphone at the time of the crash.

The mother declined to comment to the reporter and the couple then contacted the newspaper's deputy chief reporter and ultimately the editor. They wanted very little of the inquest to be reported and no comment from themselves to appear. The published story mentioned the cellphone suggestion along with the coroner's finding that there was no evidence the deceased had been using her cellphone and quoted her mother's denial that her daughter had been using it at the time. In response to the complaint the editor said the girl's mother had not said until the end of the interview that she did not want to be quoted.

The newspaper justified its approach to the bereaved family on the grounds that cellphone use in cars was an issue of public concern. But the Press Council noted that the story contained no development of this concern, no statistics or general comment

by the police. “A short comment from (the mother),” said the decision, “hardly qualifies as the follow-up story the newspaper said it had to trouble the family for.” The Council was evenly divided and the decision went against the complainant on the casting vote of the chairman, who explained that a complaint should not be upheld unless a majority of the Council on the determinative vote decides to uphold.

Both cases show how fairly routine reports can cause difficulties where death is involved. In one case the mere mention that the name of the accident victim was to be released caused alarm to a relative, in the other a gratuitous call after an inquest caused needless hurt.

Newspapers can never approach bereaved people with less than extreme care. The fact that the Council receives relatively few complaints of this nature suggests that reporters are approaching the bereaved with care but they cannot be reminded too often of the special sensitivity these assignments require.

# Submissions

As with previous years in 2009 the Press Council made submissions to various bodies on various topics, whenever it was considered freedom of the press was at risk of being impinged on by legislation or regulation.

The following are submissions made in 2009. The Law Commission submissions also included answers to questions put by the Commission. These are not included here.

## **Submission to the Law Commission on Suppressing Names and Evidence – February 2009**

1. Thank you for the opportunity to make a submission on this matter.
2. The New Zealand Press Council was established in 1972 by newspaper publishers and journalists to provide the public with an independent forum for resolution of complaints against the press. It has other important objectives, as noted below. The present constitution of the Press Council comprises six independent members and five industry members.
3. The Press Council has as its second and third objects:  
“To promote freedom of speech and freedom of the press in New Zealand”  
And  
“To maintain the New Zealand press in accordance with the highest professional standards”
4. This submission will concern each of the objects: the first as it pertains to open justice and the role of the Press in reporting court; the second as it relates to the ease with which journalists are able to ensure that the information they source is accurate.
5. We will also comment on relevant matters that have come before the Press Council.
6. In brief it is the Press Council’s contention that the best interests of the public would not be served if there were to be any tightening of existing laws relating to suppression of names and evidence.
7. **Open Justice and The Press**
8. The Press’s role in being the eyes and ears of the public unable to attend court in person has been reinforced by the Courts.
9. The Press is a partner in ensuring open justice.
10. We cannot express it more clearly than Justice Baragwanath in *The Queen v B* (at [55])

*The starting point, and usually the finishing point, must be a presumption of openness, which means that cause must be shown to depart from the logic that the courts are open; the media are the eyes and ears of the community;*

*and so the media may report what the public would have seen had they gone to court. It is essential to be realistic: if, as is usually the case, there will be an ultimate disclosure of the accused's name, little or no purpose may be achieved by an interim order withholding publication. To do so, by imposing unnecessary secrecy, will be counter-productive. The public interest in knowing what is happening in the courts is such that orders of that kind should not be made as of course.*

11. The Press Council does consider complaints about breaches of privacy among them the occasional complaint concerning well-known people. A corollary to this is the possibility that well-known people will, when they appear in court, attract greater media attention.
12. It is unfortunate that a perception has arisen that such people are more likely to get their names suppressed. Publication of their names may well have some impact on them but there should be no separate statutory factor to be taken into account by the presiding judge. Whether people are well-known or not they must receive equal treatment.
13. The presumption of openness should not be lightly overcome by individual rights and interested claims of 'risk'. The Council would argue that *privacy* may not be the appropriate term to use in relation to court proceedings. Rather, there may be *private interests*, which need to be balanced against *public interests* when determining suppression.
14. The Press Council accepts that s5 Bill of Rights requires, in some cases, that the privacy of a person be considered in the balancing act required by s14. However, it is of the view that this balancing act should not be left to an editor when considering a report on a court proceeding. The editor, after all, has the right to publish court proceedings unless an order to the contrary has been made. If privacy is a relevant issue, then the appropriate order should be made by the judge. It is the Council's view that judges at times too readily make suppression orders. In other words, the principle of open justice should be departed from only sparingly and on clearly articulated grounds determined by a judge. The media should have the right to challenge by appeal the judge's opinion.
15. We note the references to practice in South Australia regarding court reporting. There is little evidence that any unfairness, regarding partial reporting of a court case, is occurring in New Zealand. In fact it is largely general practice that a court case, if embarked on, must be covered from beginning to end. This is not only in the interests of fairness, but because readers expect it.
16. We would regard the term "equal publicity" as problematic. (Q21d). A brief well-written item will often attract far more readers than a longer piece and in any event how can you ensure that the same people read all articles.
17. We can understand the difficulties faced when trying to define a fair trial (2.17 and 2.18), however it is surprising to the Press Council that timeliness was not a factor mentioned.

## 18. **Name Suppression and the Working Journalist**

19. Journalists have frequently commented on the difficulty they face in ascertaining the status of suppression orders. This comes about in two ways: the attitude of court staff in releasing information and the difficulty in definitively finding out the current status of any order.
20. This was highlighted in the recent Fairfax Contempt of Court case when even the Solicitor General's office was unable to ascertain, in a timely manner, the status of the suppression orders which Fairfax had been charged with breaching.
21. Two days after being asked by the judges to provide definitive information on the status of each piece of information, the Solicitor General was able to advise the bench that of the 13 items included in the charge, in fact only 6.5 had ever been suppressed.
22. If the Solicitor General's office has such difficulty checking the status and extent of suppression orders how can a working journalist be expected to? The court reporter, working against a deadline, does not have days to spend on researching orders.
23. In the interests of accuracy, and the highest professional standards mentioned above, the Press Council would therefore support a National Register, as do our counterparts in Australia.
24. Professor Ken McKinnon, Chairman of the Australian Press Council, speaking on the Australian situation at the combined Press Council forum *The Press and the Right to Know Under Siege* stated:  
*The upshot of general judicial timidity is to resort to suppression so frequently that any claim of justice being seen to be done can easily be challenged. Last year a survey of media organisations reported close to a thousand suppression orders in existence, a number that was not necessarily the full count. There are no national records so no-one knows how many suppression orders there are. Sometimes the fact that a matter has been suppressed is also suppressed. There is no standard format for a suppression order that shows exactly what has been suppressed and for how long. The lists are not reviewed regularly, so no doubt, some expired suppression notices continue to be treated as if still in force. There is certainly no central electronic register that would allow checking by a daily newspaper approaching an evening printing deadline. ... How can justice be seen to be done in such a ridiculous situation?*

## 25. **Matters that have come before the Press Council**

26. The Press Council has dealt with complaints about name suppression and still does so, if the complainant can assure the Council that the matter is not going to be pursued by the Police.
27. This is not a comfortable fit for the Press Council, which is tasked with

ruling on ethical breaches rather than legal ones. However we do provide a service to aggrieved members of the public and so will consider such complaints. See the 2005 Annual Report excerpt attached.

28. Most are inadvertent breaches for which the publication is, naturally, apologetic. We contend that these would be overcome with a National Register. We would envisage an on-line register, under the auspices of the Ministry of Justice, who would have the responsibility of updating and maintaining it. Access would be by password, to approved persons only. Access should be trackable.
29. Some complaints relate to identifying information which the complainant alleges makes his/her identity obvious. Some, but not all, of these complainants are successful. More careful wording of suppression orders would eliminate many of these problems. If it is the Court's intention to suppress the identity of an accused, the suppression order should be formulated to provide for this. A standard format for routine suppression orders would reduce the number of uncertainties.
30. The current situation of various media outlets describing an accused by small but differing features, allows the public to build up quite a picture, which can lead to identification. Each outlet considers they are maintaining the order, so which outlet is then to be regarded as being the one to have breached the order?
31. We have provided answers to the questions in Appendix A.
32. We thank you for the opportunity to provide our views and would happily expand on any point if requested.

### **SUBMISSIONS TO THE LAW COMMISSION ON THE REVIEW OF THE LAW OF PRIVACY – STAGE 3: Invasion of Privacy: Penalties and Remedies**

The New Zealand Press Council has a major object “*to promote freedom of speech and freedom of the press in New Zealand*”. These submissions are made in accordance with that object.

The United Nations adopted the Universal Declaration of Human Rights in 1948. Article 19 states:

Everyone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers.

Section 14 of the New Zealand Bill of Rights Act 1990, which incorporates the right into New Zealand law, provides that “*Everyone has the right to freedom of expression, including the freedom to seek, receive and impart information and opinion of any kind in any form*”. There are two elements to this right, namely the right to speak freely and the right of the public to be informed.

While section 14 does not refer to freedom of the press “*the right of freedom of the press is no more and no less than the right of all and any member of the public to make comment: Solicitor General v Radio NZ Limited [1994] 1 NZLR 48.*

Section 5 of the Bill of Rights provides that the rights and freedoms contained in the Bill of Rights may be subject only to such reasonable limits prescribed by law as can be demonstrably justified in a free and democratic society. This Council takes the view that any enactment that is likely to limit the right of freedom of expression must be critically examined to ascertain whether it is demonstrably justified. The principle applied in the *Spycatcher* case in the European Court of Human Rights should be applied here, namely the right granted by the Bill of Rights “*is subject to exceptions, however, these must be strictly construed and the need for any restriction must be established convincingly: Observer and Guardian v. UK* (1992) 14 E.H.R.R. 153.

The European Court in *Handiside v UK* (1976) E.H.R.R. 737, defined freedom of expression as:

Freedom of expression constitutes one of the essential foundations of a democratic society and one of the basic conditions for its progress and for each individual’s self-fulfilment. It is applicable not only to “information” or “ideas” that are favourably received or regarded as inoffensive or as a matter of indifference, but also to those that offend, shock or disturb. Such are the demands of pluralism, tolerance and broadmindedness without which there is no “democratic society”.

In the United Kingdom where both freedom of expression and privacy are rights included in law by the Human Rights Act 1988, Article 10(2) of the European Convention of Human Rights expressly sets out the permissible limitations on the right. It states:

The exercise of these freedoms, since it carries with it duties and responsibilities, may be subject to such formalities, conditions, restrictions or penalties as are prescribed by law and are necessary in a democratic society, in the interests of national security, territorial integrity or public safety, for the prevention of disorder or crime, for the protection of health or morals, for the protection of reputation of the rights of others, for preventing the disclosure of information received in confidence or for maintaining the authority and impartiality of the judiciary.

The Privy Council, in *Observer Publications Ltd v Matthews and Att.-Gen. of Antigua* (2001) 10 B.H.R.C. 252 referred to the limits which can be placed on freedom of expression in the following terms.

Any infringement must be “necessary in a democratic society”, and “necessary”, although not synonymous with “indispensable”, means more than “useful”, “reasonable” or “desirable”. It implies the existence of a “pressing social need”.

It is submitted that the New Zealand position should be no more liberal than the United Kingdom position, particularly when privacy is not recognised as a right under the Bill of Rights. Thus, any restriction on freedom of speech and freedom of the press in this country must be established convincingly and necessary in a democratic society.

An example of the potential danger of restricting the public’s right to know was the recent attempt by some United Kingdom members of parliament to pass legislation which would have prevented their personal expense claims being open to public scrutiny.

The Council only intends to answer those questions which are relevant to the promotion of freedom of speech and freedom of the press. Before doing so, it will make general observations on the relevant topics.

## **Chapter 7 (Reform of the Law)**

The chapters preceding Chapter 7 detail the current law relating to the disclosure of personal information, including the *Hosking* tort. The history of privacy torts in other jurisdictions, including the limited use of the tort and the limited success of those actions suggests that there may not be a great problem in this area. The various considerations and implications indicate that care is required to establish that there is a need to restrict freedom of expression and that such need is established convincingly.

Another important issue for the press is the need to establish when privacy values can limit freedom of expression. The Supreme Court Judges in *Brooker v Police* [2007] 3 NZLR 91 differed as to whether a value such as privacy, which is not a protected right under the Bill of Rights, can be balanced against freedom of expression which is a right protected by the Bill of Rights. If there is to be an amendment to the law, care should be taken to ensure that privacy can not, as defamation once could, be used for gagging purposes to prevent the public's right to know in the public interest.

The Council acknowledges that there are privacy values which society recognises. However, freedom of expression allows persons, including the media, to comment on private matters. The public interest dictates that this should be so. That right should not be curtailed by imposing unnecessary legal restrictions on freedom of expression. Any restrictions imposed must be demonstrably in the public interest.

The review of the existing legal position in Chapters 2 to 5 and the commentary on the *Hosking* tort indicate the complexities and uncertainties which exist in applying privacy values. The Council's view is that these uncertainties will change from time to time as society's norms develop. There is a danger, in the Council's view, that these complexities and uncertainties may be compounded rather than clarified by an attempt to legislate in this area. Until new legislation is interpreted by the courts, there is often uncertainty as to its application and, therefore, likely to be a chilling effect on the media.

The Council is not competent to comment on the application of the limitations contained in Article 10(2) of the European Convention of Human Rights. In this country, dignity, financial loss and personal safety and health may restrict freedom of information. However, remedies in these fields are often available under law other than privacy law. Dignity is a difficult concept because, as has been said, many reports in the media affect the dignity of a person referred to in the article. The Council's view is that the media should be entitled to exercise its right to report, notwithstanding dignity issues, if there is a legitimate public concern in the matter being reported.

In summary, the Council's position is that it does not, in general, favour statutory reform of the law on personal information disclosure. The *Hosking* tort should not become a statutory tort and any development, refinement or restriction of it should be

made by the courts. While accepting that the terms “reasonable expectation of privacy”, “highly offensive to an objective reasonable person” and “legitimate public concern”, to take three terms used in the majority decision in the *Hosking* case, are subject to debate and clarification, it is considered that it is more appropriate for a court to define and apply those terms in appropriate cases rather than to attempt to define them by statute. A court can balance the factors of the case and the importance of upholding the right of freedom of expression.

Finally in this section, it is noted that while the paper refers to the legal position, the main newspapers are governed by their own code of ethics and are subject to the review of this Council under the Council’s Statement of Principles. The privacy principle states:

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

In view of the limited use and success of the privacy tort in other parts of the world and no great perceived need for such a tort in this country, it may be appropriate in the case of the media to leave control of privacy issues to self-regulating industry bodies.

### **Chapter 8 (Surveillance and other Intrusions)**

The Council’s position is that like use of personal information, any changes to the laws of surveillance should proceed with caution. The media often relies upon information provided by other agencies. The media should be protected if relying upon information provided by another agency unless the news gatherer itself has breached the law in obtaining the information.

### **Chapter 12 (Media)**

Because of the importance of the media in a democratic society, the Council supports the retention of the provision in the Privacy Act which provides that the media in its news gathering activities is not an agency and, therefore, not subject to the principles in the Act. Any transgressions by media personnel are capable of being dealt with by either the newspaper’s code of ethics or by complaints to this Council.

The Press Council’s responses to the question are attached. We note, however, that the majority of the questions are seeking answers for alleged transgressions that happen only occasionally and for which no new remedies or law changes are necessary because they happen so rarely. Further, the Privacy Act 1993 allows sufficient room for codes of behaviour for specific behaviours. It is far better, the Council believes, to allow the tort or codes to develop so that real needs are met rather than allowing imagined or relatively few transgressions to risk impeding freedom of expression and the public’s right to know.

### **Electoral Finance Reform: Submission to the Ministry of Justice-June 2009**

Thank you for the opportunity to make a submission on the Issues Paper on Electoral Finance Reform. We appreciate being able to have input at this stage and look

forward to further involvement as the process continues.

For the moment we make the following points:

### **Freedom of Expression**

The Press Council has as one of its principal objects: “To promote freedom of speech and freedom of the press in New Zealand.”

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

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

These freedoms have been laid down in statute in s 14 of the Bill of Rights Act 1990 which states:

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

At no time is this more important than in the period around an election. We are, therefore, particularly pleased to see Freedom of Expression at Principle 2.

The Council does not question the basic intent of the Electoral Finance Reform – to establish fair and balanced provisions for the conduct of Parliamentary elections – as set out in the Principles. We are, however, concerned that in the establishment of new rules for the conduct of elections, the democratic imperative of citizens’ rights to freedom of expression should not be compromised and that there should be no abridgement of the free flow of information during the electoral process.

### **Freedom of the Press**

In terms of freedom of the press the Council regards it as imperative that editorial content of newspapers and magazines exempted. Any definition of Election Advertising must not be not be applicable to editorial content.

We would suggest that a similar protocol is used to that currently employed when the Press Council determines jurisdictional issues with the Advertising Standards Complaints Board. We use the “paid space” rule. If copy in a newspaper has been paid for, even if it has been constructed so as to look like editorial content (advertorial), then it is regarded as advertising, and should be marked as such.

In the run-up to elections editors must be free to report, express opinion, encourage debate and advocate without any ‘chilling effect’ from a poor definition of Election Advertising.

### **Names and addresses on Advertisements and Billboards**

At the Wellington forum the view was expressed that names and addresses of

authorising persons should not be published on advertisements and billboards, but instead should be available on application to the Chief Electoral Office. This was on the basis of anecdotal evidence that those whose names and residential addresses appeared on such advertisements had suffered through having their residential address made known in a very obvious way. We note that current law allows business addresses to be used. (4.22 Issues Paper)

The Press Council would strongly oppose any suggestion that those behind advertisements can be anonymous or semi-anonymous in that they can hide behind ‘shop-front’ business addresses or box numbers. Their names and verifiable addresses should be publicly available, if for no other reason than that their bona fides can be independently established by any member of the public. They should be accessible without the need to go through an agency for permission or approval to access. This is fundamental to transparency in the electoral process. (Principle 4). In 2005 the addresses on pamphlets were instrumental in uncovering the influence of the Exclusive Brethren.

Whether their addresses should be on all billboards and advertisements is a moot point but their names certainly should be and their addresses also should be available to the public as of right at, for example, the Chief Electoral Office, or electoral offices throughout the country. There should be no impediment to access to this information.

*The Press Council would not have considered that the Sale and Supply of Liquor and Liquor Enforcement Bill could have any implications for freedom of speech or freedom of the press. However we become aware of the extent of the definitions of “Liquor Advertisement” and “Liquor Promotion” as set out in the Bill, and these raised areas of concern for us. We therefore lodged the following submission with the select committee in August 2009.*

### **Submission to the Justice and Electoral Committee on the Sale and Supply of Liquor and Liquor Enforcement Bill – August 2009**

Thank you for the opportunity to make a late submission on the Sale and Supply of Liquor and Liquor Enforcement Bill.

2. The Press Council’s concerns lie with the definitions of Liquor Advertisement and Liquor Promotion as described in the Bill currently before the House.
3. From the Explanatory Note, the Bills Digest and from a reading of Hansard when the Bill was introduced, it is clear that Parliament did not intend that there should be any impingement on the editorial content of newspapers or magazines.
4. The legal advice to the Attorney General on consistency with the New Zealand Bill of Rights Act s14 addressed possible limits to freedom of expression flowing from the Bill and found that there were limits imposed in the case of advertising, but that that these were justified in terms of s5. It would appear that the Crown Counsel did not consider that the Bill would have an impact on editorial content, since no comment was made on the limitation

of freedom of expression in relation to editorial content.

5. However, because of the broad definitions contained in the draft Bill, the Press Council maintains that editorial content could (unintentionally it would appear) fall within the definitions and thus be subject to possible regulation.
6. Thus, a columnist writing about pinot noir production in Central Otago, for example, could be regarded as promoting wine-drinking. A restaurant review suggesting that a particular wine is a good accompaniment to a particular dish could be said to encourage the use of a liquor product.
7. The Council notes that the Loi Evin, which was intended to regulate alcohol advertising in France has now been interpreted by a French court as applying to editorial content and *Le Parisien* newspaper was fined €5,000 for an article entitled ‘The triumph of Champagne.’
8. The Council would respectfully suggest that the Committee considers revising the current Bill to ensure that this anomaly, which was clearly not intended by the House, is corrected.
9. We draw your attention to two other pieces of legislation where such amendments have been made, for precisely the same reason.
10. The report-back version of the Electoral Finance Bill was amended to read

#### **5 Meaning of Election Advertisement**

(2) The following are not election advertisements:

(c) Any editorial material, other than advertising material, in a periodical that is written by, or is selected by or with the authority of, the editor solely for the purpose of informing, enlightening or entertaining readers:

(d) ...

(da) Any editorial material, other than advertising material, published on a news media website that is written by, or is selected by or with the authority of, the editor or person responsible for the website solely for the purpose of informing, enlightening or entertaining readers

11. The Public Health Bill was amended to read, in the reported back version:

#### **83 What code of practice or guidelines may provide**

‘ is published in any form or broadcast on any medium.

12. We would ask that the Committee ensures that editorial content is exempted from the provisions of this Bill.
13. We would be happy to provide further information on these points if required.

# Decisions 2009

<b>Complaint name</b>	<b>Publication</b>	<b>Adjudication</b>	<b>Date</b>	<b>Case No</b>
Roger Bryant	<i>Gulf News</i>	Not Upheld	February	2060
Cricket Wellington Umpires	<i>The Dominion Post</i>	Part Upheld	February	2061
Jack Ingram	<i>The Weekend Sun</i>	Not Upheld	February	2062
Eme Kilkenny	<i>New Zealand Herald</i>	Not Upheld	February	2063
Stephen Rice	<i>New Zealand Herald</i> (Website)	Not Upheld	February	2064
Peter Zohrab	<i>The Dominion Post</i>	Not Upheld	February	2065
Dave Hansford	<i>NBR</i>	Not Upheld	March	2066
Kiwis for Balanced Reporting On the MidEast	<i>Sunday Star-Times</i>	Not Upheld	March	2067
Stephen Rice	<i>Otago Daily Times</i>	Not Upheld	March	2068
Dale Williams	<i>Taupo Times</i>	Not Upheld	March	2069
Auckland Regional Council	<i>New Zealand Herald</i>	Upheld	May	2070
Alf Newman	<i>Nelson Mail</i>	Not Upheld	May	2071
QLDC (Quango)	<i>Mountain Scene</i>	Not Upheld	May	2072
QLDC (Spray)	<i>Mountain Scene</i>	Upheld	May	2073
Peter Zohrab	<i>Kapiti News</i>	Not Upheld	May	2074
Peter Zohrab	<i>Kapiti Observer</i>	Not Upheld	May	2075
Dave Henderson	<i>Sunday Star-Times</i>	Part Upheld	June	2076
Parihaka Management Trust	<i>Taranaki Daily News</i>	Part Upheld	June	2077
Fr Carl Telford	<i>The Press</i>	Not Upheld	June	2078
Bill Benfield	<i>N Z Geographic</i>	Not Upheld	August	2079
Complainant	<i>The Press</i>	Not Upheld	August	2080
Cr Dirk Sieling	<i>The Informer</i>	Upheld	August	2081
Ian Geary	<i>The Timaru Herald</i>	Not Upheld	October	2082
Ken Orr	<i>The Press</i>	Not Upheld	October	2083
Harmeet Sooden	<i>NBR</i>	Upheld	October	2084
Ethel & Cliff Winslow	<i>North &amp; South</i>	Upheld (1 dissent)	November	2085
Ian Sheen	<i>The Dominion Post</i>	Not Upheld	October	2086
Nicolaas Francken	Stuff	Not Upheld	November	2087
Jim Gerard	<i>The Kaiapoi Advocate</i>	Part Upheld	November	2088
Hawke's Bay DHB	<i>The Dominion Post</i>	Not Upheld by a majority 6:4	November	2089
Hawke's Bay DHB	<i>Hawke's Bay Today</i>	Not Upheld by a majority 6:4	November	2090
Frank Kelly	<i>Otago Daily Times</i>	Not Upheld	November	2091
Charles Pierson	NZPA	Not Upheld	November	2092
Malcolm Spark	<i>North &amp; South</i>	Not Upheld	December	2093
G Van Meurs	<i>The Press</i>	Not Upheld	November	2094
M. Laurence Withy	<i>Vibrant Hutt</i>	Upheld	December	2095
Hon. Peter Dunne	<i>The Dominion Post</i>	Not Upheld	December	2096
Ian Edwards	<i>The Northern Advocate</i>	Not Upheld	December	2097
James Gardiner	<i>Hawke's Bay Today</i>	Upheld	December	2098
Lorraine North	<i>New Zealand Herald</i>	Not Upheld	December	2099
Colin Pannell	<i>New Zealand Herald</i> (website)	Not Upheld	December	2100
Harmeet Sooden	<i>Sunday News</i>	Not Upheld	December	2101
W. Garry Whincop	<i>New Zealand Herald</i>	Not Upheld	December	2102
TFK & Ariake Restaurant	<i>Canvas</i>	Not Upheld	December	2103

# An Analysis

Of the 44 complaints that went to adjudication in 2009, eight were upheld in full (one member recorded a dissent); three were part upheld; two were not upheld with dissent; and 31 were not upheld.

Twenty-two complaints were against daily newspapers; three were against magazines; three against Sunday newspapers; 10 against community newspapers; three were against websites; two against *National Business Review* and one against NZPA

Most complaints going to adjudication are considered by the full Council. However, on occasions, there may be a complaint against a publication for which a member works or has some link. On these occasions the member leaves the meeting and takes no part in the consideration of the complaint. Likewise, occasionally a Council member declares a personal interest in a complaint and leaves the meeting while that complaint is under consideration. There were 17 occasions where a member declared an interest in 2008.

Debate on some complaints can be quite vigorous and while the majority of Council decisions are unanimous, occasionally one or more member might ask that a dissent be simply recorded (Case 2085) or written up as a dissenting opinion (Cases 2089 and 2090).

## The Statistics

<i>Year ending 31 December</i>	<i>2006</i>		<i>2007</i>		<i>2008</i>		<i>2009</i>	
<b>Decisions issued</b>		<b>32</b>		<b>40</b>		<b>43</b>		<b>44</b>
Upheld	6		8		11		7	
Upheld with dissent	1		1				1	
Part upheld	2		2		2		3	
Part upheld with dissent	2		1					
Not upheld with dissent			3		1		2	
Not upheld with dissent on casting vote of Chairman	1				1			
Not upheld	19		25		28		31	
Declined	1							
<b>Not adjudicated</b>		<b>23</b>		<b>38</b>		<b>31</b>		<b>33</b>
Mediated/resolved	0		1		3		7	
Withdrawn	2		2		4		3	
Withdrawn at late stage	1		2		1			
Not followed through	6		13		3		9	
Out of time	2		3		3		1	
Not accepted	0		4		8		3	
Outside jurisdiction	2		4				1	
In action at end of year	10		9		9		9	
<b>Total complaints</b>		<b>55</b>		<b>78</b>		<b>74</b>		<b>77</b>

# Adjudications 2009

## A gulf apart – Case 2060

The Press Council has not upheld a complaint from Roger Bryant against the *Gulf News* over its coverage of a public meeting.

### Background

Waiheke resident Roger Bryant wrote to the *Gulf News* on October 19, 2008 objecting to its coverage of the annual general meeting of the local group Community and People of Waiheke (Capow) on October 12, 2008. A lead article, an editorial and a letter to the editor dealing with the meeting appeared in its October 16 edition.

In a letter on October 19, Mr Bryant told the editor he wanted to give “the other side of the story”. He objected to what he described as emotive language used by the writer of the newspaper’s front-page article and by the editor in his editorial.

The article, headed “Planned disruption of Capow meeting”, outlined how a group of members had sought to disrupt the meeting with delaying tactics. The article contained extracts from an email sent by Mr Bryant to a group of 12 people outlining a delaying strategy designed to challenge the validity of the meeting and to prevent a senior official from Auckland City Council outlining future development plans for Waiheke Island.

Mr Bryant further objected to a comment in the editorial in the same issue that referred to a small group of people who had attempted to “ambush” the meeting.

He also complained about the prominent placement of a letter to the editor that was critical of his conduct at the meeting and incorrectly stated that he was not a member of Capow.

Mr Bryant said he had been vilified by the coverage and this had been hurtful and damaging to him. His letter outlining his objections was published in full in the *Gulf News* on October 23 with a response from the editor, who defended the newspaper’s coverage saying it was based on accounts of what had happened at the meeting.

### The Complaint

Mr Bryant brought his complaint to the Press Council on November 6 in reaction to the editor’s comments printed below his October 23 letter.

He said the *Gulf News*’ report had been unbalanced. His email had been quoted in the October 16 lead article without the contents being verified with him.

Referring to the letter to the editor, he said there had been an inaccurate assumption that he was not a member of Capow. He said this fact should have been checked by the editor. He said the letter talked about his “supposed domination of public meetings.” He viewed that comment as a personal attack and he viewed it as evidence that the coverage was not impartial.

He said the editor had promised to provide further coverage of the council official’s comments in the next issue, but that had not eventuated.

Mr Bryant said he had been the subject of unjustified hostility and the *Gulf News*’ coverage had brought him into disrepute.

## **The Newspaper’s Response**

Editor Simon Johnston said his published reply, printed below Mr Bryant’s letter, had been in response to the complainant’s insistence that he make one.

As to his use of the email without verifying the contents with Mr Bryant, Mr Johnston said he double-checked with sources that the email was sent by Mr Bryant and concluded “there was an explicit intention to disrupt and delay and meeting.”

His promise of further coverage had not eventuated due to his having to take a sudden, unscheduled period of leave.

## **Discussion**

Over several weeks in October, the *Gulf News* provided coverage of an important local issue – the AGM of Capow, which was to decide the group’s future shape and its role in any subsequent development proposals for Waiheke Island. Caught up in the middle of some vigorous local debate was the Auckland City Council official.

The *Gulf News* publicised the meeting ahead of time, together with the way the organisers had decided to conduct it, in order to deal both with the group’s affairs and to give the council official a fair hearing.

Its lead story focused on an email outlining a strategy to disrupt the meeting and the subsequent actions of a small group – a number of whom had been party to the email – to delay the business so that the council official would not have time to speak.

Which news angle the *Gulf News* took for its story was entirely a matter for the newspaper. However, its coverage, as viewed over several weeks, provided a full picture of events for local people. The lead story dealing with the delaying tactics was only one part. The editorial focused mainly on the development issues dealt with by the council official. The letter to the editor was the view of a member of the public who attended the meeting.

Mr Bryant’s objections were published in full the next week with a response from the editor – though probably not the response Mr Bryant was seeking. The eventual outcome of the AGM was published on October 30.

## **Conclusion**

The *Gulf News* might have avoided some criticism by talking to Mr Bryant after the Capow AGM and before publishing its story about his email. However, its report of the meeting was a fair one and Mr Bryant was given space for a full response the next week. The complaint is not upheld.

Press Council members considering this complaint were Barry Paterson (chairman), Aroha Beck, Pip Bruce Ferguson, Ruth Buddicom, Kate Coughlan, Penny Harding, Keith Lees, Clive Lind, Alan Samson and Lynn Scott.

# **Newspaper on a sticky wicket - Case 2061**

## **Introduction**

Evan Watkin, chairman of Cricket Wellington Umpires and Scorers Inc, complained about two articles in *The Dominion Post* published on October 30 and 31, 2008. The articles dealt with the appointment of a particular umpire.

The complaint is partially upheld.

### **The Articles**

The first article was headed: “Umpire sacked in first game”

The first sentence of the article read:

“Wellington Club cricket umpire X has been dismissed after calling a wide for a delivery cut to point.”

The article then quoted a team captain as saying that “*the incident was one of many poor calls that left players from both sides shaking their heads*”.

Mr Watkin was responsible for the appointment of the umpire. The article went on to say:

“Watkin acknowledged that the standard of club umpiring was mixed, that X needed further training and ‘would not stand in the near future’ but he said he was forced to introduce novice umpires to senior cricket because of lack of experienced alternatives.”

The chief executive of Cricket Wellington, Gavin Larsen, was quoted as saying:

“... the idea of getting a single good umpire to stand at both ends has been considered, but made a whole day’s play too tough for one person.”

The second article appeared under the heading: “Larsen backs Watson and rookie umpires”

The article stated that other umpires had urged Mr Watkin not to throw X, a Level 2 umpire, straight into senior cricket but a lack of numbers meant that Mr Watkin took the plunge and allocated X to the match in question.

Mr Larsen was also quoted as saying that Mr Watkin had a great track record of allocating umpires to games and:

“I think he has done a sterling job over the years and I see this as a very isolated incident.

“It is not the sort of story I want to see early in the season. It is not a great look.”

The article then went on to say that X had not returned calls and that Mr Watkin was not in a mood to talk saying that the umpire would not be talking and neither would he. The article also stated that the plan was to introduce X to umpiring in lower grades or secondary school grades.

### **The Complaint**

The complaint alleged three factual errors in the first article, namely:

- 1) The reference to the umpire “*being dismissed*” in the first sentence was totally incorrect and led to the completely erroneous headline.
- 2) Although the umpire did call a wide it was not due to a lack of knowledge of the

law as implied in the article but simply a case of calling a wide too soon.

- 3) The reporter had not checked with the scorer on the alleged seven-ball overs and Mr Watkin had checked with the scorer and confirmed that none was recorded.

It was alleged that the article lacked balance because the reporter did not check the allegations with the captain of the opposing team.

It was alleged that the second article was factually incorrect when it quoted Mr Watkin, saying that the umpire “won’t be talking and neither will I.” Mr Watkin said he did not say this, and neither had other umpires urged him not to throw X into senior cricket. Additionally the newspaper had referred to an umpire of three years’ experience as a “rookie”.

The complaint concluded with:

“The story was inaccurate, unbalanced and misleading which *The Dominion Post* has totally failed to acknowledge. The story has unfairly damaged the reputation of cricket umpires and the association.”

## **The Response**

The response from the editor of *The Dominion Post*, which is a sponsor of Wellington Cricket, referred to various background matters that are not directly relevant to the issues raised by the complaint. It said that the purport of the article was that an inexperienced umpire had made a decision that raised legitimate questions about whether that umpire was fit to control top-level cricket. The competition was below the premier grade in Wellington.

*The Dominion Post*’s response to the factual errors alleged in the first article may be summarised:

The intro’s use of the words “*being dismissed*” drew on the cricket parlance of a “*dismissal*.” However, they also related to what the newspaper said Mr Watkin told the reporter, namely that the umpire required further training and would not stand in the near future.

It was sceptical of the comment that the umpire called the wide too soon.

A reference to the seven-ball overs came from the captain who spoke to the reporter.

In respect to the allegation of lack of balance in the first article, it was claimed that it was balanced even though no approach was made to the captain of the other team as both Mr Watkin and Mr Larsen were approached and an attempt was made to speak to X.

In respect of alleged errors in the second article the newspaper stated:

It can substantiate the fact other umpires urged Mr Watkin not to put X straight into senior cricket.

A reference to another “*rookie*” standing with X came directly from a statement made by Mr Larsen. The newspaper accepts that the state-

ment might not be correct but felt it was able to rely upon Mr Larsen's comment.

It stands by the comment that Mr Watkin said he would not be talking and neither would the umpire.

In respect of the headline to the first article, *The Dominion Post's* position was that though "sacked" was a strong description of the situation, this was what in fact happened. The umpire was in fact removed from the role.

*The Dominion Post* denied that it failed to make proper distinction between reporting the facts and conjecture, passing of opinions and comment. It did not give its own opinion but merely quoted from what it said the captain and Mr Watkin told them.

## **Discussion**

The issue reported on was a legitimate topic for a sports section of a newspaper. One club, and possibly both clubs, had complained about the standard of X's umpiring. Unbeknown to *The Dominion Post* at the time of the articles the manager of one club had phoned Mr Watkin and complained to him about the standard of umpiring.

It is apparent that Mr Watkin was concerned at the possible publication of X's name. He asked the reporter not to include the name. This is understandable in a sport that struggles to recruit and maintain sufficient umpires. The Council notes that the story could have been run without naming the umpire, and that the publication of the umpire's name arguably was detrimental to the wider interests of Wellington cricket. However, the naming of the umpire is not a specific matter of complaint and, notwithstanding the obvious downside in doing so, the newspaper was entitled to publish the name.

There are many factual allegations made by one or other of the parties in this matter that are denied by the other. One of those factual matters might have been resolved by production of the captain's reports on the particular match. Mr Watkin was prepared to release those reports to the Council but not to *The Dominion Post*. The Council cannot determine matters on evidence not seen by a party. It cannot make a determination on some of the disputed facts.

There might have been a factual error in stating that seven-ball overs were called but the newspaper was quoting what the captain said. A wide was called on a ball that was hit, albeit that there is a factual dispute as to the circumstances. The reference to another umpire being called a rookie might have been an error, but this again was a quote from a responsible cricket official. The other factual differences cannot be resolved and there were no grounds upon which the complaint can be upheld on the basis of factual inaccuracies.

Prudence suggests that it might have been advisable to have consulted the second captain, but the reporter did obtain quotes from Mr Watkin, Mr Larsen and attempted to contact X. In the circumstances, the Council does not find that the article lacked balance. It also notes that the second article was complimentary of the work Mr Watkin had done for Cricket Wellington over many years.

In respect of the allegation that comment was not distinguished from fact, *The*

*Dominion Post* says that it merely quoted what others said and this was made clear from the article. In general the Council agrees.

In the Council's view the only matters of concern are the use of the words "*dismissed*" in the intro to the first article and the headline use of the word "*sacked*". The normal meaning of "*dismissed*" and "*sacked*", which are, in many respects, synonymous in employment matters is that the term of employment has terminated.

Putting aside the question of whether or not X was an employee, the Council finds that the substance of the first article was not accurately and fairly conveyed by the use of the term "*sacked*". The article suggested that X needed further training and "would not stand in the near future". This does not suggest a dismissal from X's role as an umpire. There is also unfairness in using this term in respect of a named umpire in the circumstances. The Council finds that the use of the word "*sacked*" infringes the requirement that the headline should accurately and fairly convey the substance of the report.

### **Finding**

For the reasons given above, the complaint is partially upheld on the use of "*sacked*" in the headline. The other complaints are not upheld.

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

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

## **Use of press statement to develop article accepted – Case 2062**

The Press Council has not upheld a complaint from Jack Ingram against *The Weekend Sun*.

The complaint concerned the newspaper's use of material supplied by Mr Ingram, the chairperson for the Bay of Plenty Labour Electorate Committee, in the run up to the general election in November 2008. Mr Ingram has referred to it as a "letter" he wrote for publication but, as the editor points out, it was more in the nature of a press statement: it was not addressed to the editor, signed by Mr Ingram, or marked for publication in the letters column, and it was partly written in the third person including quotes from Mr Ingram.

What is not in dispute is that Mr Ingram hand-delivered his press statement to the newspaper office and asked that it be published in full or not at all, to which the response was that that would be a matter of editorial discretion.

The press statement put forward Mr Ingram's personal view that there could be tactical advantages in Labour voters giving the party vote to Labour but the local electorate vote to the New Zealand First candidate. It noted that the Labour Party was following a "two ticks" campaign but set out Mr Ingram's reasons for taking a different line.

The newspaper did not publish the press statement unaltered. It ran a news story on November 7, 2008 headlined "Labour chairman backs tactical approach". The

story reported Mr Ingram’s view as put forward in his press statement, including a quotation. It also reported comment from the local Labour candidate and the party’s Tauranga chairman.

Mr Ingram objected to the use of the press statement in an abridged form. In particular, he objected to the omission of two sentences in the press statement to the effect that tactical voting was just that and would not reflect poorly on the abilities or dedication of the local Labour candidate. Mr Ingram asked that the press statement be published in full to set the record straight.

The newspaper did not respond and Mr Ingram complained to the Press Council that the failure to publish his press statement in full and, in particular, that the omission of the two sentences noting that it was no reflection on the local Labour candidate, was unfair and lacked balance. The Press Council does not agree.

Editors retain discretion on publication of unsolicited material, subject always to the requirement for accuracy, fairness and balance. Some care is required when editing correspondence that will be published under the author’s name. The requirements are far less stringent for press statements.

In this case, the published story went beyond the contents of the press statement to provide balancing comment from the local Labour candidate and the Labour party itself. The story was accurate, fair and balanced. The use of the term “tactical” inherently communicated that the local vote was to be made independent of the merit of the particular candidates in issue. The omission of the two sentences in question did not render the story unfair or unbalanced.

The complaint is not upheld.

Press Council members considering this complaint were Barry Paterson (chairman), Aroha Beck, Pip Bruce Ferguson, Ruth Buddicom, Kate Coughlan, Penny Harding, Keith Lees, Clive Lind, Alan Samson and Lynn Scott.

## **Anti-Clark pro-Key bias not proven – Case 2063**

Eme Kilkenny complained to the Press Council, alleging “pro-right, anti-left political bias” on the part of the *New Zealand Herald*, especially during the pre-election period in 2008. She submitted two reports from the October 15 edition of the newspaper as examples and contended that they breached the provisions in the Statement of Principles that refer to accuracy, fairness and lack of balance.

Her complaint is not upheld.

### **Background**

Initially Ms Kilkenny had complained to the editor via email regarding “ongoing political bias” (against the Labour Party) in the *Herald*.

The editor responded by pointing out that complaints had also been received alleging anti-National bias in the newspaper. He pointed out that thus any bias seemed to be “in the eye of the beholder”.

He stressed that, over time and across different editions of the paper, no discernible bias against any one party could be seen and he invited the complainant to back up her general criticism with specific examples so he could respond in more detail.

The complainant replied by suggesting that the October 15 issue was “highly unbalanced in negative spin against Labour and blanket positive spin pro-National.” She cited various headlines, words with positive overtones being linked to John Key but words with negative associations being linked to Helen Clark, subheadings and a cartoon.

The editor referred the complainant to the previous issue (October 14). He listed various articles and headlines that were critical and negative about National and John Key and supportive and positive about Labour and Helen Clark. He suggested that a similar analysis of the October 13 issue revealed a similar breakdown. Thus, he stressed, over time, the newspaper’s coverage of the political campaigns might reveal a “rigorous balance”.

Dissatisfied, Ms Kilkenny took her complaint to the Press Council, specifically citing two reports from the October 15 edition.

### **The Complaint**

The first report is a page 3 account of the first leaders’ debate of the 2008 election campaign. It is headlined “Taxing time at the leaders’ debate”. The complainant simply suggests it is “heavily biased” against the Prime Minister.

The second article appears on page 5. It is a piece by a long-standing *Herald* columnist about National being excluded from any considerations leading up to the issuing of a government guarantee on New Zealander depositors’ savings. It is headlined “Clark arrogant to keep Key in dark” and runs below a subheading, “PM’s behaviour puts politics before welfare of the country.” Again the complainant submits that this is biased and an “emotive depiction positioned against Helen Clark”.

### **The Newspaper’s Response**

The editor replied to the formal complaint over the first report by pointing out that it was a “colour piece” of observations and comment on the performance of the two leaders in the debate. He noted that there had been widespread comment on the strength of Mr Key’s performance in the first debate.

He replied to the criticism of the second report by cheerfully acknowledging that it was indeed critical of Helen Clark and by attaching a second piece by the same columnist, one that was “demonstrably critical” of John Key.

In summary, his newspaper’s coverage could not be judged over one issue but by the overall “breadth of our coverage over time”.

### **Discussion and Conclusion**

There is little to justify the claim that the first piece is “heavily biased”.

Certainly the general tenor of the text is that Mr Key was the better performer on the night. For example, Mr Key is “determined” whereas Miss Clark is “in full roar”, until her voice becomes “a drone” and, though Mr Key “persists”, she eventually “booms over him”. At times, too, Miss Clark’s comments are described as “fanciful” and also “grandiose”.

However, this is not a news report with its attendant need for objectivity and careful balance; this is obviously a personal account of how the journalist saw their

respective performances and it is clearly from her point of view. The Council also notes that some other political commentators were also of the view that Mr Key performed better than expected, the Prime Minister less so.

There is also nothing in the headlines, or in the accompanying photograph, to suggest biased treatment.

As far as the second piece is concerned, the editor's rebuttal of ongoing bias by supplying another column by the same writer, but this time sharply critical of Mr Key, is telling.

More importantly, the complainant accuses the writer of bias and an "emotive depiction . . . against Helen Clark" but this is an opinion column and it is clearly labelled as such. The Press Council has been consistent in its approach – where it is obviously opinion, the writer has considerable freedom to express that opinion, even in forceful language.

For the above reasons, the complaint is not upheld.

Press Council members considering this complaint were Barry Paterson (chairman), Aroha Beck, Pip Bruce Ferguson, Ruth Buddicom, Kate Coughlan, Penny Harding, Keith Lees, Clive Lind, Alan Samson and Lynn Scott.

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

## **Out of steam before Britomart – Case 2064**

Stephen Rice complained about a report published on nzherald.co.nz at 9am on Friday August 8, 2008. The three-sentence news story concerned a Parliamentary Special train that was to terminate at Britomart later that day marking the centenary of a prior journey by MPs travelling from Wellington by steam train to greet the then-visiting American naval fleet.

The complaint is not upheld.

### **The Complaint**

On October 10, 2008 Mr Rice complained to the editor of the *New Zealand Herald* that the news item was misleading as it implied the Parliamentary Steam train would be hauled into Britomart station and that the entire steam train would be available for inspection till 5pm on August 8, 2008. Mr Rice explained that this could not be the case as there were substantial problems with steam locomotives entering Britomart station because it is an enclosed space. He has been assured of this on a number of occasions by various Britomart staff. He further explained that there was a pre-arranged change of engine that took place at the Penrose station replacing the steam locomotive with a diesel locomotive to haul the train into Britomart station. He complained that the story was unchecked for factual accuracy before publication.

No response was forthcoming from the *New Zealand Herald* editor. On November 1 Mr Rice complained to the NZ Press Council using the online complaint form.

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

The nzherald.co.nz publisher Jeremy Rees accepted that Mr Rice was correct and that the Parliamentary Special train travelled from Wellington to Auckland under steam

but its steam engine was decoupled at Otahuhu and it entered Britomart hauled by a diesel locomotive. Mr Rees amended the story.

### **Mr Rice's Response**

Mr Rice accepted Mr Rees' willingness to amend the story and his acknowledgment there was a factual error. He then asked what Mr Rees would have had to say to spectators who might have turned up at Britomart to see the steam locomotive haul the steam-train into Britomart.

### **Discussion and Decision**

The information carried in this report was inaccurate. It is unfortunate when an error makes it into a news publication. It does happen that people are inconvenienced and sometimes this is of significant import. However, it is neither possible nor reasonable to expect that every fact of every story is checked before publication. There would be no news reporting if verification of every single fact had to occur. Some information must be taken on face value. The story was attributed to Newstalk ZB.

What is required of news organisations is that any complaints are addressed immediately and that errors are corrected as soon as possible. Mr Rice's complaint was not made until two months after the publication of the incorrect information. It is unclear why the *New Zealand Herald* did not respond at that stage. However, unless Mr Rice had contacted nzherald.co.nz on the day of publication, and had the error corrected immediately, it would not have been possible to avert the potential for public inconvenience.

The complaint is therefore not upheld.

Press Council members considering this complaint were Barry Paterson (chairman), Aroha Beck, Pip Bruce Ferguson, Ruth Buddicom, Kate Coughlan, Penny Harding, Keith Lees, Clive Lind, Alan Samson and Lynn Scott.

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

## **Activist's views need not be sought – Case 2065**

Peter Zohrab complained to the Press Council about an article "Repeat wife beater goes free" published in *The Dominion Post* newspaper on October 23, 2008.

The complaint was not upheld.

### **The Complaint**

In relation to the specific article, Mr Zohrab stated that all but one of the comments published in the report came from "females [who are] feminist and anti-male". He claimed that this reflected a general pattern of anti-male bias that was also evident in some of the newspaper's earlier articles. He submitted a number of articles that he claimed supported his contention. For the purposes of the adjudication, it was not necessary to separately identify each of those articles.

Mr Zohrab identified himself as a "men's/fathers' rights activist". He asserted that because of his profile and experience in those areas, the newspaper should seek his counter-balancing views every time it sought the views of Women's Refuge so that the pro-male perspective would then also be reported. He opined that a newspa-

per must always have comment from pro-male as well as pro-female sources on gender issues. Implicit in his complaint was the argument that, without both of those sources being given an opportunity to comment, the newspaper article would lack balance.

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

The editor rejected Mr Zohrab's complaint. He indicated he would not agree to Mr Zohrab's request to seek out his views and he rejected the contention by Mr Zohrab that he was qualified to assume any position as a spokesperson on gender issues. He rejected outright the claim made by Mr Zohrab that the newspaper reports on domestic violence/ gender issues showed a pattern of being anti-male.

### **Discussion**

Both the specific article complained about and the articles then submitted to support the generic complaint of anti-male bias, have required the editor to make a determination regarding person/s whom he regarded as suitable to offer comment on the matters being reported.

That determination is the sole preserve of an editor. It is not a matter in which the Council will interfere.

In correspondence with the Council, Mr Zohrab attempts to qualify himself as an appropriate pro-male spokesperson. For the reason set out above, it is not for the Council to assess his qualifications. It would be quite wrong for the Council to do so.

Though it is evident Mr Zohrab feels aggrieved at the editor's exercise of his discretion he has, like other readers, the forum provided by the letters to the editor section of the newspaper. This provides a place for vigorous discussion of a range of views.

Neither the specific complaint nor the general complaint is upheld. It is frequently not necessary for a newspaper to present all possible points of view. It is for an editor to determine who should provide comment.

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

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

## **Climate change stoush – Case 2066**

### **Background**

In his regular Media Watch column in the *National Business Review* of April 24, 2008, David Cohen discussed the issue of comments carried on websites. He cited an apology carried in AUT Media's online Hot Topic feature and subsequent comments. The apology to the Listener and its editor referred to the magazine's then Ecologic contributor Dave Hansford and his departure from the magazine after a column in which Mr Hansford argued that climate change deniers had been given favourable treatment in mainstream media. Cohen's article said "this was not the first time Mr Hansford has parted company with an editor in the wake of delivering problematic copy having to do with environmental matters".

He said Mr Hansford had had “sharp differences recently with *Forest and Bird* after it declined to use a piece he had contributed” and over the treatment of previous pieces written for them including a piece about NIWA scientists that had led to an apology and retraction.

### **The Complaint**

Mr Hansford complained to the Press Council on August 28. He said Mr Cohen’s comments about him were inaccurate and “motivated by an intention to discredit my professional conduct”. He said the article contravened the Press Council’s Principles on accuracy and fairness, privacy, confidentiality, comment and fact and subterfuge.

The article had created the impression his piece had been rejected by *Forest and Bird* because it was erroneous, when it was not published for other, legitimate editorial reasons.

It was also erroneous to suggest that the apology for the NIWA piece was because of any inaccuracy by him. NIWA had taken issue with a quotation. There had been no retraction.

Mr Hansford said Cohen had made no reference to many magazines with which Mr Hansford had only harmonious relationships.

The complainant said that the column had portrayed him as unreliable and unprofessional and was motivated by malice and retribution for criticism Mr Hansford had made about the NZ Climate Science Coalition (NZCSC).

The fact that Cohen made his remarks in an opinion piece did not exempt him from the need for accuracy.

Mr Hansford claimed that in obtaining email correspondence between Mr Hansford and *Forest and Bird* Cohen had contravened the principle of privacy.

### **Response**

NBR said that the controversy over the *Listener*, its relations with Mr Hansford and how that matter became a subject for online comment was a fitting subject for the Media Watch column. The claims that Mr Cohen was somehow acting on behalf of the NZCSC or was intending to call Mr Hansford’s professional conduct or credibility in question were not justified. Cohen had no professional contacts with members of NZCSC.

In the course of researching the column Cohen was entitled to examine Mr Hansford’s other local journalistic activities. No subterfuge was used in obtaining correspondence between Mr Hansford and *Forest and Bird* and it was relevant. The column did not quote directly from the correspondence.

The NIWA-related article had prompted an apology.

### **Further comment**

Mr Hansford cast doubt on the NBR’s claim that Cohen had no contact with NZCSC, two members of which regularly wrote for *National Business Review*. He said he was in no doubt the purpose of the column was to serve retribution on behalf of the NZCSC. The email correspondence was not relevant but simply obtained to discredit him.

## Discussion

Climate change is an emotional issue with partisan views on all sides of the argument. The manner in which the discussions are conducted is a legitimate subject for comment and it might be expected that any such comment would include an examination of the backgrounds of those involved, indicating the level of commitment existing in the debate. Columnists, including Mr Hansford, who express strong opinions, might expect to receive opinionated reactions.

Cohen was not going beyond the bounds of normal journalism in obtaining correspondence concerning Mr Hansford and there is no evidence to suggest that any subterfuge was involved. The matters were of a professional rather than personal nature and Mr Hansford's privacy was not substantially breached.

There is nothing in the Media Watch column or subsequent correspondence to substantiate Mr Hansford's belief that Cohen was acting out of malice on behalf of members of the NZCSC. To suggest that he must have known two particular individuals because they wrote for the same publication is to draw a very long bow. It is by no means uncommon for contributors to work for publications for prolonged periods without ever meeting their fellow writers.

The Press Council's principle concerning fact and opinion is intended to emphasise that publications must maintain a discernible distinction between the two. In this column Cohen's opinions are clearly stated and his main interest, expressed in reasonable terms, is the nature of comment encountered on websites. On climate change, he expresses himself as "cheerfully agnostic" although he adds "apocalyptic scenarios" entertained by the media "have often not stood up well".

However, he does raise the matter of Mr Hansford's professional relationships with publications. It is difficult to see much damage accruing from the implication that there had been some disagreements between Mr Hansford and his editors at Forest and Bird. Such disagreements, often vigorously expressed, are part of normal life in the media. Nor, in the context of the piece, was it unfair not to point out that he had harmonious relationships with other editors.

But there is also the suggestion that Mr Hansford's work had been inaccurate and had required correction. Media Watch does not cite a reason why one piece was not published but the context could lead a reader to believe there were problems with it of an editorial nature. Mr Hansford says the piece was declined because the interview subject was not sufficiently interesting and NBR does not challenge this.

The Media Watch column does specify that Forest and Bird had to apologise over a NIWA piece written by Mr Hansford. The complainant says the apology was made as a rebuttal of a quotation but does not deny that some kind of printed redress was occasioned by the piece. It is clear that at least some of Mr Hansford's work involves taking a position and such journalism carries the risk of provoking a response. The Council is not in a position to judge the exact nature of the NIWA response, particularly since Mr Hansford did not provide details of the apology and background to it, but Cohen was entitled to point out that there had been one. He could not have been expected to go into great detail on the terminology.

## **Decision**

The complaints concerning inaccuracy, privacy, confidentiality, comment and fact and subterfuge are not upheld.

Press Council members considering this complaint were Barry Paterson (chairman), Pip Bruce Ferguson, Kate Coughlan, John Gardner, Sandy Gill, Keith Lees, Clive Lind, and Lynn Scott.

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

## **Cartoonist entitled to use hyperbole – Case 2067**

### **Introduction**

Rodney Brooks, chairman of the group Kiwis for Balanced Reporting on the Mideast, complained about the accuracy of the words in a Bromhead cartoon published in the Sunday Star Times on January 11, 2009. He also complained that errors he pointed out went uncorrected.

The cartoon depicted an Israeli soldier firing a machine gun. A speech bubble contained the words: “Ten innocents, one Hamas... Twenty innocents, Two Hamas... Thirty innocents...”

The complaint is not upheld.

### **The Complaints**

Mr Brooks acknowledged that cartoonists have latitude in their depictions, but argued that untruths should not be allowed. He said Israeli and United Nations authorities (as reported in the *Jerusalem Post*) had found the opposite of what the cartoon claimed: in fact, more Hamas had been killed than “innocents”.

The statement was not a justifiable or harmless exaggeration, he said, but an out-and-out untruth akin to “Jews kill Christian babies and drink their blood” claims made by anti-Semites over the centuries. A cartoonist would not get away with ascribing uncommitted crimes to an individual; the same standards of accuracy should apply to a nation.

A request to the newspaper for a correction had been refused, leaving the 10-to-one ratio uncontested.

### **The Newspaper’s Response**

Newspaper editor Mitchell Murphy responded that his paper’s columnists and cartoonists were employed to express their opinions, as had happened in this case. Not all readers would agree with the positions espoused all of the time.

The cartoon had been published on a page marked “Comment and Review”.

### **Further Correspondence**

In further correspondence, Mr Brooks cited an earlier Press Council ruling (Case 2045), that included: “it would seem wise for a newspaper...to take every care that all important, disputed issues are corrected, as much to the aggrieved party’s wishes as possible.”

## **Discussion**

Mr Murphy – and Mr Brooks – are correct: cartoonists and columnists are afforded more latitude in their work than reporters. It is widely understood that such work comprises the opinion of the cartoonist or writer. It is not unusual for a cartoonist to use hyperbole.

The issue of accuracy in relation to the figures cited in the cartoon is impossible to resolve. However, a cartoonist is entitled to make the point that civilian Palestinians of Gaza suffered heavy losses.

In a generalised cartoon, the figures beginning, “Ten innocents...” are unlikely to have been taken by anyone as an exact count or ratio of Palestinian civilian and Hamas deaths resulting from the Israeli incursion.

The cited Press Council comment, Case 2045, referred to a complaint in relation to disputed issues arising out of clear and repeated newspaper error. The observation, that important disputed facts should be corrected, sits in a markedly different context from a cartoonist’s opinion about inequities of suffering in a global conflict.

## **Conclusion**

The cartoonist had the right to highlight his views about civilian deaths incurred in an international conflict.

The complaints are therefore not upheld.

Press Council members considering this complaint were Barry Paterson (chairman), Pip Bruce Ferguson, Kate Coughlan, John Gardner, Sandy Gill, Penny Harding, Keith Lees, Clive Lind, Alan Samson and Lynn Scott.

## **What does a railcar look like? – Case 2068**

The Press Council has not upheld a complaint by Stephen Rice against articles published in *The Star* (Dunedin’s weekly community newspaper published by Allied Press) and its online edition. The same article was published in the *Otago Daily Times* online (ODT Online) but not in the print edition of the newspaper (also published by Allied Press).

## **Background**

The articles from which the complaint originated were identical stories highlighting a public meeting organised for the following week by a Fairfield resident to discuss the feasibility of the return of the Mosgiel/Dunedin commuter train service.

The articles were accompanied by a photograph of the meeting organiser and two railway officials looking over a “refurbished rail car at Hillside workshops”.

Therein were several references to “rail cars” both in direct speech attributed to the Hillside Workshops operations manager, and in reported speech.

The articles state that “the type of rail cars that were being refurbished for rail in Auckland and Wellington” would be suitable for Dunedin.

The articles also refer to “light rail cars” as being ideal for the conditions (narrow-gauge track)

## **The Initial Complaint**

The complainant in the first instance (on November 19, 2008) complained to the editor of the *Otago Daily Times* (responsible for all publications).

His complaint in essence was that the articles were misleading because the photographs and their captions were misleading. The photographs accompanying the articles were of locomotive-powered passenger carriages, yet the term “railcar” dominates the text; therefore the illustrations were misleading as to what “railcars” actually look like.

## **The Response**

In his response to the complainant, the editor agreed that an error had been made in describing the carriage in the photograph as a rail car. “The websites will be corrected accordingly.”

However, the editor said that he and his staff did not agree that the carriage “in no way resembles a rail car”. Other rail experts have said that a fully fledged rail car would not look dissimilar to what was shown in the photograph.

The editor’s response concluded with an offer to Mr Rice to write a Letter to the Editor for consideration for publication.

## **The Extended Complaint to the Press Council**

Mr Rice then took up his complaint with the Press Council. As well as his initial complaint, he added further technical points that he had taken considerable time to establish in seeking further information about the accuracy of the articles.

The nub of these further complaints is that the incorrect use of basic railway terminology in communications by rail officials to news media outlets is disturbing and every effort should be made to get it right.

## **The Response**

The acting editor, in responding to the complaint to the Press Council agreed that too much reliance had been placed on “expert” opinion. However, the errors were substantially technical in nature, though he noted they should be avoided where possible.

In his final response to the complaint, the editor pointed out that in regards to the initial complaint, the photograph was taken with the full co-operation and under the direction of Hillside Engineering Group experts; that the captioning error was acknowledged and corrected; that the photograph was immediately removed from the archived *ODT* online article; and that the caption was altered on the archived online version of *The Star*.

The editor also pointed out that Mr Rice’s complaint to the Press Council differed from the original complaint about the illustration and caption, and raised matters not contained in his original formal complaint to the newspaper.

## **Discussion**

There is often a tension between articles that include technical matters, and the need to make a story accessible to the general public. In this case the newspaper relied on railways staff for the terms used and the information provided.

When Mr Rice initially complained to the editor, steps were taken to rectify errors around the illustrations used. He was also offered the opportunity to put his concerns in a Letter to the Editor.

### **Conclusion**

This article was essentially a piece to highlight the upcoming meeting to discuss the future of commuter trains between Mosgiel and Dunedin. The headline “Meeting to discuss return of Mosgiel train” indicated the major thrust of the article. The errors were incidental to the main thrust and did not detract from the purpose of the article. The newspaper acted promptly in dealing with Mr Rice’s original complaint and in correcting the archived versions of the articles. They also offered him the opportunity to write a Letter to the Editor. That Mr Rice extended his complaint, taking considerable time and trouble to furnish material to back it, took the complaint into areas that were not identified originally.

The complaint is not upheld.

Press Council members considering this complaint were Barry Paterson (chairman), Pip Bruce Ferguson, Kate Coughlan, John Gardner, Sandy Gill, Penny Harding, Keith Lees, Clive Lind, Alan Samson and Lynn Scott.

## **Top Town rivalry goes off-field – Case 2069**

The Press Council has not upheld a complaint from Dale Williams, Mayor of Otorohanga District, against the *Taupo Times* over an editorial published in the *Taupo Times* on November 28, 2008.

### **Background**

Kris Wills, editor of the *Taupo Times*, wrote an editorial to accompany an article about participation in the Top Town competition, between the Unison Taupo Lakers and a team from Otorohanga.

In an email sent by Mr Williams to Mr Wills on December 1, Mr Williams served notice that he would make a complaint to the Broadcasting Standards Authority and to the Minister of Broadcasting, in response to the editorial in the *Taupo Times*. He found Mr Wills’ comments “deeply insulting to the Otorohanga District” and referred to “character assassination, insults and petty abuse” such as had appeared in the article.

Mr Williams further indicated that many Taupo residents and colleagues had also expressed outrage at “your rather juvenile attempts at self-gratification”, which he found at variance with the good relationship that he claimed existed between Otorohanga and Taupo. Mr Williams requested an immediate written apology and a printed retraction from Mr Wills, who had previously been an Otorohanga resident, and the *Taupo Times* newspaper.

Mr Wills replied to Mr Williams by email on December 2. He painted the editorial as “an attempt to spark a friendly rivalry in the light of the top town event”. He claimed that the rivalry was between his publication and Otorohanga’s Waitomo News. He saw the article as “good natured ribbing” which was part of Kiwi culture.

Though he acknowledged Mr Williams' right to lay a complaint (and directed him to the Press Council to do so) he stated that the editorial was clearly labelled as opinion, and that the Press Council has upheld the right of editors to write opinion columns in the past. His email concluded that he wished Otorohanga "all the best in the Top Town, but obviously not as much as Taupo".

### **The Complaint**

Mr Williams brought his complaint to the Press Council on December 2. The complaint consisted of his forwarding the emails between himself and Mr Wills, with no further grounds for complaint than were included in his initial email to Mr Wills. He claimed that the editorial had "caused a great deal of consternation in both Taupo and Otorohanga Districts".

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

Mr Wills' response to the Press Council stated that he had responded to Mr Williams both personally and in a subsequent editorial published on December 5. Mr Wills reiterated that the original editorial was intended as an attempt to spark a friendly rivalry and it was not his paper's intention to insult or embarrass civic leaders or citizens. He indicated that the December 5 editorial had offered a sincere apology "to anyone who had taken offence. None was intended".

He believed that the editorial is correctly labelled as an opinion column and should be judged as such. He claimed that the article was not defamatory and could best be judged as satire. He concluded with his belief that his paper had acted professionally and quickly in apologising, and said he looked forward to the Council's ruling.

### **Further Responses**

Mr Williams emailed the Council on January 20 and reiterated that Otorohanga team members had been hurt by the comments. He claimed that a sincere apology was still owed to Otorohanga District Council and to the members of the Otorohanga Top Town Team.

Mr Wills maintained his newspaper's position that an appropriate apology had been tendered in the December 5 editorial. He said he had written twice to Mr Williams to apologise for any offence caused. He repeated his earlier comments about sparking rivalry and not intending to give offence and said no complaints had been received from "general readers".

In response Mr Williams indicated that a "sincere, written statement of regret tendered to the aggrieved party" was his definition of an apology and that this had not been forthcoming. After a phone conversation with the secretary of the Press Council, he requested that the complaint proceed.

### **Discussion**

This situation arose in the context of a sporting competition, Top Town Teams, in which largely amateur but enthusiastic sportspeople compete. Regional rivalry can be intense, and it is in this context that Mr Wills' comments were made.

Some of his expressions would appear to justify Mr Williams' reference to "juvenile attempts at self-gratification", particularly expressions such as the Otorohanga

team comprising “wannabes and was-beens” and that if Otorohanga was to beat Taupo, Mr Williams would be invited to “personally spank my butt in the middle of his tin-pot town”.

The fact that Mr Wills had previously been resident in Otorohanga and had obviously not enjoyed the experience possibly added fuel to the fire.

In the *Taupo Times* dated December 5, alongside the editorial, there was an article admitting that Otorohanga’s mayor found Mr Wills’ editorial “not funny and frankly insulting”. In the editorial alongside, Mr Wills reiterated his claim that insult was not intended, and that “we are more than happy to say sorry and offer a sincere apology to anyone who has taken offence”.

## **Conclusion**

The editor of the *Taupo Times* appears to have misjudged the tenor of this article. The laddism inherent in his writing, though he claimed it to be intended to spark regional rivalry, has, as he admitted himself, “fallen flat”. However, the writing occurred in the context of an editorial and is clearly editorial opinion, not factual claim, despite the umbrage that has been taken by various parties including the complainant. In addition, the editor did apologise on December 5.

The complaint is not upheld.

Press Council members considering this complaint were Barry Paterson (Chairman), Pip Bruce Ferguson, Kate Coughlan, John Gardner, Sandy Gill, Penny Harding, Keith Lees, Clive Lind, Alan Samson and Lynn Scott.

## **The true cost of a big ticket item – Case 2070**

The chairman of Auckland Regional Council, Mike Lee, complained to the Press Council that the *New Zealand Herald* had published a report containing inaccurate information about the cost of an integrated ticketing system for public transport in Auckland.

The complaint is upheld.

## **Background**

On February 2, 2009, the *Herald* published a front-page lead headed “Slump hits city’s major projects; ARC holds crisis talks on state of business arm’s books”.

The article said that more than \$1 billion worth of major civic developments were under threat from the global recession “which has sent returns from the regional council’s strategic investments into freefall. Politicians, directors and senior Auckland Regional Council staff held crisis talks on Friday to get to grips with the rapidly deteriorating books of the ARC’s business arm, Auckland Regional Holdings”.

The article said: “The meeting broke up in acrimony and will reconvene on Thursday.”

Further in the article, a paragraph said: “The holding company’s income is also expected to contribute to the operational costs of a \$170 million integrated ticketing project. A tender process is nearing completion for the project.”

Accompanying the article was a graphic that included an illustration of buses and

the headings: “Threatened: Integrated ticketing”. The caption read: “The successful tender for the \$170m integrated ticketing project is to be announced shortly, but can Auckland afford the project?”

### **The Complaint**

Mr Lee disputed how the meeting had ended and the cost of \$170 million, and took up his complaint with the *Herald*. The reporter who wrote the article had interviewed him the day before and he had told him there was commercial sensitivity about the ticketing project but the capital cost was expected to be \$60 million to \$80 million.

The day the article appeared, he had left a message on the reporter’s mobile phone, complaining about the \$170 million figure and the statement that the meeting had broken up in acrimony.

However, the reporter was by then on leave and his call was not returned. Mr Lee said he also complained to another *Herald* senior journalist.

The same day – February 2 – he wrote a letter to the editor again stating the meeting had not broken up in acrimony, and this was duly published in full. At the time, he decided not to raise the issue of the ticketing system again because of the commercial sensitivity surrounding the project.

But on February 10, the *Herald* published a letter critical of Mr Lee under the heading “ARC’s \$170m ticket plan absurd”. He contacted the *Herald*’s editor, Tim Murphy, by cellphone to take up the cost issue again but Mr Murphy did not call back.

He also wrote a letter to the editor and what Mr Lee described as a heavily truncated version of his letter was published on February 12. It said, over Mr Lee’s name: “A *Herald* article and subsequent letter to the editor said the cost of integrated public transport ticketing would be \$170 million. The likely cost of that ticketing is between \$60 million and \$80 million.”

### **The Newspaper’s Response**

In an exchange of emails between the pair, Mr Murphy said he had had no indication of Mr Lee’s disputing of the figure until February 10 and once he was aware of it, he referred it to his newsroom. The reporter was on leave and could not be contacted until February 12.

Mr Murphy said the reporter remembered Mr Lee mentioning the figures of between \$60 and \$80 million but he took that to be referring to the ARC’s proportion of the overall cost, both capital cost and running costs. He believed the ARC proportion had been set at between 50 and 60 percent.

A total figure far higher than \$80 million had been made by a “central government figure,” and that reinforced the reporter’s understanding that Mr Lee’s estimate was for the ARC proportion only.

“If indeed you are now saying that the overall cost (not just capital, as specified in your letter) is going to come in under \$80m in total, we will clearly be prepared to correct that in the paper.”

In a later email to Mr Lee the same day, Mr Murphy said he had been made aware that the New Zealand Transport Agency’s estimates of capital and running costs for

the project over 10 years were close to \$150 million “before CPI increases”. This was “close” to the reporter’s published figure.

In his formal response to the Press Council, Mr Murphy said the February 2 story had said the cost, including operational costs, was likely to be about \$170 million.

He also expanded on his figures, quoting a report from the NZTA of December 2008, which put the capital cost at \$70 million to \$85 million and annual operating costs of \$6.5 million over 10 years.

“Aware of this overall figure, he [the reporter] misunderstood Mr Lee in an interview before publication of the February 2 story to be referring to the ARC proportion of cost when Mr Lee specified a total of \$60 to \$80 million,” the editor said. “As it happens, that misunderstanding was not material – we stand by the total used as an accurate estimate at that time of capital plus operating costs of the integrated ticketing system.”

### **Further Comment**

In his formal complaint to the Press Council, Mr Lee disputed that. The February 2 article said the “holding company’s income is also expected to contribute to the operational costs of a \$170 million ticketing project”. He added: “One could infer from this that the operational costs are in fact extra.”

He pointed out that Auckland Regional Holdings and the ARC were also expected to contribute to ongoing operational costs of a \$1 billion electric train system mentioned in the article.

Though it was correct the operational cost over 10 years was estimated to be \$6.5 million a year, the region’s cost would be 40 percent of that. But adding that figure to the \$80 million capital cost gave a total of less than \$150 million, not \$170 million.

The editor’s argument was specious. “It is like someone claiming a copy of the *Herald* costs \$10,000 and then explaining that one meant the cost of buying the *Herald* for 10 years.”

### **Discussion**

A first issue for the Press Council is whether a reasonable person reading the article of February 2 would believe that the reference to the \$170 million ticketing project referred to the capital cost or the capital cost plus operational costs.

The article makes two references to the figure – one refers to the holding company’s contribution to the operational costs of the \$170 million project. A second, a caption, referred to “the successful tender for the \$170 million project”.

Though operational costs are mentioned, it is by no means clear that the figure of \$170 million includes both capital and operating costs and that the latter are extrapolated over 10 years. The sentence cannot bear the weight the editor places on it. It does not, as the editor says, “clearly” stipulate operating costs as part of the \$170 million – it reports only of the holding company contributing to the operating costs of a \$170 million project.

The caption does not mention operational costs but links the successful tender to the \$170 million project. Without further explanation, the Press Council believes a reader would be entitled to believe that was the capital cost of the project alone.

A second issue is whether the \$170 million is correct. The figures by the editor's own calculations from the NZTA estimates do not add up to \$170 million. It is closer to \$150 million, a significant difference.

Though the editor indicates the \$170 million allowed for costs to rise through inflation, this was not stated in the article and readers should have been made aware that such estimates had also been factored in.

The *Herald* agrees its reporter did misunderstand Mr Lee's figures from their interview but the claim that the figures are about the same is not convincing.

Further, it is obvious that no figure can be regarded as accurate because a contract for the integrated ticketing system had yet to be let, and was therefore unknown, and operational costs 10 years into the future and rates of inflation could be regarded only as estimates.

Mr Lee's letter, albeit truncated, published on February 12, does present his point of view, but without background about the previous article and letter, its overall corrective or explanatory value is diminished.

It is regrettable that both parties did not adopt a more conciliatory approach with a view to resolving the issue so that readers and ratepayers could have been better informed on the issue of cost, capital and operational, and the sharing of those costs between central government and the regional council.

## **Decision**

Mr Lee's complaint about the inaccuracy of the figure is upheld. The caption and sentence in the February 2 article taken together strongly indicate the figure refers to capital costs only and, if it didn't, the *Herald* should have explained how it reached the figure. There was no reference to the figure including 10 years' operating costs.

The publication of Mr Lee's truncated letter does not absolve the *Herald*. It should have carefully made clear its calculation methodology in the initial article so readers were in no doubt.

Press Council members considering the complaint were Barry Paterson (chairman), Pip Bruce Ferguson, Ruth Buddicom, Kate Coughlan, Sandy Gill, Penny Harding, Keith Lees, Clive Lind, Alan Samson, Lynn Scott.

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

## **Dark shade of grey – Case 2071**

The Press Council has not upheld a complaint by Alf Newman against *The Nelson Mail* in respect of two articles published on February 28, 2009.

## **Background**

The complaint relates to two articles published in the Saturday Weekend edition of *The Nelson Mail*. The front page article covered a challenge by Nelson City Councillor Pete Rainey to the local Grey Power group to canvass its membership before claiming to speak on their behalf and a rebuttal by Grey Power president Gordon Currie that it did not pretend to speak for all its 12,000-plus Nelson members. The story pointed to a feature article entitled "Shades of Grey" carried inside the newspa-

per. This article was a backgrounder to Grey Power and quoted Grey Power president Gordon Currie. Also present at the interview was Alf Newman, identified as one of Grey Power’s local government committee members and the author of a 1000-word article concerning Grey Power representation and the right of the Nelson city council to represent the Nelson community, among other issues.

### **The Complaint**

Mr Newman complained of false reporting by *The Nelson Mail* in articles concerning local Grey Power criticism of the Nelson city council, the newspaper’s description of the tone of the criticisms as being unacceptably aggressive and abusive and a claim that one Nelson City Council member was a particular target for criticism by three Grey Power representatives including Mr Newman.

Mr Newman argued *The Nelson Mail* named the three committee members (forming the local government committee of Nelson Grey Power) as acting for Grey Power, and undertaking “almost defamatory” and “incredibly personal” criticism of the Nelson city council.

Mr Newman argued that the sentences – “Some are almost defamatory. Some are incredibly personal” – were unsubstantiated commentary without verification, and that there was no attribution to the comment linking the letters to Grey Power.

Mr Newman argued that the articles accused the same three Grey Power members of making one councillor, Mr Rainey, a particular target for criticism.

Mr Newman claimed these allegations were false. He rejected that there was a link between the three men’s views of the council and their membership of Grey Power. He requested the newspaper produce evidence that he was acting “in any Grey Power capacity or purporting to speak for or otherwise represent Grey Power”.

If evidence was not to be forthcoming Mr Newman expected a public retraction and an “appropriately fulsome apology within seven days”. Otherwise he threatened further action.

The initial complaint was made to the head of publishing, Fairfax Media, in Auckland. After receiving a response from Bill Moore, editor of *The Nelson Mail*, Mr Newman refined and redirected his complaint and after a further email from Mr Moore, Mr Newman complained to the Press Council specifically citing Principles 1, 2 and 6.

### **The Newspaper’s Response**

*Nelson Mail* editor Bill Moore promptly answered that, after careful study, he could find no accusation of “abusive criticism” and invited Mr Newman to write a letter to the newspaper with his views. Mr Newman replied that the editor had missed the nub of the complaint and resubmitted a refined complaint. The editor replied that there were no grounds for retraction and again invited Mr Newman to write a letter for publication.

In response to Mr Newman’s complaint to the Press Council, the editor responded that it was without justification. He provided a selection of letters from three men, who are (or were at the time) members of the Grey Power’s local government sub-committee as proof of their “robust” style in critiquing the activities of the city council and Mr Rainey in particular. He stated that the three men were well known

as Grey Power representatives to newspaper readers who follow council news.

He addressed a specific complaint by Mr Newman regarding the sentence: “I get a bit disturbed about some of the letters in your paper” from Grey Power sources. The editor advised that the quote came from the Nelson mayor commenting on the relationship between the city council and Grey Power.

## **Discussion**

The essence of Mr Newman’s complaint is threefold: that *The Nelson Mail* accuses Grey Power and its named members of “unacceptably aggressive and abusive criticism”; that a sentence regarding “almost defamatory” and “incredibly personal” letters from Grey Power quarters is unsubstantiated and unattributed comment; and that the three named Grey Power members have made one councillor a particular target for criticism when Mr Newman says he has made no statement as a Grey Power spokesman.

In relation to the first point, about the article describing Grey Power as “unacceptably aggressive” and making “abusive criticism”, the feature writer legitimately raises the question: “Might their feisty, aggressive approach to their campaigns be part of the problem?” This is a valid question in describing an organisation that has issued a 1000-word article that accuses the local council of a Mugabe-like reaction to criticism. Comparing the local councillors’ response to criticism in such terms is an aggressive stance.

In relation to the second point regarding the unattributed/unsubstantiated commentary that some Grey Power letters to the newspaper are “almost defamatory” and “incredibly personal”, the writer took particular care to indicate exactly which words the mayor spoke and which were implied by his comment. The quote marks are shown to end before the “from Grey Power sources”. However, the editor had advised Mr Newman that the mayor made the remarks in context of Grey Power criticism and was therefore speaking specifically of Grey Power members.

Mr Newman has been a regular published letter writer to *The Nelson Mail* and in several of the letters supplied to the Press Council, his description of Mr Rainey’s morals and judgment is severe. Mr Newman has not dissociated himself from aspects of the story that link him directly to Grey Power, which name him as a member of the local government committee and which also name him as the author of the 1000-word article described by the newspaper as a “diatribe”. In the Press Council’s view linking his views to Grey Power membership was legitimate.

In letters to the editor written by Dan McGuire and Erroll Millar (the other two members of the local government committee of Grey Power) after publication of the articles complained of, neither sought to disassociate their opinions from Grey Power nor distance their criticism of Mr Rainey and the council from their membership of Grey Power. In fact quite the reverse occurred with both men arguing from a Grey Power perspective.

The complaint is not upheld.

Press Council members considering the complaint were Barry Paterson (chairman), Pip Bruce Ferguson, Ruth Buddicom, Kate Coughlan, John Gardner, Sandy Gill, Penny Harding, Keith Lees, Clive Lind, Alan Samson, Lynn Scott.

# **The local body and the local newspaper (No. 1)**

## **– Case 2072**

The Press Council has not upheld a complaint from Queenstown Lakes District Council concerning an article published in *Mountain Scene*.

### **Background**

On January 29, 2009, the *Mountain Scene* newspaper published an article on the finances of Queenstown Lakes District Council (QLDC) based on the annual report for the year to June 30, 2008. Under the heading “Quangos are costing us” the article pointed to a series of increases in costs and charges, debt and an overall surplus recorded by QLDC subsidiaries. It said QLDC appeared to be coy over the results and had quietly dropped the report on to its website.

The following day QLDC emailed the newspaper giving notice it had “serious issues” with the article and on February 2 sent the editor a list of what it believed were inaccuracies. The newspaper acknowledged the complaints and before responding further referred the matter to an expert in accounting.

On February 5 *Mountain Scene* published a correction of one figure and stated the QLDC complaints had been referred to the expert. On February 12 the newspaper published an article under the heading “QLDC comes up short”, in which financial analyst, Alan Robb, substantially dismissed the complaints and was critical of the council’s financial reporting.

On February 19 under the heading “QLDC debt to soar further” the newspaper ran a report recording QLDC was investigating future funding options and that used disputed figures from the original report.

QLDC complained to the Press Council on March 3.

### **The Complaints**

QLDC complained on the grounds of fairness, accuracy and failure to correct. It listed 10 separate complaints including: that the newspaper had compared a full year with an incomplete year which invalidated the comparisons; that the newspaper had applied the cost of council-controlled organisations to rates, which was inappropriate; that the cost of council controlled organisations was \$56.20 for every rate-paying property each year, and not \$585 as originally reported or \$383 as in the correction; that the information on rising costs was incorrectly and inadequately explained because the newspaper had not discussed the figures with QLDC; that QLDC could not “coin” it; that QLDC-controlled organisations were not “quangos”; that the information in the report was not “buried by the council” and that Alan Robb was incorrectly described as a University of Canterbury professor; it was misleading to call his report “an adjudication”; and that his criticisms were unfounded and contrary to the findings of the council’s auditors.

### **The Response**

The editor of the newspaper said that when QLDC complained on February 2 he referred the matter to his general manager, who holds a B Com degree and has sub-

stantial business experience. He believed that, based on the Annual Report, the figures were correct except one, the cost figure attributed to QLDC subsidiaries, which should have been \$7.6 million and not \$11.6 million. This was corrected in the publication of February 5. They also corrected their resulting calculation that the cost to the ratepayers was thus \$383 for every rate-paying property and not \$585, as they reported.

The editor said the correction was published as a stopgap measure as they wished to check further but had deadline issues. He decided to refer the matter to an independent accountancy specialist. Alan Robb's work had been published in major media and he was contracted to examine the newspaper reports, the material on which it was based and QLDC's complaints. It was stressed that he was perfectly free to find the newspaper wrong and the newspaper intended to act on his findings. In the event he dismissed QLDC's complaints and was critical of its procedures.

As his findings were lengthy and technical they were summarised for print in the article of February 12 but the full text, which included all QLDC's criticisms, was published on the newspaper's website and readers were directed to it.

QLDC complained that the newspaper had compared figures from an incomplete year with those of a complete year but its own Annual Report had done just the same and the Annual Report did not provide comparable figures. The complaints that the figures published were not adequately explained were unjustified because these explanations were absent from the Annual Report. The editor quoted Alan Robb noting that it was unacceptable to expect readers of an annual report to have to ask for additional information before they could expect to obtain a "correct" view. This was a case where balance did not require an approach to QLDC because all the information should have been available in the report.

The expression "coin it" was valid if there was a margin over cost regardless of whether QLDC was a non-profit organisation and the use of the term "quango" was an appropriate generally used term for a semi-autonomous body, which QLDC subsidiaries were.

It was fair to suggest the report was little publicised. The Annual Report was not the subject of any press release nor was it in the "What's New" section of QLDC's website.

QLDC was being insulting in challenging Alan Robb's standing or impartiality. He was an adjunct professor at St Mary's University in Canada and former head of Department of Accountancy, Finance and Information Systems at the University of Canterbury. The newspaper commissioned his report at the usual professional rate. It was a quibble for QLDC to object to the word "adjudication" when Alan Robb was specifically instructed to independently test the complaint.

The fact that QLDC's auditor had passed the Annual Report showed only it met a statutory requirement and many examples showed that such audits could not always be taken as full disclosure of the subject's financial situation.

### **Further comment**

QLDC responded on April 2 standing by its complaints. It said the Annual Report was adopted in public from a publicly notified agenda at a meeting at which two

members of the media and two members of the public were present. QLDC had no quarrel with Alan Robb but it was factually incorrect to describe him as a former Canterbury University accounting professor and QLDC believed *Mountain Scene* should have disclosed he was paid for his opinion. QLDC had never been contacted for an explanation of the figures, which would have been “happily given.”

In a final comment the newspaper said that several of the so-called errors were accurately drawn from the Annual Report and the council was challenging them only by using fresh information.

## **Discussion**

As the Press Council has suggested in previous rulings it is not unusual for tensions to arise between local authorities and the local media and this is particularly true in the sensitive area of finance. It is part of a newspaper’s role to cast a critical eye on such matters. Nor is it improper for a publication to take an adversarial stance, as it appears *Mountain Scene* tends to do.

The interpretation of financial information is fraught with difficulty and capable of widely differing analyses, as a glance at the business pages of the world’s media will quickly reveal, particularly in the current economic climate. It is difficult to take issue with *Mountain Scene*’s decision to seek an outside source to examine QLDC’s response to its story. QLDC’s objections to the term “adjudication,” to the description of Alan Robb as a former Canterbury University accounting professor - he is a professor and was formerly at Canterbury University - and to no mention being made of the normal practice of his being paid for a professional opinion lack real substance.

The publication of the full report from Mr Robb and, therefore, the full complaints from QLDC on its website is routine practice and might be argued provided a good airing of QLDC’s interpretation of the figures. Before receiving Mr Robb’s report *Mountain Scene*, in its correction of February 5, had directed readers to the full text of QLDC’s complaints.

The use of the terms “coining it” and “quangos” might not be the council’s preferences but they are unlikely to mislead the lay reader and cannot be said to be inaccurate. Whether the amount of publicity given to the release of the Annual Report amounted to its being hidden is debatable. The presence of two members of the public and two members of the media attests to the fact it was not behind closed doors but the newspaper is entitled to judge the publicity provided was not extensive.

On the matter of balance, *Mountain Scene* and Mr Robb adopt the position that the full explanations QLDC seek to provide should have been in the Annual Report and therefore QLDC’s views need not be sought. QLDC in its correspondence says that this is the heart of the problem.

*Mountain Scene*’s original report says specifically “the revelations are in the QLDC’s newly released Annual Report”.

QLDC’s view is that the figures need explaining. The newspaper’s view is that the document on which it relied should have been a complete statement of the financial position. It points out that QLDC states “the Annual Report is the principal financial reporting document for the Crown”.

The newspaper is, therefore, justified in restricting its story to the Report, they argued.

This might be true, from an accounting perspective, but in the interests of its readers' better understanding, the newspaper would have been doing them a service in approaching QLDC.

It is common practice to seek further elucidation of the information in financial statements, whether from public or private organisations. When it became apparent that the figures published were challenged by QLDC it would have been prudent to allow the council the opportunity to provide its explanation.

QLDC did respond quickly to the story offering further financial information in explanation of the bald figures in the annual report. An example, cited by both the complainant and the newspaper, was the rise in the spending on vehicles. This was substantially the consequence of the purchase of a new fire engine for Queenstown Airport. This is information that the readers would surely have appreciated, as would readers of the Annual Report had it been there.

But QLDC's own approach hardly encouraged a cordial exchange and the newspaper acted properly in seeking another opinion to test its interpretations of the material in the Annual Report.

### **Decision**

The complaints of inaccuracy and lack of balance are not upheld. *Mountain Scene* did not act unreasonably in relying only on the Annual Report in its reporting and specifically indicated that was from where its figures came.

The complaints concerning the newspaper's use of "quangos", "coining it" and its description of Alan Robb are not upheld.

Press Council members considering the complaint were Barry Paterson (chairman), Pip Bruce Ferguson, Ruth Buddicom, Kate Coughlan, John Gardner, Sandy Gill, Penny Harding, Keith Lees, Alan Samson, Lynn Scott.

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

## **The local body and the local newspaper (No. 2) – Case 2073**

The Press Council has upheld a complaint by Queenstown Lakes District Council (QLDC) against *Mountain Scene* concerning an article published on February 12, 2009.

### **Background**

*Mountain Scene* published an article about the aerial spraying of conifers on Queenstown Hill under the heading "Spray victims – speak out." It reported claims by a resident that she had suffered symptoms including headaches, swollen eyes, sore throat and breathing difficulties at the time of the spraying. The article called for others who might have had similar experiences to come forward.

The article said the woman's symptoms had started on January 19, the day of the spraying, and still affected her weeks later. She had to take two days off work and move away from her home for six nights.

The day the article appeared, QLDC contacted the newspaper to say that, because of wind, the spraying had not happened on January 19, but a week later on January 26. The council said the claims in the article were not only wrong, they were impossible. At the time of spraying, the wind was blowing away from the houses on Queenstown Hill, the weedkiller was weighted with oil, and there was no way spray drift could have reached her property.

In response, the newspaper published a brief article on February 19 under the heading “Wrong date” saying that the date of the spraying operation had been incorrectly stated as January 19 when the operation actually took place on January 26.

### **The Complaint**

QLDC brought the issue to the Press Council saying the newspaper had failed to adequately correct its error or apologise, and widened its complaint to include the headline and several other matters.

It complained about the use of the plural “victims” in the headline when it disputed that there were any victims at all.

It took issue with the newspaper’s failure to acknowledge the operation was a joint one involving the council, the Department of Conservation and a private landowner.

QLDC also complained that the newspaper had failed to provide balance by not using information contained in a council press release and fact sheet explaining the need to spray the trees. It had failed check the facts of the story with the council or put the resident’s claim to QLDC.

In later correspondence, the council claimed that the woman mentioned in the article had contacted QLDC to say that she had not wanted to be involved in the story, but she and her employer had been pressured by the newspaper to make statements.

### **The Newspaper’s Response**

*Mountain Scene* editor Garry Ferris said QLDC had used a simple typographical error involving a wrong date to suggest that the entire article was “a sensationalised and inaccurate beat-up.”

He acknowledged the woman was initially reluctant to have her name used in the story but, contrary to claims by the council, the woman had contacted the newspaper in the first instance, not the other way around.

He said the article was about “the after-effects of spraying, not the spraying operation itself or the date of it” and the council’s complaint was evidence of an attempt to control news coverage.

The headline “Spray victims – speak out” did not claim there was more than one victim; it instead reflected the woman’s call for others who might have been affected to come forward. If other victims had come forward and turned a small story into a large story, he said the newspaper would have then sought comment from the Council. To do so earlier would have been premature.

### **Discussion**

*Mountain Scene* acknowledges that it got the date of the spraying wrong. It acted

promptly to correct the error, but this was wholly inadequate because it then left a question mark hanging over the woman it interviewed whose symptoms, the original article said, appeared on January 19.

The headline is ambiguous. It might be read as a call for spray victims to speak out. It might just as easily mean spray victims are speaking out.

This news story needed balance and careful checking, suggesting as it did that a local authority's action might be to blame for causing harm to someone. The article contained alarming suggestions and QLDC was entitled to have the suggestions put to it before publication.

### **Conclusion**

This complaint says much about the lack of a good working relationship between *Mountain Scene* and QLDC. The complaint is upheld for the reasons above, particularly lack of balance.

Press Council members considering the complaint were Barry Paterson (chairman), Pip Bruce Ferguson, Ruth Buddicom, Kate Coughlan, John Gardner, Sandy Gill, Penny Harding, Keith Lees, Alan Samson, Lynn Scott.

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

## **White ribbon day (No. 1) – Case 2074**

### **Introduction**

Peter Zohrab made a complaint about non-publication of an article submitted to the *Kapiti News*. He stated specifically: “I am writing to complain that the *Kapiti News* has refused to publish my article on domestic violence.”

Mr Zohrab's complaint about non-publication of his article was not upheld.

### **Background**

White Ribbon Day is an international day on which people wear a white ribbon to show they oppose violence towards women.

On Wednesday November 19, 2008, the *Kapiti News* published an article headed “Mayor right behind White Ribbon Day”. The article called on the community to support White Ribbon Day.

On December 3, 2008 the *Kapiti News* published an article headed “Turning the tide on domestic violence”, covering activities at Paraparaumu Beach that were part of White Ribbon Day.

Mr Zohrab sent a letter to the *Kapiti News* requesting it run an article, to be provided by him, on domestic violence perpetrated by women towards men, as he believed that the articles covering White Ribbon Day were false and discriminatory towards men.

The editor, Simon Waters, replied that they would “consider any article, submitted by yourself, on the subject”.

On January 21, 2009, Mr Zohrab was informed that Steven Bell was now the editor of *Kapiti News*. Mr Bell informed Mr Zohrab he would run Mr Zohrab's article only as a letter to the editor.

Mr Bell stated that during the conversation, Mr Zohrab became abusive, then stated that he would complain to the Press Council regarding Mr Bell's refusal to publish the article. Mr Bell then told Mr Zohrab that he would not publish it at all.

Mr Zohrab brought his complaint to the Press Council.

### **Response from *Kapiti News***

The editor responded stating that the articles concerned were not about Mr Zohrab and he was not mentioned in them. The articles covered a community event for White Ribbon Day. The editor stated that he had "considered the public interest in publishing Mr Zohrab's material and whether legally or in the interests of natural justice he merited a right of reply and considered that he did not". He also considered that Mr Zohrab's material was not in keeping with the usual content of the *Kapiti News*.

The editor went on to say that when he was telling Mr Zohrab that he would accept a letter to the editor the discussion was terminated because of Mr Zohrab's abusive comments.

### **Discussion and Conclusion**

Mr Zohrab clearly states in his letter dated January 30, 2009, "I am writing to complain that the *Kapiti News* has refused to publish my article on domestic violence."

It is not the New Zealand Press Council's function to dictate to a newspaper what offered material they should or should not accept for publication.

In the particular circumstances of this complaint the Council considers there was no question of balance or unfairness that called for a right of reply.

The complaint is not upheld.

Press Council members considering the complaint were Barry Paterson (chairman), Pip Bruce Ferguson, Ruth Buddicom, Kate Coughlan, John Gardner, Sandy Gill, Penny Harding, Keith Lees, Clive Lind, Lynn Scott.

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

## **White ribbon day (No.2) – Case 2075**

### **Introduction**

Peter Zohrab complained to the Press Council about a report in the *Kapiti Observer*. He contended that it was unfair, unbalanced and discriminatory against males. He also complained that the newspaper had declined his offer of an article that would counter and balance the original report.

His twin complaints, about unfairness and non-publication of his views, are not upheld.

### **Background**

On November 17, 2008 the *Kapiti Observer* included an advertisement, paid for by Kapiti Coast District Council, promoting "White Ribbon Day". This is an international day when people wear a white ribbon to indicate that they do not condone violence against women.

The advertisement pointed out that the Kapiti council actively supported the concept and gave information about how the day (November 25) would be celebrated on the Kapiti Coast.

On November 27, the newspaper published a report of the activities. According to the newspaper, a “large crowd of men, women and young people” had assembled, wearing white ribbons, in support of “eliminating violence against women – and all family violence”.

The report included brief accounts of comments from various speakers. It appeared under the headline “Song celebrates White Ribbon Day” and was accompanied by a photograph of men, women and children building a white ribbon out of shells.

### **The Complaints**

After the advertisement, Mr Zohrab telephoned the newspaper to complain and to explain that he wanted “equal space to put the true picture”. His request was not granted.

After the report of the community activities on White Ribbon Day, he wrote to the newspaper, again complaining that the report gave a “one-sided picture of domestic violence as being something that men do to women” and again requesting equal space for “the truth about domestic violence and the harm that is done by pushing an anti-male line”.

The newspaper did not reply to this letter of complaint but it did publish it, in full, in the Letters to the Editor section, under the heading “White Ribbon sends out a sexist message”, on December 11.

Dissatisfied, Mr Zohrab made a formal complaint to the Press Council, about the *Kapiti Observer*’s report on White Ribbon Day and the newspaper’s refusal to allow him to counter that account.

### **The Newspaper’s Response**

The editor, Diane Joyce, stressed that the report had covered an event within the newspaper’s readership area, in a very similar way to many reports published each week. It was an account of an event rather than an analysis of the issue of family/domestic violence.

She pointed out that the complainant had been told the newspaper very rarely published submitted pieces, but that he could submit a letter to the editor. His next letter of complaint had indeed been printed.

### **Further Exchanges**

The complainant contended that the article reported statements made by people at the event and thus much of the text became “anti-male propaganda” – that is, the suggestion that this was merely a report about what happened could not be sustained.

Further, the *Kapiti Observer* had cooperated with a feminist agenda by giving this event such prominent coverage, half a page including a quarter-page photograph. The newspaper had given disproportionate coverage to “hate-speech”.

Finally, a letter to the editor could not be considered an adequate balance because letters had smaller word limits and did not include photographs.

The editor argued that it was the editor’s prerogative to decide which events could be covered – subject to the usual factors such as timing, newsworthiness, availability of space.

She also noted there had been no opportunity to report on a “women’s violence against men” protest in Kapiti. If one were to occur it might well be covered.

She noted, briefly, that though the complainant suggested the event had been reported too prominently, it had actually appeared on page 21 of the paper.

### **Discussion and Conclusion**

The essence of Mr Zohrab’s complaint is that without counter-balancing from an explicit pro-male point of view, such reports only perpetuate what he sees as a false stereotype – domestic violence is what men do to women.

However, as the Press Council has noted elsewhere, it is frequently not necessary to present all possible points of view.

This complaint is an apt example. The report was a straightforward account of a community event within the newspaper’s circulation area, rather than an in-depth examination of the causes and consequences of domestic violence.

In any case, Mr Zohrab was given access to the forum provided by the Letters to the Editor section. He was able to make his point forcefully, albeit more succinctly than he would have wished.

Further, his claims of “one-sided” and “anti-male propaganda” amounting to “hate speech” cannot be sustained by an examination of the language embedded within the article.

The report is couched in words that are restrained rather than strident. The overall tone is unemotional. There is nothing to lend weight to a “primitive feminist crusade against the men they hate” (his complaint to the Press Council).

Finally, Mr Zohrab makes much of “the harm done by pushing an anti-male line” yet the comments of three male speakers at the event were extensively covered.

His twin complaints against the *Kapiti Observer* are not upheld

Press Council members considering the complaint were Barry Paterson (chairman), Pip Bruce Ferguson, Ruth Buddicom, Kate Coughlan, John Gardner, Sandy Gill, Penny Harding, Keith Lees, Clive Lind, Lynn Scott.

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

## **Never asked about the water supply – Case 2076**

### **Introduction**

The Press Council has partially upheld a complaint by David Henderson about an article entitled “Police probe sabotage claim” that appeared in the *Sunday Star-Times* on January 25, 2009.

### **The Article**

The article stated that police were “investigating allegations that someone was sabotaging the sale of a residential development once owned by one of David Henderson’s companies near Queenstown”. It noted that nearly a dozen signs adver-

tising the sale of exclusive properties at Anthem Estate, in the Gibbston Valley had been either vandalised or stolen. It stated that “Anthem Estate was being developed by Anthem Holdings, a company owned by the financially troubled developer, but it was placed in receivership on August 28 last year”. It said that the six properties that made up the estate were being sold separately in a mortgagee sale.

The article also referred to a dispute between Mr Henderson and Grahame Thorne. It said that one of Mr Henderson’s companies, Gibbston Water Services, owned the water supply to the property Mr Thorne was renting. Mr Thorne was quoted as saying, “We are quite prepared to pay for water but not at that price – it’s exorbitant” and that Mr Henderson was “holding me and my family to ransom over something as basic as water just isn’t on”.

Immediately after the quotes from Mr Thorne it was noted: “Henderson did not want to comment.”

### **The Complaint**

Mr Henderson complained that there were several inaccuracies in the article; the statement “Police probe sabotage claim” was incorrect; and the statement “Henderson did not want to comment” was untrue.

### **The Response**

The newspaper’s response was that the article was factually accurate in all material aspects and the matters with which Mr Henderson took issue were matters of semantics.

Initially, the editor accepted the reporter’s word that Mr Henderson had said he did not want to comment. When a transcript of the conversation between the reporter and Mr Henderson was produced, the response was that when the reporter “put the questions to him, he said it was ‘silly, silly stuff’ and ‘he did not want to be part of it’.”

### **Discussion**

The Council accepts that there were inaccuracies in the article but most of these were immaterial to the story. Though there might not be an entity named “Anthem Estates”, the vineyard on the property was named “Anthem”. Mr Henderson’s companies did not own all of the development; only three of the blocks comprising the 20-block property were subject to mortgagee sales. These minor inaccuracies in themselves are not sufficient to uphold the complaint.

The complaint is also not upheld on the basis of the headline and the allegations of a police investigation. It is clear that there had been a complaint to the police that was subsequently discontinued. There had been a question of missing signs. There was a basis for the headline and the references to the police investigation.

The Council has viewed a transcript of the interview between Mr Henderson and the reporter and has heard the tape of the interview. The allegations attributed to Mr Thorne were not put to Mr Henderson. He did comment that “I am just not going to be part of it” in response to questions relating to the missing signs, during which it was acknowledged that some of the information had come from Mr Thorne. The water supply question was not put to Mr Henderson and he was not

asked to comment on it. The article was inaccurate and unfair in this respect.

The article also lacked balance. It gave Mr Thorne's view on the water supply issue without seeking Mr Henderson's views for balance. Those views should have been sought and published.

### **Decision**

The complaint is partially upheld on the grounds that the *Sunday Star-Times* misled its readers by advising that Mr Henderson did not want to comment on a matter that had not been put to him; and

Part of it lacked balance.

Press Council members considering this complaint were Barry Paterson (chairman), Kate Coughlan, Sandy Gill, Penny Harding, Keith Lees, Clive Lind, John Roughan, Alan Samson and Lynn Scott.

## **One-sided Parihaka story slammed – Case 2077**

### **Introduction**

Parihaka International Peace Festival Trust director Te Miringa Hohaia complained about a *Taranaki Daily News* article (January 13, 2009) in which a Maori warden was reported as saying the Parihaka peace festival was the scene of drug abuse.

He said the article "Parihaka drug shock for warden", presented as the opinion of one woman, comprised "unsubstantiated conjecture", and breached Press Council principles of Accuracy (including Fairness and Balance), Comment and Fact, Discrimination, and Headlines and Captions.

He said the article was "the latest in a string of incidents" with "a gratuitous focus on the negative for Maori". Its intent was to "grab a sensational headline at Maori expense" and its effect was to "defame" Parihaka and the festival activities.

The story, which concluded with a sentence saying Mr Hohaia could not be reached for comment, was followed the next day by an article, "Counsellor: Parihaka no stoner city", giving contrary and positive views from representatives of the police, security and a youth counsellor.

The complaint was supported by other Maori making the point that, on Fairfax NZ's Stuff website, only the first, negative story was distributed.

The complaint is part upheld, on the issue of balance.

### **The Complaint**

On Accuracy, Fairness and Balance, Mr Hohaia said the article, the opinion of one woman, wrongly suggested a widespread drug problem. No other voice was included to substantiate or challenge the serious allegations made. Police were later reported as saying they would be naïve to say cannabis was not used at the event, but there had been no reports of concern made to them.

Reporting he (Mr Hohaia) could not be contacted ignored the fact that reporters knew well he was working on the festival site. The area had poor cell-phone cover, but no messages had been left for him at known Parihaka landlines.

Readers had been misled or misinformed including by omission, he said. The

woman quoted had been correctly described as a leading South Taranaki Maori warden, but she had not been attending the festival in an official role.

On Comment and Fact, he said the warden had told a subsequent hui her comments had been based on a single incident relating to five children in the early hours of the morning away from festival grounds. She had also said she had been misquoted.

On Discrimination, he said the main reason for rushing the article to print was to “grab a sensational headline at Maori expense”: “Had there been real evidence of what [the warden] alleged, we would accept that it was in the public interest to publish it. It was not.”

On Headlines and Captions, he said words and images used - including the headline (“Parihaka drug shock for warden” and the sub-head, “Children smoking cannabis, worried woman claims”) – were designed to grab attention and sell papers. He took similar umbrage at a front-page masthead reading, “Parihaka shock: Maori warden’s disgust at young kids smoking dope”, placed alongside a close-up image of cannabis smoking.

There was no reason for a story to have been rushed to print, when balancing opinions were available. The harm had been compounded by the story’s wide distribution, in New Zealand and overseas.

### **The Newspaper’s Response**

*Daily News* editor Jonathan MacKenzie said his reporters made several unsuccessful attempts to achieve balance by contacting Mr Hohaia, including calling his home (leaving messages) and his cell phone (which gave an “unavailable” message). His staff had been unaware he could be reached only at the festival grounds.

The Trust’s assertion that the incident had occurred outside festival grounds, on a marae but still at Parihaka, negated the importance of the core issue.

As a result of Mr Hohaia’s unavailability, the paper had achieved balance with the following day’s story, in the same place and on the same page as the original.

The paper was perfectly entitled to quote a respected Maori warden.

The newspaper had been a major supporter of the festival for many years. As usual, it had this year run several positive stories and photographs leading up to the event. “I think you need to get some perspective on this story and see it against the preponderance of positive coverage your festival enjoys.”

Contrary to the criticisms, the paper was demonstrably sensitive to Maori and their way of doing things. But in this case, a “whistleblower” had broken protocol to report serious issues of drug taking by children.

Mr MacKenzie supplied articles to demonstrate his newspaper’s generally positive attitude toward Maori and Maori issues, and a printout of phone call messages (made before and after the original article) to show his staff had sought Trust comment.

### **Discussion**

The January 13 article comprises a - clearly attributed - Maori warden’s concerns about drug use at the festival.

Mr Hohaia questions the accuracy of her utterances saying that, at a later hui, she

had claimed to have been misquoted, and that the drug-taking to which she referred had been off festival grounds. But he has not addressed the specifics of her quotes. Although he has offered the Council a recording of hui discussion, it might have been more compelling had the warden herself made a complaint alleging inaccuracies, or at least endorsed his.

To argue that the warden was an inappropriate source is untenable. She was not speaking on behalf of anybody, but as a witness; the paper could have validly listened to any festival-goer.

Regardless of what passed between her and festival organisers at the hui, it is beyond the ability of the Council to resolve issues of accuracy in relation to the observed incident.

On the question of balance, the *Daily News* is on less certain ground. The paper was perfectly justified in investigating believed drug abuse at the festival. But, although it is believable the newspaper might have been unable to get hold of Mr Hohaia on the night before publication, it stretches belief that it could find no-one in authority for an overview response or larger perspective.

Relying on subsequent stories for balance is an especially risky practice when the stories are shared with other news media via the Internet. Though the initial story might have grabbed the attention of another newspaper, the “balancing” follow-up might not.

There is no confusion between comment and fact: all festival criticism in the article emanates from the warden’s mouth.

Charging the paper with deliberate discrimination is unduly harsh: numerous articles supplied to the Council suggest a generally positive attitude toward Maori. What seems to be at issue here, as Mr Hohaia himself avers, is a haste to put out “a good story”.

The headlines and captions – as well as the masthead picture of cannabis smoking – though upsetting to festival organisers, were designed to catch the attention. That was their purpose. They are valid as long as the warden’s concerns have been correctly reported - the paper was careful to attribute all critical comments to her.

## **Conclusion**

For the reasons given above, the Press Council does not uphold on the complained-about grounds of Comment and Fact, Headlines and Captions, or Discrimination.

However, in a story making strong allegations, the paper had a responsibility to make an effort to check facts and provide balance. It was not enough to make a few attempts at contacting one festival organiser. Where there is controversy or conflict, the Council has previously urged publications of the necessity to check all sides before first publication. Apart from shock value, there was no reason here not to hold back publication for a day, should that have been necessary.

The Council therefore upholds the complaint on the ground of lack of balance.

Press Council members considering this complaint were Barry Paterson (chairman), Kate Coughlan, Sandy Gill, Penny Harding, Keith Lees, John Roughan, Alan Samson and Lynn Scott.

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

# **Fair commentary on Pope's condom comments**

## **– Case 2078**

The Press Council has not upheld the complaint of Father Carl Telford about two syndicated feature articles entitled “How a Pope aided Aids” and “Hope for pro-choice faithful” published in *The Press* newspaper on March 19, 2009. It also has not upheld the complaint made about the cartoon and editorial published the following day.

### **Background**

The two feature articles were obtained from *The Times* (London). They were part of a package that included a news report that was published on the same day under the headline “The Pope’s condom comments sicken campaigners.”

### **The Complaint**

Fr Telford complained that the feature articles breached principle 1 in that they were inaccurate and did not give a fair account of Pope Benedict’s remarks on the use of condoms or give adequate information about the Catholic Church’s teachings on ways to otherwise curtail the spread of Aids.

He further complained that the cartoon breached principle 8 by placing what he claimed was gratuitous emphasis on the remarks of Pope Benedict and as a consequence causing offence to those who follow the Pope’s teachings.

He also complained that the editorial was discriminatory and inaccurate. He considered that the editorial showed discrimination to his Catholic faith by claiming that this faith, held by one billion people, was ignorant and out of touch. In commenting on the editor’s assertion that the stance adopted by the Pope risked undermining the efforts of people working to combat the spread of Aids, Fr Telford contended that the editorial was inaccurate because this failed to take account of the fact that 28 per cent of the worldwide work fighting Aids was being carried out by people of the Catholic faith.

### **The Newspaper’s Response**

The editor told the Council that the newspaper was dependent upon other sources for its international news. In this instance, the two articles and the news report were selected from *The Times* (London). The editor considered the Pope’s visit to Africa was highly newsworthy and considered that it would be remiss not to report upon it. He was satisfied that the coverage the newspaper gave to the story was fair.

He explained that it was a coincidence that the cartoon and editorial were available for publication on the same date. Though he was aware that the leader writer was tackling the subject, the editor did not direct the cartoonist as to his subject matter. The editor observed that cartooning could be challenging and confronting. He did not consider that the cartoonist, in this instance, had been grossly offensive.

He argued that it was important in an opinion piece to be able to criticise religious leaders or governments if there was a legitimate argument to be made. He distinguished between criticising someone’s faith, and criticising those in power within structures that represent those faiths.

## **Discussion**

The articles complained about are features, which entitle a journalist to state a view. They were published on the op-ed page and did not purport to be news reportage. As such they were not required to be “fair”. The Council notes that there was a news item on the same topic, and by the same journalists, also published on March 19.

To criticise the comments of a religious leader is not the same thing as criticising the faith of the leader’s followers.

The cartoon is critical. But cartoonists must be permitted to challenge and confront. At times cartoons will cause offence but freedom of expression does not mean expressing only views that people agree with, and suppressing other views. Without that understanding, freedom of expression ceases to exist.

The editorial is a strongly critical one. But again we uphold the right of an editor to raise arguments against any religious or political leader’s remarks where the editor considers that there are legitimate grounds for doing so. That decision is a matter for an editor’s discretion. It must be remembered that an editorial is an opinion piece and, given that, it is inevitable that there will be readers who disagree with its tenor.

The Council does not consider the publications complained about breached either principle 1 or principle 8.

The complaints are not upheld.

Press Council members considering this complaint were Barry Paterson (chairman), Kate Coughlan, Sandy Gill, Penny Harding, Keith Lees, Clive Lind, John Roughtan, Alan Samson and Lynn Scott.

## **A plague of pests or a plague of 1080? – Case 2079**

### **Introduction**

The Press Council has not upheld a complaint by Bill Benfield against the *New Zealand Geographic* concerning an article “A Plague Upon Our House” written by Dave Hansford and published in the *New Zealand Geographic* in May, 2009.

### **The Article**

The article reported claims and counter-claims about the effectiveness of, or harm caused by, the poison 1080, aerially dropped in forests around New Zealand. It mentioned “hundreds” of peer-reviewed papers examining this poison. The gist of the article was that while various opponents of 1080 poisoning were making a variety of claims against 1080, in fact the poison was assisting organisations such as the Department of Conservation to better manage pests and was benefiting various native species, by killing possums, rats, stoats and ferrets.

### **The Complaint**

The complaint is that the article in question failed the Council’s Principle 1, in that it was (a) inaccurate, unfair and unbalanced and further that it (b) misled and misinformed readers by both commission and omission. The main grounds for the complaint were that Mr Hansford had either not used sound scientific studies to substantiate the article, or had not referenced the “six [that] could be described as using

science”. Emailed correspondence between Mr Benfield, James Frankham (editor of *New Zealand Geographic*) and Adam Fricker (managing editor) was also submitted, covering issues raised prior to the complaint’s being lodged with the Council.

### **The Response**

Mr Fricker stated that the editor had sent Mr Benfield a draft prepared by Mr Hansford which did contain references (albeit some with missing data; one “in press” and one with an incorrect website reference). However, Mr Benfield had claimed that some of this information had been misused, cited incorrectly or used to draw conclusions that were not valid from the studies. Mr Fricker responded that “we are confident the article is robustly researched, balanced and will stand on its own merits”. He went on to rebut points raised by Mr Benfield, although acknowledging that two articles that lacked adequate citation details were the omission of the *New Zealand Geographic*. Mr Fricker strenuously denied claims by Mr Benfield that material was misused, cited incorrectly or drew conclusions that were not valid. He accused Mr Benfield of “cherry-picking” himself, to substantiate his own point of view.

### **Discussion**

The crux of the matter appeared to revolve around whether the article that appeared in *New Zealand Geographic* was based on sound science, and whether its author, Mr Hansford, had fairly and accurately represented (a) what those articles contained and (b) the state of scientific research on 1080 poisoning in general. Mr Benfield believed that the magazine had failed on both counts. The magazine’s managing editor, by contrast, claimed that Mr Benfield’s position was “pervasive among anti-1080 lobbyists” and that “They cannot publish baseless, interest-driven and alarmist junk science without reference or check, then criticise the rigour, independence and integrity of scientists and journalists.”

Mr Benfield, for his part, suggested that Mr Hansford’s article could be considered “a propaganda piece” for ideologies of “indigenous purity, a new Gondwanaland”.

As far as the accuracy of claim and counter-claim about the use or misuse of scientific articles cited in the *New Zealand Geographic* is concerned, this Council cannot adjudicate on the competing claims.

As for balance, the Press Council noted that there were many opinions and voices contained in the article, including those of anti-1080 campaigners. The article noted that even those in favour of 1080 recognise its use is not without problems. The collateral poisoning of native birds, stock and family dogs is mentioned.

Wellington medical officer of health Stephen Palmer is cited as having had to “push pest-control authorities ‘very hard to improve the way they operated. Some of them were real cowboys’.” Palmer subsequently claimed that 1080 was being handled much better recently. The article also described innovative alternatives to 1080 that are not, unfortunately, freely available at present.

### **Conclusion**

The issue of lack of balance raised by Mr Benfield was not upheld, because there was evidence of critical comment on 1080 provided in the article. The author was not

required, in an article of this type, to ensure that exact balance of contrary viewpoints was maintained.

Neither side agreed on each other's interpretation of whether articles had been accurately used. Both parties held to positions that were unlikely to change, and the Press Council is unable to adjudicate on the accuracy claims.

Readers wanting to investigate the veracity of the claims and counter-claims about 1080 would be wise to read widely on the issue, rather than to rely on the content of one article.

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

## **Thirteen + Eleven = spat – Case 2080**

A complaint against a column entitled “Bullies all emerging” has not been upheld by the Press Council.

### **The Article**

Beck Eleven writes a weekly column appearing in *The Press*, Christchurch, on Saturdays. Her brief is to offer views on life and events and people she encounters. She writes in a style that is youthful and combative.

The column that is the subject of complaint appeared on April 4. It poked fun at a number of people she called “column bullies”. Among them was a correspondent she dubbed, “little Freddie Double-Barrel”.

“Freddie” is aged 13. On February 28 he had emailed a letter to the editor of *The Press* criticising the Beck Eleven column in sweeping terms. He called it “immature ramblings” and described that day's effort as “the single most horrible article I have ever read in my life”.

He said, “I personally don't want to know about some guy I don't know (who) has a big nose and prefers kisses over hongis. Gee, reading that article, what a big fat waste of my life. At least now I know what my family are talking about when they complain about Beck Eleven”.

*The Press* chose not to print his letter but passed it to the columnist who used it for the article of April 4. She quoted his general criticisms and, noting he had called himself “a somewhat frustrated teenager”, she said, “If I was a teenage lad I'd be relieving my frustration using a far more efficient technique than letter writing”.

### **The Complaint**

The complainant is “Freddie's” grandmother. She complains that Beck Eleven has ridiculed her grandson's name, his age, his letter and the opinions of his family. She accuses the columnist of exaggeration, misnomers, salacious innuendo and sarcasm as well as ridicule.

She describes the article as a “scurrilous piece of media bullying” and sees it to be a symptom of a disturbing increase in female violence in our society, often presented as entertainment.

She believes the article breaches several of the principles upheld by the Press Council, namely:

- Principle 5, that editors should exercise particular care in reporting on or about young people.
- Principle 6, that publications should distinguish the reporting of fact from opinions and comment.
- Principle 8, that publications should not place gratuitous emphasis on age, among other characteristics.

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

The editor, Andrew Holden, points out that Beck Eleven was careful not to identify "Freddie" publicly since his letter had not been published, but says the columnist intended her critic to know to whom she referred.

Mr Holden says it was the critic's age that captured her attention. Subsequent emails from "Freddie" to *The Press* over the non-publication of his letter did not suggest to Mr Holden that he was vulnerable or that he had taken offence at Beck Eleven's comments.

### **Discussion**

The Council has considered this complaint under the three principles cited above. Dealing first with Principle 8, it finds the reference to "Freddie's" youth to be fair since he himself had mentioned his age and the column is intended for a youthful audience.

It also finds that the column was plainly opinion and could not be mistaken for factual reporting under Principle 6.

A more difficult issue arises under Principle 5, requiring care in the treatment of children and young people. "Freddie" was 13, an age between childhood and adolescence. He was old enough to submit a forthright opinion for publication, not old enough to express himself in terms that might have persuaded the newspaper to run it.

Despite its non-publication, the columnist decided to use it. It might not be unusual for columnists to reply to unpublished criticism but it is a practice the Council suggests they should approach with care. The critic's views ought to be represented fairly and perhaps more fully than they would in a reply to published comment.

The editor mentions that Beck Eleven intended "Freddie" to recognise himself in the column. He also points out that subsequent email discussion with "Freddie" over the non-publication of his letter contains nothing to suggest the young man felt hurt or humiliated.

In an email after the April 4 column, "Freddie" wrote, "Maybe next time somebody criticises Beck Eleven's work she should just deal with it like an adult instead of abusing the writer; after all, all she did was prove my points."

The Council is impressed with the maturity of this response. The concerns expressed by the complainant are not evident in her grandson's communications with the newspaper or with this Council.

Since the 13-year-old does not appear to have suffered from a lack of care on the

part of the columnist, the article cannot be found in breach of Principle 5.

But the Council notes that the maturity of this 13-year-old's response was known to the newspaper only after the fact, and it continues to urge caution in publishing criticism of someone so young.

### **Decision**

The complaint is not upheld on any of the grounds cited.

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

## **Singin' da blues – Case 2081**

### **Introduction**

The Press Council has upheld a complaint by Cr Dirk Sieling, of Thames Coromandel District Council (TCDC), against *The Informer*, a weekly newspaper in Whitianga.

### **The Article**

On January 6, 2009, a front-page article written by the paper's editor, Gerry Church, and headlined "TCDC: The silence is deafening", said 2008 had not been a good year for ratepayers seeking information about decisions the council made that will have a significant effect on ratepayers' "lives and livelihoods for the next three years, to the tune of \$13.5 million".

This was because the council leased land to Cr Sieling that it said could have been leased to a promoter of a festival called Bluesfest for more than three times the amount that the Service Delivery Committee (SDC) had agreed to with Cr Sieling. This had led to a loss of "up to \$13.5 million in local revenue potential".

The article noted a sale of land to the TCDC at Moewai Park for a sports centre for Mercury Bay included a clause that allowed the family selling to graze land not needed by the council at no charge for five years ending April 1, 2006.

In 2003, before he was a councillor, Mr Sieling bought adjacent land from the family and the council agreed to his request that the free grazing be transferred to him. No formal lease or written acceptance were ever drawn up.

After April 1, 2006, Mr Sieling continued to graze the land at no cost, at some point entering into a two-year sub-lease with a local sharemilker. There was still no formal lease.

In late 2007, the Bluesfest promoter wanted to hold a festival on the land that "now Councillor Sieling was subleasing". Council staff told the promoter to pay \$40,000 plus GST as rental directly to Cr Sieling, which he did. The festival was held and the promoter estimated revenue to Mercury Bay was \$2.5 million.

The promoter also offered the council to lease the land for three years for \$65,000 a year, plus GST. He wanted to hold three concerts each year, each one worth a conservative \$1.5 million in revenue to Mercury Bay, or \$13.5 million in total.

The article said the lease offer was given to the SDC, of which Cr Sieling was a

member, although he had since resigned. In the meantime, council staff had recommended to the full council that the promoter's offer be accepted, believing there was no lease with Cr Sieling, only a month-by-month grazing arrangement.

The council delegated the decision to the SDC, giving the deputy mayor authority to deal with the issue. The committee wanted to put the land out for tender, but that led to Cr Sieling threatening legal action.

The article said Cr Sieling made a written submission saying he could match or come close to matching the financial return to the community if the concerts were to proceed in the way he suggested. But the promoter wanted nothing more to do with Cr Sieling.

The committee entered into a deal with Cr Sieling for a rent of less than \$20,000 a year, the committee chair saying they had relied on staff and legal advice. "That's an interesting comment when TCDC staff had already recommended taking the promoter's offer," the article said.

Minutes of a SDC meeting of June 25, 2008, said "it appears to us that the council may be at risk of a claim" brought by Mr Sieling for specific performance of a letter dated April 7, 2003, as "constituting an agreement to grant a lease" and/or a claim for damages.

The article said the council would not release the legal opinion. "As this is a \$13.5 million dollar issue for the community, it is a very important opinion for the ratepayers to have access to, but the silence continues," it said. The Mayor had not responded to questions on the issue.

### **The Complaint**

Through his barrister Cr Sieling complained to the editor on March 23 saying the article breached the Press Council's Statements of Principles, notably those relating to accuracy, fairness and balance, relating to five main points.

- As the paper well knew, it was "far from the case" that the land could have been leased to the Bluesfest promoter for the amount of money claimed because the promoter had chosen for his own reasons to stop negotiating for the return of the festival to Whitianga. He had publicly criticised the ground as "marshy", which was causing him to look outside Whitianga.

It was inaccurate and unfair to blame the council and Cr Sieling for the departure of the festival.

- By saying that council staff had directed the promoter to pay rental to Cr Sieling, the article implied Cr Sieling had sought the money and kept it. The article did not mention Mr Sieling had nothing to do with the directive and had passed most of the money to the council, less money for the sharemilkers and a small sum for cleaning the land.
- The article said information from the promoter's lease offer had been passed to Cr Sieling as a member of the SDC, and that he had since resigned.

That was true but it was extremely unfair in that it failed to report Cr Sieling left the room and took no part in the discussions affecting his personal

interests and that when he addressed the committee subsequently, he did so in a personal capacity, using information provided to him in that capacity. The newspaper must have known this because it had earlier published email correspondence between the council and promoter, dated well before the SDC meeting, that contained much of the information.

- The article had said that council staff had recommended to the full council that the promoter's offer be accepted, and believed the lease with Cr Sieling was a month-to-month grazing arrangement.

Yet the paper itself had recently reported this and then apologised because this belief on the part of the council staff was mistaken.

- In "snidely" questioning the SDC chair's explanation that the committee relied on staff and legal advice in allocating the lease to Cr Sieling and adding that staff had already recommended taking the promoter's offer, there was a suggestion the council was acting against the advice of its staff. The article did not mention that the legal advice was received after the staff's initial advice, and that had been instrumental in changing it.

Cr Sieling, through his barrister, said the whole thrust of the article was that he had improperly used his position as a councillor to gain a lease of land on favourable terms and at the expense of an offer that would have brought millions of dollars into the community.

At no time had Cr Sieling been contacted for his side of the story, and would have been happy to provide his views had they been sought.

## **The Response**

In response, the editor said there was no criticism in the article, just facts. The council would not release the legal opinion, and councillors had refused to answer his questions.

It was correct that council staff had told the promoter to pay the \$40,000 rental fee to Cr Sieling, and there was no implication in the article that the councillor had sought the money. The editor said Cr Sieling had paid \$24,000 of that to the council, some \$12,500 to the sharemilker and had kept \$3500 for his expenses.

The editor said that if any information was given to Cr Sieling in his private capacity, "one would have ask why," as that information was given by the promoter to a council officer who said the information would be submitted to the committee under the "public excluded" category.

It was fact that council staff had recommended to the council that the promoter's offer be accepted, and the editor showed how he had clarified that the grazing arrangement applied to a different piece of land to the one referred to by the council.

The editor also denied he had been snide about the SDC chair's explanation of relying on staff and legal advice. The thrust of the article, and all articles published before and after, was to provide the readership with facts and let them decide.

The editor said if Cr Sieling was concerned, he could have written a letter to the editor. The councillor had had options to provide his views. Some he had chosen not

to exercise and some he did, which provided little, if any, additional information other than what had been printed.

## **Discussion**

Both parties to the complaint produced a large amount of supporting documentation on an issue that is also being investigated by the Office of the Auditor-General.

It is not the Press Council's role to decide the rights or wrongs of what transpired with regards to the land, or to comment on the council processes involved. It is the Council's role to determine the complaint based on what appeared in the article of January 6, 2009, and events directly related to that publication.

The editor of *The Informer* rightly sees his role as a community advocate, bringing to the attention of readers issues of concern. That is to be applauded. But the editor also needs to ensure that in doing so he is being fair and accurate.

The essence of the story was that Cr Sieling and the council had deprived the Mercury Bay community of about \$13.5 million in revenue opportunities because a committee of the council had decided to continue with a leasing arrangement with Cr Sieling and not take up a more lucrative one from the concert promoter.

*The Informer* had published previously on the issue of the festival and the land, including correspondence from Cr Sieling to the committee and council, and the January 6 article could be regarded as a follow-up. The matter was of public interest and the allegation was serious and worthy of investigation.

The editor relies on documentation including emails and reports to back up what has been written. Much of what was published is emphatically expressed and has not been challenged.

But while documents can provide evidence, they can lack context or alternative explanation. The Press Council believes that the editor should have sought comment from the councillor before the January 6 article was published.

Further, documents and statements are not necessarily proof, as the editor found when he relied on the council's incorrect description of a parcel of land and Cr Sieling's leasing arrangements.

Reproducing emails and documents – or sending an email to elicit comment from the Mayor – is no substitute for sheer journalistic hard work – asking questions directly and recording answers, putting the issues to the appropriate parties and writing articles clearly and accurately, taking into account all relevant factors.

It also seems only fair that the article should have recorded that Cr Sieling was speaking as an individual and not as a councillor when he spoke about the grazing land to the committee, and it should also have clarified the mistake it had previously corrected.

It was remiss above all in not reporting that \$24,000 of the \$40,000 the promoter paid to Cr Sieling was subsequently repaid to the council.

The editor's pursuit of the council's legal opinion is worthy in that, had he been successful, some additional detail might have been provided, and the council's lack of response to the editor's questions, as detailed in the January 6 article, is poor and its errors regrettable.

But the editor still had a duty to approach Cr Sieling on every occasion he proposed to publish in the hope of, at best, providing valuable information for readers or, at worse, recording his lack of response.

### **Decision**

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

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

## **Concerted and irrational campaign denied – Case 2082**

A complaint by Ian Geary against *The Timaru Herald* has not been upheld by the Press Council

### **Background**

On June 5, 2009 Mr Geary sent by email a classified advertisement he wished to place in *The Timaru Herald*. Later that day, following communication with a reporter from the newspaper, Mr Geary withdrew the advertisement.

Meanwhile *Herald* staff, recognising Mr Geary's name from previous stories concerning the suspension of his practising certificate, decided to run a news story about Mr Geary's submission of a proposed advertisement. They emailed the proposed story to Mr Geary asking for his comments and also spoke to him by phone.

The article, published on June 8 and headlined “‘Psychologist’ ad may be misleading”, led with the New Zealand Psychologists Board's expressed concerns that a person whose registration to practise had been suspended seemed to be proposing to advertise his services in a way that could mislead “a naïve reader” into concluding he “was either A a psychologist or B practising psychology”.

The article went on to set out Mr Geary's views that he was not advertising his service as a psychologist, but that he was entitled to say that he had 35-plus years' experience as a clinical/registered psychologist.

### **The Complaint**

Mr Geary felt he had been treated unfairly by taking material that he intended for an advertisement and making a story out of it. He thought the reporter who first contacted him, and later the editor and deputy editor, all had an axe to grind. He contended that the newspaper was conducting a concerted and irrational campaign against him.

He said language used by the newspaper denigrated him. He also thought the newspaper was not accurate in reporting that he was an unregistered psychologist.

Mr Geary also complained that the *Herald* story was inaccurate as to the date his practising certificate was suspended and that the newspaper stated he had failed the Board's “competence programme” when he had been required to undertake a “competence review”.

He said he had “read and reread the proposed advertisement and all I can see is an

appropriate reference to my 35 years' experience as a psychologist in the past. I believe I had every right to mention that extensive involvement”.

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

David King, editor of *The Timaru Herald*, responded that Mr Geary had had his registration suspended, but was clearly trying to advertise his services without revealing that he was offside with his professional body.

“We felt it was important to draw our readers' attention to these concerns. We simply did our job and I am proud that we did so.”

The newspaper said its staff had been professional in their dealings with Mr Geary. It said Mr Geary was given a full and fair chance to respond to the story it intended to run, including being given an advance copy, which was unusual.

### **Discussion and Finding**

The Press Council notes that the previously-published articles sent by Mr Geary with his complaint, reported on Mr Geary's suspension by the Psychologists Board, his subsequent appeal to the court and a previous attempt to advertise his services in 2006. All these stories have been generated by events as they have occurred. They do not represent a concerted and irrational campaign against him.

On the occasion complained about, the newspaper determined to run a news item from the proposed advertisement. The Council has no issue with this. Mr Geary was given the opportunity to comment and his views were published. The alleged inaccuracies are not material.

The Press Council believes *The Timaru Herald* has carried out its journalistic duty of informing the public and supports the editor in his stance.

The complaint is not upheld.

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

## **Inadequate warning of BDSM content – Case 2083**

Ken Orr complained to the Press Council about an article published in *The Press*. He contended that the article denigrated women and offended public decency. The complaint is not upheld.

However members of the Press Council did express concern about the inadequacy of the warning and the size and nature of the photographs accompanying the article.

### **Background**

The article was a three-page feature published in the *Mainlander* section of *The Press* on July 4, 2009. The first page included “Warning: Story features adult sexual themes” on the bottom right hand corner.

It was titled “Pleasure from Pain” and subtitled “Inside the world of BDSM in Christchurch”. It presented a lengthy account of an investigation into the activities of members of Uncommon Bonds – a group for Christchurch's BDSM community. (BDSM stands for bondage and discipline, dominance and submission, and sadism and masochism.)

The report was accompanied by a series of photographs, generally of participants in bound and sexually submissive positions.

No one was identified. Faces were pixelated or turned away from the camera and those interviewed were given pseudonyms.

### **The Complaint**

Mr Orr initially complained to the editor of *The Press*, explaining his view that the newspaper had breached its own “high professional standards” by publishing this article.

He argued that it portrayed women as sexual objects, and thus offended public decency, and that bondage was akin to violence against women and could even be seen as “an extreme example of domestic violence”.

He suggested that because there was a lack of any editorial disapproval for the behaviour and for the “violence and degradation inflicted on women” the article could be seen as advocating BDSM practices.

In short, *The Press* had failed in its obligations as a family newspaper.

### **The Newspaper’s Response**

The editor, Andrew Holden, explained that court cases involving members of the BDSM community had initiated the report – that is, he believed there would be public interest in their activities.

He argued that although *The Press* entered family homes, it was written and edited for adults, for example, it sometimes contained stories and court reports that could be “brutal” for children.

He countered the complainant’s concerns about the ill-treatment of women by pointing out that the story described the submissive desires of some men as well. Further, the members of the group were willing participants.

Finally, he firmly rejected the notion that *The Press* by publishing any story could be seen as advocating the subject of the story, such as a report on prostitution.

### **Further Responses**

When Mr Orr brought his complaint to the Press Council, he had little further to add. The thrust of his complaint was still based on his contention that the article, overall and in general, offended public decency.

The complainant suggested that although the women had consented, this should not lead to acceptance of their treatment. Consent could be by duress or by psychological conditioning.

In a final submission, he claimed that the warning given in the newspaper was ineffectual; it was too small and would not have discouraged children and teenagers from reading the article. In addition, the photographs accompanying the article were large and offensive.

### **Discussion and Decision**

Mr Orr’s complaint rests on the premise that the newspaper breached professional standards by publishing grossly offensive material.

Certainly the maintenance of the press in accordance with the highest profes-

sional standards is a key objective of the New Zealand Press Council.

However, it is difficult for the Council to adjudicate on such matters. Obviously, what offends some readers will be completely acceptable to others. Further, notions of decency and taste are mutable and fluid, constantly evolving to reflect changing attitudes and values. What might have offended many a generation ago is much less likely to do so today. In short, there are no fixed and immutable standards when it comes to adjudicating on “offensive”.

In general, it is the editor who has to make a judgment call about material that might cause offence, in the interests of their newspaper or magazine. And, when editors cause offence, they risk losing subscriptions and readership.

At the same time, there have been examples when even the fluid, hazy lines indicating what might or might not be acceptable have clearly been crossed and the Press Council has upheld, albeit rarely, complaints on the grounds of decency and taste.

In an earlier adjudication, it noted that it would usually require “extreme circumstances involving gratuitous offence to a particular group” to uphold such complaints.

This does not apply to this particular complaint.

The material in the article was bound to be distasteful to some readers but the text itself is straightforward rather than sensational, perhaps too much information for some, but enlightening rather than lurid in its detail. This matter-of-fact tone is maintained throughout.

Although Mr Orr argued that the article denigrated women by describing bondage, it was clear from text and photograph that both men and women allowed themselves to be bound and dominated.

The Press Council also accepts the editor’s argument that there may have been some public interest in BDSM activities because of preceding court cases in the city.

The photographs caused the members of the Council more disquiet than the text. They were large and explicit. Two, which showed members of Uncommon Bonds in submissive poses and with (largely) exposed buttocks, created particular concern.

Even the editor of *The Press* had noted in his submission that “it could be argued that they are unnecessarily descriptive”. However, he argued that “real” photographs rather than “modelled” photographs were needed to show “elements of the truth”.

It might also be argued that here the words of the article were enough to portray the truth and this was a case where illustrating that truth became fatuous. The photographs had the effect of only sensationalising the more straightforward, factual text.

The photographs might be distasteful but are they offensive? And even if they are offensive, do they reach the threshold of “grossly offensive”? Are they extreme enough to cross over that vague and uncertain border into the land of “gratuitous offence”?

On balance, and especially given the reasons above for not upholding Mr Orr’s complaint against the article taken as a whole, the Press Council thinks not and declines to uphold on this associated complaint against the photographs.

Although not sufficient to justify an uphold decision, there is one final matter where the Press Council is in agreement with the complainant. The warning was completely inadequate.

In order for it to have been useful, especially for parents of younger children, it should have been in much larger type, should have been placed more prominently and should have been published on the front page of that edition of The Press as well as being on the first page of the article.

Overall however, this complaint against The Press on the grounds of offending public decency and denigrating women is not upheld.

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

Ruth Buddicom took no part in the consideration of this complaint

## **Correction should have been published – Case 2084**

Harmeet Sooden complained to the Press Council about a David Cohen opinion piece entitled “Gaza Blues” in his column “This is Not a Blog Post” published in the *National Business Review* (NBR) on December 17, 2008.

The complaint is upheld on the grounds of inaccuracy. Cohen’s article implies that Mr Sooden is not a New Zealand citizen (and by implication is not entitled to receive support from the NZ Ministry of Foreign Affairs and Trade).

Mr Sooden’s other complaints concerning the article are not upheld.

### **Background**

On December 17 2008, *The Dominion Post* published an article detailing the inquiry that was being conducted by New Zealand Foreign Affairs after a complaint by former hostage (in Iraq) Harmeet Sooden about his recent treatment by Israeli immigration officials.

Mr Sooden, a peace activist, had been planning to work with a Palestinian activist group, International Solidarity Movement, but had been refused entry to Israel. He alleged mistreatment before his expulsion from Israel.

Cohen’s opinion piece of December 17 was in response to *The Dominion Post* article. He stated in his “not a blog” that Mr Sooden “is a Zambia-born Canadian citizen and not a New Zealand national”. He questioned whether or not Mr Sooden’s complaint of mistreatment was justified. His article, in essence, lays open what he considers Mr Sooden’s “goofy antics” and suggests that his peace activism antics are attention-seeking.

### **The Complaint**

The complainant draws the attention of the Press Council to what he considers a number of inaccuracies in the article. In particular, he is concerned that the article does not acknowledge that he is a New Zealand citizen and therefore entitled to seek help from the New Zealand Government.

He also questions the tone of the article, and its clear denigration of his involvement in peace activism in the Middle East, and a statement that a high profile murder of one of his peace activist colleagues, Tom Fox, was carried out by Islamists. He asks how such information is available to Cohen.

## **The Newspaper’s Response**

The editor in chief of the *NBR*, in his initial response to the executive director of the Press Council about this complaint, said that he was hoping to set up an internal ombudsman to monitor complaints to his newspaper. However, despite best endeavours, this had not happened.

Subsequently, repeated requests to the editor to respond to this complaint have not been met.

## **Discussion**

In its previous decisions, the Press Council has repeatedly endorsed the view that opinion pieces in newspapers, magazines, or other publications can take a strong line, reflecting the views of the writer.

However, the Press Council has also reiterated the need that information presented as “fact” should be accurate.

In this case, when the complainant pointed out to the *NBR* that he was indeed a New Zealand citizen, this should have been corrected as soon as possible in a subsequent publication.

The Press Council is not able to resolve the factual dispute over the statement that Tom Fox had been killed by Islamists.

As to the tone of the article, the Council finds that it was not exceptional given that this is an opinion piece. This part of the complaint is not upheld.

## **Decision**

The complaint is upheld on the grounds of inaccuracy when Mr Sooden was described as “not New Zealand citizen”. This matter should have been corrected by *NBR*.

The Press Council is disappointed that the editor in chief of the *NBR* failed to engage properly with the complaint process. In doing so, he undermines the industry-regulated Press Council, which was established so that the public could have complaints considered independently by an organisation made up by a majority of public members. The editor’s intention to establish an internal ombudsman might have some merit for his company but, if it ever establishes such a position, it will not replace the Press Council. Responding to public complaints should be viewed by editors as part of their job and not a matter to be treated lightly.

Press Council members considering this complaint were Barry Paterson (chairman), Ruth Buddicom, Pip Bruce Ferguson, Kate Coughlan, Sandy Gill, Keith Lees, Clive Lind, John Roughan, Lynn Scott and Stephen Stewart.

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

## **Photograph inappropriate for article theme – Case 2085**

Ethel and Cliff Winslow complained about *North & South’s* publication of a photograph that included their daughters, Katy-Sue (20) and Maggie (18), to illustrate an article about increasingly violent, criminal and changing behaviour among young females.

The complaint is upheld.

## **Background**

The cover story, “Girls behaving badly”, in *North & South*, May 2009, is about growing violence and criminality among young women and a change in socially acceptable behaviour associated with young women including “ladette”-type behaviour.

Katy-Sue and Maggie Winslow were out for a girls’ night with friends in Queen Street, Auckland when they encountered a freelance photographer on assignment for *North & South*.

The Winslows say the photographer told the girls he was taking “random photos” and they, along with two friends, offered to pose. *North & South* editor Virginia Larson says the photographer told the girls their photograph could appear in a magazine.

The photograph was one of 10 illustrating the hard-hitting cover story. The other nine images illustrate young women being arrested, a prison official, a jail, a young female convicted of murder, tattooed hands and a set of stairs. Each of the other images was linked to matters of a serious criminal nature. Only one other image is recognisable and that is of a convicted murderer.

The photograph was reused in June *North & South* to illustrate letters to the editor about the issue.

The girls were not named, though they were clearly identifiable, and the caption stated “Another night on Queen Street” above a pull-quote referring to girls previously having been wrapped in cotton wool and the changing concepts of socially acceptable behaviour.

## **The Complaint**

The Winslows, complaining on behalf of their daughters (who consented to allow the complaint to proceed), say their daughters were on a night out and were not behaving badly. “They do not behave badly on any night nor participate in grudge attacks, murder, ambush or female violence, yet they appear as part of your article that is all about such behaviour.”

They say the article has caused their extended family a lot of hurt and embarrassment. And they are concerned that if the girls’ employers were to see the article, it could affect employment. They say the girls’ reputations are damaged.

## **The Response**

*North & South* editor Virginia Larson apologised for any anxiety that the publication of the photographs caused. However, she argued that there was no breach of privacy or implication that the girls were involved in illegal activity. The photos were taken in a public place.

She argued that the photographer clearly told the girls the photographs were for a magazine and they offered to and went on to pose.

## **The Decision**

Photographs taken in public places are able to be used without gaining the consent of their subject. In this instance the girls were aware they were being photographed and crafted a pose for the camera.

However, the use of this photograph, to illustrate an article that is largely about seriously criminal behaviour and deeply anti-social attitudes displayed by a growing number of young women, is inappropriate.

The editor's assertion that the article canvasses more general societal changes in regards to young women's behaviour, and is therefore justified, is not accepted. The article is predominantly concerned with serious criminal behaviour. The subsequent use of the photograph, to illustrate the letters to the editor page, indicates an editorial thinking that this photograph does represent the article as a whole. It is accepted that this second use occurred before the Winslows' complaint was received.

The complaint is upheld.

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

## **Organic argument – Case 2086**

### **Introduction**

Ian Sheen, president of the Levin branch of the Soil & Health Association of New Zealand, complained that the column entitled 'World of Science' by Bob Brockie in *The Dominion Post* breached principles of accuracy, fairness and balance in references to research on the relative value of "organic" products. Mr Sheen further complained that the column presented comment as fact, and that *The Dominion Post* failed to correct its alleged errors.

The complaint is not upheld.

### **Background**

On December 8, 2008 the Brockie column discussed organics and featured Brockie's views about the "misuse of the word organic". In his column Brockie said that the use of the word had been "corrupted and abused for sales promotion". He outlined what in his view organic meant. He argued that assertions by organic promoters that their products were better tasting, healthier and better for the environment were "plain wishful thinking".

Brockie returned to the subject on December 22, 2008 to answer letters to the editor that had disagreed with his previous article.

Following the second column Mr Sheen wrote to *The Dominion Post* saying he believed Brockie's latest attacks on organics lacked scientific and journalistic integrity. His letter was not published.

Mr Sheen elaborated on his concerns about the articles in a further letter of complaint to the newspaper. He claimed that Brockie had used "spurious argument, misrepresentation and misinformation to make a pre-meditated, prejudiced, pejorative attack on people with a differing point of view", in particular the Soil & Health Association of New Zealand.

He said the article was "littered with deliberate untruths, misinformation, and gross misrepresentation" and he believed that the sole purpose of the articles was to

denigrate and ridicule others with whom the columnist disagreed. He also said that the arguments used by Brockie were dated and more current research was available.

*The Dominion Post* replied that the articles were opinion pieces and appeared in the section of *The Dominion Post* that carried opinion and commentary.

Mr Sheen did not consider this an acceptable response from the newspaper and made a formal complaint to the Press Council.

### **The Response**

Nick Wrench, acting editor for *The Dominion Post*, said in reply to the Press Council, that the articles were clearly opinion pieces and did not breach any Principle of the Press Council.

He went on to say that the columnist was “entitled to express his honestly held opinions”, and again noted that the articles appeared in the section of *The Dominion Post* that carried opinion columns and commentaries. He also stated that while some might find the quotes used by Brockie controversial, they were accurate quotes.

### **Conclusion**

The Press Council is not qualified to adjudicate on factual issues of science or on whether research conclusions have been fairly and accurately represented in a column of this nature.

The Council accepts that the Brockie column is well known to its readers who might be able to make allowance for his willingness to differ from the mainstream.

However, the average reader is not always in a position to recognise when such assertions may be a matter of opinion. If their accuracy is disputed, the newspaper has some obligation to publish a contrary view.

In this case *The Dominion Post* did publish two letters in response to Brockie’s column on organics, to which he replied in a subsequent column. That brought a letter from Mr Sheen that the newspaper had declined to publish, giving rise to his complaint that the paper has refused to correct errors.

The Press Council understands the newspaper’s decision not to publish Mr Sheen’s letter. Having already published two views that differed from those of Brockie, *The Dominion Post* could not be accused of unwillingness to “correct” its columnist and accordingly the second and third grounds of complaint cannot be upheld.

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

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

## **Care required in moderating posters’ comments – Case 2087**

A complaint by Nicolaas Francken about comments appearing on the stuff.co.nz website has not been upheld.

The stuff.co.nz website is a news and information website operated by Fairfax Media.

## **Background**

Fairfax invites its readers to post comments in a number of areas on the website. The comments complained about were made in accordance with this policy after the website published the news that Sue Bradford was to resign as a Member of Parliament, and commented on Ms Bradford.

The complaint was that several of the comments were unacceptable because they incited hatred, were defamatory, were immoral and showed a complete lack of decency or respect for an elected Member of Parliament. Examples given of what were said to be unacceptable comments included “she must never have been beaten as a child”, “It’s a pitbull LOL”, and “Ding Dong, the witch is dead”.

## **The Website’s Position**

The editor of the website apologised to the complainant for any unintended offence that the comments had caused. He did not, however, accept that any of the comments posted incited hatred, were defamatory, were immoral, or showed a lack of decency or respect for an elected MP. His position was that a person choosing public office could expect a level of “opinion” and “comment” directed at the person that might not otherwise be directed at members of the public. He noted that Miss Bradford was a polarising figure and believed the level of public comment about her resignation reflected that.

The editor noted that all comments were moderated before going live and that there were more comments not accepted than were actually approved. The position was reconsidered after Mr Francken’s complaint and some of the comments already on the website were removed and others added.

## **Discussion**

The comments are not the views of the website or its editors. They are analogous to letters to editors in a newspaper.

The Council has, in respect of letters to editors, held that politicians may be subject to more robust criticism than others; those comments can include disparaging remarks that are newsworthy; a correspondent can express strong and even prejudiced views; a letter must not incite violence; but nevertheless a politician is entitled to fair treatment and the letters to editor section is not a forum for personal attacks.

Stuff has its terms and conditions for accepting comments. They provide, amongst other things, that comments will not be posted if offensive, vulgar, defamatory, or incite violence or hatred.

Ms Bradford is a politician who expresses strong views and has both strong supporters and strong detractors. As a politician, she could expect robust and strong criticism. The issue is whether some of the comments incited hatred, or went beyond the limit of robustness. The complaint is not from Ms Bradford herself and it is not intended to consider the possibility of defamation.

Comment sections are appearing frequently on websites. They are now part of the news and media scene. The comments in this case included both favourable and unfavourable comments on Ms Bradford.

The particular comment that was said to incite hatred was the reference to a pitbull.

It was suggested the term was used because many people hate pitbulls. The Council does not accept this inference. The inference the Council takes is that Ms Bradford is a person who once she got her teeth into something never let go. Some would see this as complimentary rather than disparaging.

Some of the comments are very robust and were near the borderline. However, the Council takes the view that there are always likely to be strong views expressed in the case of an MP who was high profile and was in many respects a crusader. On balance, it does not uphold the complaint.

It does note, however, that an editor of a website who invites comments should be particularly vigilant that the comments section is not allowed to become simply a forum for personal attacks, and close monitoring is recommended.

The complaint is not upheld.

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

## **Who paid for the Kaiapoi pool? – Case 2088**

Jim Gerard complained about a report in *The Kaiapoi Advocate*. He raised various concerns, including lack of fairness and balance, but his principal complaint was that the newspaper had published incorrect material and then failed to correct the errors (Principle 2). His complaint is partly upheld.

### **Background**

The report appeared in *The Kaiapoi Advocate* (p3) on June 12.

Headlined “Tired of ‘misquotes’ on Kaiapoi pool funding”, the article explained how the Kaiapoi pool had very largely been funded by the Kaiapoi community rather than by the Waimakariri District Council.

The views of Gary Cattermole, former chair of the pool committee, and Roger Blair, a councillor representing the Kaiapoi ward on the council were reported.

The reporter (by-lined), Sandra Stewart, who acknowledged she was also a WDC councillor (representing the Kaiapoi ward) detailed her investigation concluding that “more than 90 percent of the cost” of the pool had been sourced from Kaiapoi rate-payers and residents.

It is important to note that fundraising for a projected community pool had begun in 1987 but, as a result of local body amalgamation in 1989, the assets and liabilities of the Kaiapoi Borough Council had become subsumed by WDC.

Until the pool’s completion (1995), various funds were granted by WDC but Stewart’s report claimed that although the funds were technically from the district council, in reality they came from Kaiapoi.

Part of the context is that a new swimming pool is under construction in the neighbouring township, Rangiora, and many Kaiapoi residents apparently believe that the Rangiora pool should (largely) be funded by that community rather than by district-wide rates and levies.

The complainant, Mr Gerard is a former mayor of WDC and the chair of the fundraising committee for the Rangiora pool.

Initially he addressed his concerns to the Editor but dissatisfied with his response as well as the delay in receiving a formal written reply, he complained to the Press Council.

### **The Complaint**

Mr Gerard disputed that the Kaiapoi pool had been 90 percent-Kaiapoi funded and supplied counter-information about the funds and grants.

He accepted that the dollar terms cited were accurate but pointed out that their source was open to question.

He estimated that the Kaiapoi pool had been funded about 45 percent by WDC and the newspaper's explanation that it had been almost entirely self-funded was manifestly incorrect.

He demanded that his corrections be published "unedited" and "in full".

In his complaint to the Council, he further suggested that the report had not maintained a clear distinction between reporting facts and expressing opinion and the position of Stewart as both reporter and WDC councillor created a conflict of interest. She had not reported fairly because she represented Kaiapoi.

He also complained about the delay in obtaining a formal reply. This meant that he had seen little point in taking up the editor's offer of publishing a letter from the complainant (and in any case, the draft letter did not address the funding issue).

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

On July 8 the editor replied promptly (via email) to Mr Gerard's concerns. He said he would look at his submission in detail and promised to get back "soon" with a formal response.

That was not forthcoming until a letter dated August 13. Here, he suggested that the submission was too lengthy for a letter to the editor and that parts were "close to being actionable" and he needed to be cautious about publishing such comments.

He proposed a much shorter letter, taking up Mr Gerard's final point about the need for councillors to work together for the whole community and offered the possibility of Mr Gerard composing a piece about the funding, that might "be considered for publication in the usual way".

The editor stressed to the Press Council that Mr Gerard had asked that his piece be published "unedited" and "in full". He had refused because some comments might be defamatory, its length and language use needed editing, and the facts and argument were "difficult to untangle".

He considered that the dollar figures printed in the original story were accurate and not in need of correction.

He acknowledged his response had been "slower than I would have liked".

### **Discussion and Decision**

The editor's tardiness in replying was unfortunate. Any counter argument to the original article would not have appeared until, at best, some eight weeks later.

Further, the offer to publish a brief letter missed the main point of the complaint – the sources of funding for the Kaiapoi pool were at the very least open to debate.

It is not surprising that the complainant declined the newspaper's belated attempt at a compromise.

Further, in the Council's view, Mr Gerard's comments about councillors Stewart and Blair were forceful but hardly inflammatory in the context of lively local body politics.

The Council also finds his reasoning that there was no need to correct because "figures printed in the story are accurate" rather disingenuous. Mr Gerard stressed he was not questioning the accuracy of dollar amounts but whether those amounts stemmed from Kaiapoi or from the wider community, especially the Waimakariri District.

It is not necessary to examine all that he disputes but one item is significant. The article had listed \$500,000 as a grant from a repaid Kaiapoi Electricity loan. However, Mr Gerard pointed out that this was the repayment of a loan originally made by WDC to KEL. In his view, the \$500,000 was an asset of WDC when that sum was donated to the Kaiapoi pool.

On the other hand, the newspaper stands by its reporter's claim that the money was "generated" by the Kaiapoi community.

Here, the accuracy of claim and counter-claim is difficult to establish with any certainty, especially as so much seems to depend on one's point of view.

In later submissions to the Press Council, the newspaper forwarded some background provided by the WDC finance and business support manager. His summary is worth noting. He starts (tentatively), "where the source of funding was derived is not an easy one" then continues (carefully) "one point of view could see the funds were derived from Kaiapoi origins" but "the other alternative view is that the activity was transferred to the WDC . . . and was sourced from a district wide asset".

This not so much a case where inaccurate information needed to be "corrected", but rather a case where the report's claims and conclusions needed to be balanced by an alternative point of view. This could have been provided either in the report itself, or, soon after its publication.

The Council does agree that the editor was not obliged to run the complainant's piece, and especially not "unedited" and "in full", as demanded. It was too long and needed editing.

Nevertheless, he had an obligation to publish some of Mr Gerard's main points, so readers could consider the interpretations and arguments for themselves.

This was particularly important when the original story itself was one-sided.

It becomes crucial where there is a perceived conflict of interest, such as between Sandra Stewart as reporter and Sandra Stewart as councillor for Kaiapoi.

Certainly, there is a clear by-line and her connection to the story is further highlighted within the article. However, though the article purports to be a newspaper report about the funding issue, it reads more like advocacy for Kaiapoi and for the two Kaiapoi councillors on the WDC, Blair and Stewart.

The Press Council has commented before on the possible confusion inherent in Stewart’s twin roles and the need for this to be managed carefully rather than clumsily. (See Adjudication 2033)

The Press Council also notes Stewart’s argument that her article was written largely to counter an earlier story in the rival *Northern Outlook* that had given prominence to Mr Gerard’s views regarding Kaiapoi pool funding. However, readers of The Kaiapoi Advocate, including the complainant, would have been unaware that her report was attempting to “balance” coverage from another source. It is the Council’s view that this should have been clearly signalled in her original June 12 report, especially given that the story in the Northern Outlook had been published six weeks earlier.

In conclusion, The Kaiapoi Advocate is perfectly entitled to advocate for Kaiapoi but in clearly signalled editorials and opinion pieces, not in news reports and articles.

Ethics demand that newspapers ensure that what they publish in news reports is fair and balanced. The Kaiapoi Advocate failed to do that here and it failed its readers.

The complaint is partially upheld on the ground of failing to provide fairness and balance.

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

## **Press Council split on use of child’s photo – Cases 2089 and 2090**

The Press Council has not upheld, by a majority decision, two complaints by the Hawke’s Bay District Health Board against *The Dominion Post* and *Hawke’s Bay Today* about publication on August 31, 2009 of a wounded child’s photograph.

### **Background:**

The child had been shot in the arm by a gunman who had already shot dead the child’s father. At the time of publication the gunman had not been apprehended by police.

The child was taken by ambulance to Hawke’s Bay Regional Hospital and while being guided into the hospital by two ambulance officers a New Zealand Press Association photographer, standing across the road, photographed the group.

The boy’s face was clearly shown in the *Hawke’s Bay Today* and *The Dominion Post* editions of August 31, 2009. Other newspapers pixelated the photograph to conceal the child’s identity.

### **Background**

Acting chief executive officer, Warrick Frater, of Hawke’s Bay District Health Board complained to the Press Council and included letters from two senior clinicians, Dr Ross Freebairn (medical director) and Dr Russell Wills (consultant community paediatrician) of support.

He argued under two Press Council’s Principles: Privacy, requiring careful attention to the sensibilities of those suffering from trauma or grief, and the Principle

covering Children and Young People that requires editors to have particular care and consideration for children and young people. The complaint argued a breach of these Principles.

Mr Frater argued that the child had seen his father shot and had been shot himself and that it was reasonable to assume that he would be suffering trauma and grief. Therefore the child should not have been identified.

Mr Frater noted that *The Dominion Post* had published the photo before police had released the names of the dead man and the child.

Further, the child had not been advised his photograph would be used; parental consent was not sought, and neither his family nor the DHB were advised of the intended use of the photo.

The DHB later, at the time of the child's discharge, issued a media advisory saying that the family requested that the media respect the privacy of the child and his family as they grieved for their loss.

### **The Newspapers' Responses**

*Dominion Post* editor Bernadette Courtney said extensive consultation with senior staff and a lawyer preceded the decision to publish the photograph unpixelated.

She stated that the photo had been taken by an NZPA photographer who supplied it to other media for use. She knew that the photograph had been taken from a "public place" and that trespass was not a consideration.

She said the child's family had not complained. After publication of the child's photograph the family had provided a photo of his father (the dead man) and been interviewed at length.

She said she had considered Fairfax Media's code of ethics, industry ethics and the Press Council's Principles and decided to publish the photograph based on news value.

She stated that there was no legal impediment to the paper's publication of the photograph; that it was a news story of high interest; and she believed that there was justification for running the photograph unpixelated.

*Hawke's Bay Today* editor Natalie Gauld argued the same ground as several of the points raised by Ms Courtney.

By the time *Hawke's Bay Today* was published, the police had released the names of the parties.

Ms Gauld stated that the matter was of public interest, and that her paper's focus was on community outrage at the attack. She reiterated previous comments about sensitivity and said that the boy was not showing visible signs of distress.

In her final comment, Ms Gauld stated that Dr Wills' letter was his personal interpretation and that her team felt it was a sympathetic and caring photo.

### **Further responses**

The DHB responded to Ms Courtney that their contact with the child's family subsequently, and the fact that the photograph had been supplied by NZPA, were irrelevant. The child had a right to privacy and the rights of children and young people had not been adhered to.

Ms Courtney noted that Press Council guidelines did not prohibit the publication of the photograph.

To the Press Council she stated that “in a trauma/grief situation special consideration is required and my position is that the newspaper gave this special consideration, with several extensive discussions between myself, the newspaper management and the staff at the scene before publication”.

She said ongoing contact between the paper and the child’s family indicated the family did not feel its privacy had been invaded neither had they laid any complaint about publication of the child’s photograph.

In a subsequent comment, the DHB said its sole concern “was, and continues to be, over the decision of the paper to clearly identify the face of an eight-year-old boy as he was being taken into the Emergency Department of Hawke’s Bay Hospital” in breach of the Press Council’s Principles relating to privacy and children and young people.

The DHB did not accept Ms Gauld’s point that other newspapers also chose to publish the photograph unpixelated and noted that the NZ *Herald*, TV1 and TV3, most news websites including Stuff had pixelated the photograph.

## **Discussion**

The facts of this case were not substantially in dispute. Both parties agreed that the photograph clearly identified a wounded eight-year old child and they also agreed that neither his permission nor that of his family was sought before publication. This was the core of these complaints.

However, there was considerable disagreement about whether Press Council Principles had been breached, with the DHB claiming they had and the newspapers claiming they had not.

Differing views were also expressed by members of the Press Council. After lengthy discussion and debate, a clear divide emerged between those who would not uphold the complaint and those who would.

A majority of six members voted to not uphold, a minority of four members voted to uphold.

In the view of the majority, the Council Principles relating to Privacy (“those suffering from trauma or grief call for special consideration”) and Children and Young People (“Editors should take special care and consideration when reporting on children and young people”) were not breached.

It is worth noting that the Principles do not forbid the publication of photographs of victims, even victims who are children or young people. For example, photographs that clearly identify grieving survivors have been used in times of great public tragedy as in the Wahine disaster.

Photographs published to illustrate such events might be moving, even disturbing, but they do reveal the truth of a situation in which there is great public interest. Such photographs can be powerful and yet still contain inherent sensitivity for those portrayed.

The events surrounding a highly dangerous gunman on the run from the police would have been of significant public interest, especially within the newspaper’s catchments.

Those arguing not to uphold the complaint noted that the photograph was taken in a public place, at a distance, and that there had been no complaint from the child's family.

Finally and above all, a majority of the Press Council believed that the photograph was sympathetic rather than sensational. The child was shown closely attended and supported by two ambulance officers, one of whom had his arm around the boy's shoulders. His eyes were central and confronted the viewer but the effect was not to shock but to make the viewer feel sorrow and concern.

The complainant made the point that the photograph could easily have been pixelated to blur his face and thus blur his identity.

Such treatment would have rendered him anonymous and would have undermined the impact of the child's plight. A pixelated face becomes the face of anyone – a real face brings home the situation of a wounded child who had just lost a parent.

Here, one pair of eyes was enough to provide a human connection.

In summary, a majority of the Press Council took the view that the photograph did not exploit the child and his situation.

Though the majority felt that the photograph was sympathetic, a minority felt that it showed surprise by all parties, whose attention appeared to have been gained by someone in the direction of the photographer, and thus the reactions could have been shock. They felt that the photograph was intrusive, and that the child's face should either have been pixelated, or the photograph not published.

It was further noted that strongly-worded letters had been received as part of the complaint, from both the hospital's medical director and a consultant paediatrician. These experts would be in a position to make an informed decision about whether the publishing of such a photograph was an unwarranted intrusion into the boy's privacy and potentially likely to cause further trauma.

Though neither of the above parties spelled this out explicitly, they did use words such as "His vulnerability as an eight-year-old boy is great"; "I believe the interests and vulnerabilities of children exposed to traumatic events, should override any news value"; and "I am appalled at *The Dominion Post's* lack of sensitivity over this issue."

It is necessary to balance freedom of expression against the two Principles, namely Privacy (Those suffering from trauma and grief call for special consideration) and Children and Young People (editors should have particular care and consideration for reporting on and about children). In the case of an eight-year-old boy, whose father had been killed and who himself had been shot, these principles were breached in the view of the minority.

There was public interest in the wider story that there was a gunman on the loose who had shot a man and his son, killing the man. But the story would not have been diminished by the privacy of an eight-year-old, who would have been in trauma, not being breached by the publication of a photograph clearly identifying him.

The fact that some members of the extended family later cooperated in an interview is irrelevant, as their cooperation could not have been known at the time of publication. It is noted that the family sought the DHB's assistance in protecting the child's privacy on his discharge from hospital.

With the above in mind, the minority of four members did not believe that the public interest in the case should override the rights of the child to privacy.

The complaint is not upheld.

Those voting not to uphold the complaint were Keith Lees, Clive Lind, Penny Harding, Sandy Gill, John Roughan and Kate Coughlan.

Those voting to uphold were Barry Paterson (chairman), Lynn Scott, Stephen Stewart and Pip Bruce Ferguson.

## **Excitement at annual plan hearings – Case 2091**

The New Zealand Press Council had not upheld a complaint against an *Otago Daily Times* report about a clash between a councillor and a member of the public at Dunedin City Council annual plan hearings.

### **Background**

Frank Kelly complained that a report in the May 8, 2009 edition headlined “Adversaries in blunt exchange” was inaccurate, unfair and unbalanced.

The report said the hearings “descended from a polite, if somewhat strained discussion, into shouting and fingerpointing” when Councillor Richard Walls clashed with Mr Kelly, who was among those making submissions on the annual plan.

The report said Mr Kelly “evidently” had a long history of acrimony with staff and councillors, and had started his submissions in “fiery form” and attacked the consultation process, rent rises on council housing and council staff.

It also recorded how councillors had taken issue with Mr Kelly and that Mr Walls, who had said “the history” between himself and Mr Kelly went back to the early 1990s, had apologised for his behaviour.

Mr Kelly complained to the editor of the newspaper that the report had not included other details of Mr Walls’ attack on him – particularly that the councillor had made disparaging personal comments and that he had attacked him without provocation.

He also wanted space for a rebuttal, and said he did not trust the newspaper to publish a fair and impartial representation of a letter.

Responding to Mr Kelly on June 11, the editor, Murray Kirkness, said his reporter had no recollection of the specific verbal attack mentioned by Mr Kelly. The clash had been short, noisy and confusing, and the reporter restricted his report to what he knew. The published report was not intended to portray Mr Kelly in a bad light.

### **The Complaint**

In his complaint to the Council, Mr Kelly said the report lacked accuracy, fairness, balance “and perhaps I should add: truth”.

He criticised the reporter for not recording what Mr Walls had called him, that the councillor was pointing at him and shouting and that the mayor had left his chair to pacify the “out of control” councillor.

Such details should have been recorded in the interests of accuracy and balance.

Instead, the reporter had devoted column space to portray him in a poor light.

He had approached the editor to correct the errors but had been unsuccessful. He queried how the reporter knew he had “a long history of acrimony with staff and councillors” and he should have been approached to verify the accuracy of such a claim. The article mixed comment and fact.

It was also ambiguous in that referring to Mr Walls’ apology, the reporter gave the impression that “his” behaviour applied to Mr Kelly.

He accepted that newspaper proprietors could determine content but he did not accept that truth could be distorted without sanction. He also noted the Press Council’s Principle that publications should not mislead or misinform readers by commission, or omission.

### **The Newspaper’s Response**

In his response, Mr Kirkness said he had spoken twice by telephone to Mr Kelly after the report was published, and had told him the reporter had no clear recollection of the personal allegation.

The published report was not intended to show anyone in a bad light. It was a seven-paragraph account of a short altercation during the annual plan hearings, to which the newspaper devoted about 55 broadsheet columns.

He had suggested Mr Kelly write a letter for consideration for publication but this had not been taken up. Mr Kelly had claimed letters were censored, but the editor rejected that.

### **Further Debate**

Responding to the editor, Mr Kelly said he was not an adversary of Mr Walls, but gave details of how some years before he had challenged Mr Walls, who was then mayor, on the costs of a trip to a sister city, Edinburgh.

He repeated his criticism of the reporter failing to include further details within the article and his failure to approach him for comment.

### **Discussion and Decision**

The article is a brief account of a clash between a councillor and Mr Kelly at the planning hearings, during which Mr Kelly expressed fierce criticism of some past events and staff.

The Press Council has always defended the right of publications to determine what they publish. Though the newspaper might have included more detail about the clash, the fact that the reporter chose not to do so does not make the article itself inaccurate, unbalanced, unfair or untruthful.

Nor does there appear to be any distortion through omission. The newspaper said the reporter did not hear the remark Mr Kelly mentioned and, over the time of the hearings, the clash was not a major event. It would have been stretching the importance of the incident if the reporter had delved further into Mr Kelly’s past differences with the council.

Mr Kelly was invited to put forward a letter for consideration for publication and chose not to do so. It is unfair to turn down such an opportunity and then accuse an

editor of possible censorship. In a suitable form, such a letter would have redressed any imbalance.

Mr Kelly seems to agree with Mr Walls that their disagreements go back to the early 1990s, so there was justification for the reporter writing of a “long history of acrimony”. The report required some explanation of what had triggered the incident and the reporter’s mention of a “long history”, while a comment, was justified for context.

Also, as details within the report showed, and Mr Kelly appears to acknowledge, the use of the word adversaries in the headline is accurate.

If Mr Kelly had written a letter for publication, such matters could have been clarified.

The Press Council believes the average reader would have considered that Mr Walls was apologising for his own behaviour.

The complaint is not upheld.

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

## **Talking turkey – Case 2092**

The Press Council has not upheld a complaint from Charles Pierson against the New Zealand Press Association concerning an item it distributed reporting on a court case about food poisoning at a Gisborne hotel.

### **Background**

On Christmas Day 2006 a number of diners became ill after eating a buffet lunch at the Bushmere Arms. In June 2008, restaurateur Robin Pierson was convicted in Gisborne District Court of selling contaminated turkey. He appealed against his conviction to the High Court in February 2009. The appeal failed. He then sought leave to appeal the High Court’s decision, but this was declined.

### **The Complaint**

Meanwhile, Charles Pierson complained to the Press Council that the NZPA in May this year published an inaccurate account of the High Court decision involving his brother.

Relying on a press statement from the New Zealand Food Safety Authority issued after the court’s ruling, NZPA sent a report to various member newspapers. The complainant said this report was inaccurate; it had deceived the public, vilified Robin Pierson and caused economic damage to the Bushmere Arms.

Charles Pierson said the report stated that Christmas Day diners fell ill after eating tainted turkey, but the court did not establish that the food served at the Bushmere Arms on Christmas Day 2006 had caused illness.

Neither the NZPA report nor the original press statement from the Food Safety Authority mentioned the presence of norovirus found in faecal samples from diners and the part it had played in the outbreak. The authority and NZPA had misled the public by

reporting that poor food-handling practices were to blame for diners being ill.

He said a faecal sample from a diner had tested positive for the highly contagious norovirus. This proved the virus was present and had caused illness among the diners.

Mr Pierson asked NZPA to withdraw its report, acknowledge that the case against Robin Pierson was circumstantial, that faecal samples had tested positive for norovirus and that all food served that day at the Bushmere Arms was safe to eat.

### **The Response**

NZPA declined to do that. Editor Nick Brown said he believed the report of May 5 was an accurate summary of the findings of two courts that resulted from a New Zealand Food Safety Authority prosecution.

He said NZPA had accurately reported a privileged statement from a statutory authority (the NZFSA) and issued a ‘public interest’ message about food handling.

Mr Brown said the High Court had not only upheld the original conviction, it had ordered reparation to be paid to diners who fell ill, and ordered Robin Pierson to pay a high level of prosecution costs.

### **Discussion**

Three courts have now investigated the Bushmere Arms Christmas dinner incident and the conviction against Robin Pierson stands. The Press Council cannot re-litigate the case, but can consider only the specific complaint about the NZPA report of the High Court ruling that upheld the conviction and awarded reparation to diners who had eaten the turkey in question.

NZPA relied on the press release from the New Zealand Food Safety Authority – one of the two parties in contention – rather than preparing its own report from the High Court’s decision. This can be an unsafe practice and though the report quoted an authority spokesperson, it gave Robin Pierson no chance to make any comment.

However, in this case, the Press Council finds that the NZPA report was an accurate reflection of the High Court ruling.

### **Conclusion**

The Press Council does not uphold the complaint.

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

## **Sex offender finds ‘creepy and offensive’ offensive – Case 2093**

### **Introduction**

Malcolm Spark complained that a *North & South* article published in July 2009 could have prejudiced his appeal against convictions for internet sexual offending and also that it discriminated against him in regard to both his age and character.

Mr Spark further stated that he believed that the journalist had a personalised vendetta against him.

Mr Spark's complaints are not upheld.

### **Background and Complaint**

Mr Spark was convicted on March 18, 2009 of 10 counts of knowingly making an objectionable publication and 14 counts of possession of objectionable publications.

Mr Spark appealed the conviction and sentence on a number of grounds. In August 2009, the Court of Appeal dismissed all Mr Spark's appeals, bar one. One charge of making an objectionable publication was quashed.

The first article, headlined "Operation Popeye: To catch a thief of trust" was based on an interview with the mother of an 11-year-old girl with whom Mr Spark had contact via the internet. The second article, headlined "Cyber Stranger Danger", contained information outlining the need for parents to monitor their children's internet use, and information from organisations that work in the area of internet safety or with sexual offenders who use the internet in the course of their offending. Though Mr Spark's offending was used as an example, the main thrust of the article concerned the need to monitor internet use by young persons.

Included beside this article was an illustration of a young girl sitting at a computer with a stylised devil figure covered in phrases that might allegedly be used by internet sex offenders. Mr Spark objected to this illustration and believed it made him out to look like "some kind of a monster".

Mr Spark objected to publication of the first article, and being named in the second article, as he had appealed his convictions and his appeal had not yet been heard.

Mr Spark also objected to being described as having "dreary middle-agedness", and the comments "Nor did he digitally enhance the photos he sent to pubescent girls in an attempt to make himself look even remotely attractive" and "No, as creepy and offensive as Spark was".

Mr Spark stated that he believed that this is opinion stated as fact. He believes that "It's as if Caroline Courtney has a vendetta against much younger women finding much older men attractive and even though she has no idea who I am, she personalised that vendetta against me by trying to make me look as unattractive as she could."

Mr Spark stated that he would welcome the opportunity for *North & South* to interview him and correct what he saw as the current imbalance.

### **Response from *North & South***

Virginia Larson, editor, responded stating that the article "Operation Popeye: To catch a thief of trust" was "vetted by Internal Affairs; that the court was fully briefed on the story in order for [the journalist] to view the court evidence; and the sentencing judge, Judge Saunders, authorised the release of Spark's photograph to us".

Ms Larson went on to say, "Clearly the sentencing judge considered our story was in the public interest, even if Spark had indicated he would appeal at that time." She noted that the appeal would be heard by a judge, who was not likely to be swayed by media reports.

She further stated that they would not be responding to Mr Spark's complaint of discrimination against him regarding his age, physical appearance and character due

to the circumstances surrounding his offending and the fact that he was a convicted internet sex offender.

## **Discussion and Conclusion**

Mr Spark was convicted of the offences outlined in the article although one count of making an objectionable publication was later struck out by the Court of Appeal.

At the time of publication of the *North & South* articles, Mr Spark's appeal was in the process of being heard therefore, strictly speaking, *sub judice*. The Council notes that the photograph, obtained for the article, was released by the judge.

Though it is not for the Press Council to make statements on matters of law, the Council agrees with the editor's assessment that the process was unlikely to be undermined by the publication of the article and that the judge was unlikely to be influenced by the article.

Though Mr Spark objects to the characterisation given him in the article, an objection he is entitled to express, the following comments apply:

- The descriptions of creepy and offensive, and dreary middle-agedness are opinion and the journalist is entitled to express her opinion in an article she has written.
- The statement that he did not enhance the photo to make himself appear more attractive would appear, from the information provided, to be fact. Mr Spark sent actual photos of himself with no digital changes made. The article used this statement in the context of outlining how some internet sex offenders use photos that show themselves as younger and more attractive to entice young people to interact with them on the internet.

In regard to the complaint of a personalised vendetta by the journalist against Mr Spark, the first article contained details of offending for which Mr Spark has been convicted, and which convictions have been upheld, bar one, by the Court of Appeal. The details of the offending were based on evidence given at the trial and the mainstay of the article was a history of particular offending given by the mother of the 11-year-old girl. This information is publicly available and does not indicate a vendetta.

The second article referred to Mr Spark as a convicted internet sex offender with his offending used as an example of what can happen when internet usage by young people is not monitored. The main thrust and content of the articles were the importance of ensuring good parental monitoring of young people's internet usage. The Press Council has no issue with the use of Mr Spark as an example in the article.

The illustration contained examples of conversation used on the internet to attract young people, in order to stress the dangers of unmonitored internet usage by young people, when they might not know who they are actually talking to. The Press Council does not find that the illustration treated Mr Spark unfairly.

Mr Spark's complaints are not upheld.

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

## **ICCPR does not guarantee access to letters' column – Case 2094**

Gerard Van Meurs complained that Christchurch newspaper, *The Press*, had breached his rights to freedom of expression, because it heavily edited or omitted to publish some of his letters to the editor. The newspaper said it did this because of extensive referencing in the letters. Mr Van Meurs said he had been subject to censorship.

The complaint was not upheld.

### **The Complaint**

Mr Van Meurs advised he had been a regular letter writer to *The Press* for six years, submitting “politically inspired” letters to the editor. He commonly backed his opinions with evidence derived from literature or Internet sources.

He said *The Press* consistently removed virtually all his references to sources. He said this denied him the right to impart information to others. He stressed that in no way was he complaining about the editor’s right to reject, abridge or edit letters for linguistic, spelling, style and other literary errors.

He said letters to the editor provide a democratically healthy counterweight to the news media’s selective publication of material.

He also provided an example of one of his letters that was published after being heavily edited, and a reply to that stripped-down letter, which he said was factually inaccurate. He said his efforts to correct this failed.

He said removal of his supporting evidence amounted to censorship, and that freedom to express oneself was an integral and inalienable part of the democratic process.

He also cited the International Covenant on Civil and Political Rights, and the Human Rights Act, to back his case.

His complaint to the Press Council cited one of its objects: To promote freedom of speech and freedom of the press in New Zealand.

### **The Newspaper’s Response**

Editor Andrew Holden disputed the reference to the ICCPR. He said it was far-fetched to claim that it guaranteed a person’s access to a newspaper’s columns.

He said editors decided the content of their newspapers. The references cited by Mr Van Meurs in his letters were inappropriate, as *The Press* was not a scholarly journal in which contributors provided references and footnotes. *The Press’* general rule was to remove such references, because space was limited, and to avoid littering the page with such material. It did not believe this inhibited the free expression of readers’ own opinions.

He said Mr Van Meurs had been consistently advised this. The Press had replied to his frequent questions, explaining its actions.

Further, *The Press* had not denied Mr Van Meurs the right to express his views, noting the 28 letters it had published from him in 24 months. [Mr Van Meurs himself noted that 65 of his letters have been published in six years.]

Mr Holden rejected any suggestion that the Human Rights Act, the ICCPR and the New Zealand Bill of Rights Act had any bearing on the complaint and provided legal argument to support his case.

He cited the Press Council's Statement of Principles on letters to the editor that said "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". *The Press* did not believe it impinged on that principle by removing references and the like.

### **Discussion and Decision**

Selection and publication of letters is the editor's prerogative, as noted in the Press Council's Statement of Principles. The Council notes that Mr Van Meurs has had many letters published by *The Press*, over many years. If such a letter is submitted, it should be published in such a form that accurately reflects its contents, or rejected.

Newspapers cannot give everyone unrestricted ability to express views, and or be required to allow writers to back those views with a list of sources. What they can do, however, is give readers the chance to express their personal views concisely, and assess them for publication on their merits, as space permits.

The Press Council accepts the newspaper's argument that the ICCPR and the New Zealand Bill of Rights Act relate to actions between a government and its people and do not impose a duty on any private individual or entity. They do not apply in this situation.

The Press Council does not believe Mr Van Meurs has been subject to censorship, as he claims.

The complaint is not upheld.

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

### **Repetitive malicious humour earns rebuke – Case 2095**

The Press Council has upheld a complaint by M Laurence Withy of Lowry Bay against the magazine *Vibrant Hutt* concerning a series of columns written by Sir Robert Jones.

Mr Withy is a prolific contributor of letters to *The Dominion Post*. The frequency of his letters, either published or acknowledged in the newspaper, has been noticed by Sir Robert, who late last year began keeping count of them.

Sir Robert is well known in New Zealand for a cruel sense of humour that can be wickedly amusing. He has written columns for several newspapers over the years. *Vibrant Hutt*, in which he currently appears, is a bi-monthly published from a Stokes Valley address. Six issues have been distributed in the Hutt Valley during the past year.

Mr Withy has had the misfortune to become a continuing figure of fun for the columnist, who considers him a "crashing bore", writing letters that "are always sneering at anyone who has accomplished something, been generous or demonstrated en-

joyment in everyday pursuits”. As many as five of the columns so far have carried lengthy conjecture on Mr Withy’s motives, capabilities, home life and character, beginning with the “M” in his name.

Mr Withy has not helped himself by responding. After the first column he wrote to Sir Robert, which brought a stronger onslaught in the next, and the next. Given a right of reply in *Vibrant Hutt*, Mr Withy described himself as a retired chartered engineer in naval architectural science and listed his maritime concerns. That inspired another withering column. Mr Withy then complained to the Press Council.

### **The Complaint**

Mr Withy alleges that five of the six issues of *Vibrant Hutt* published to the date of the complaint (August 24) contained references to him that breach four Principles upheld by the Council, namely accuracy, privacy, the avoidance of gratuitous discrimination, and the need to distinguish comment from fact.

By way of example he cites a reference to “repressed homosexuality” and statements such as, “while his wife goes out to work” and “given he is unemployed”, which he complains are not only derogatory and offensive but inaccurate.

He seeks a formal apology from the editor of *Vibrant Hutt* or Sir Robert to be published prominently in *Vibrant Hutt*.

The Council has no power to make such an order. It can only endorse a complaint, or not, in the knowledge that responsible newspapers recognise an obligation to publish rulings against them.

### **The Editor’s Response:**

*Vibrant Hutt*’s editor, Leigh Sutton, has chosen to make no response to Mr Withy’s complaint to the Council. But in reply to his complaint to her she told him that as a persistent writer of often critical letters to the media he had to accept criticism “for this curious behaviour”.

It has been noted that she gave him a right of reply after the third column.

### **The Decision:**

Mr Withy has framed his complaint under Press Council Principles that possibly should not be strictly applied to a column of this nature. Much of its humour lies in its departure from the usual standards of accuracy, privacy, decency and fair comment.

In its treatment of Mr Withy the column is not pretending to be factually accurate. Its references to the complainant’s personal characteristics are mostly unsubstantiated assumptions, not to say prejudice.

Likewise, in relation to privacy, the Principle states that everyone is entitled to privacy of person, space and personal information unless the personal information is a matter of public record or of obvious significant public interest. But the columns are not pretending to expose Mr Withy’s actual life. They are a work mostly of imagination.

The complaint also cites the principle that gratuitous emphasis should not be placed on age, gender, sexual orientation and mental disability. But the columns’ references are on the level of “crank”, “silly old bugger”, “acting like a lunatic”, which do not seem serious enough to breach a Principle intended to protect groups vulner-

able to discrimination.

Nor do we find the columns have confused comment with fact. The references to Mr Withy are overwhelmingly in the realm of comment. They are flights of conjecture and caricature that are plainly not intended to be taken literally and we doubt that any sensible reader, no matter how much in accord with the columnist's view, would mistake his imagined material for fact.

It needs to be noted that the columns repeat one damaging allegation against Mr Withy that Sir Robert makes clear he believes to be true. It is mentioned here to reinforce the finding that the columnist can, and has in this instance, clearly distinguished alleged fact from opinion.

But if breaches of the Principles can be excused in this style of humour, the Council has a larger concern.

To indulge in sustained bullying of a named individual, not once or even twice but in five consecutive columns, for the offence of writing to newspapers, is of course the joke. Mr Withy can be forgiven for not appreciating it.

The humour has a malicious tone and its repeated personal abuse appears to have taken on the dimensions of a vendetta. Editors do not normally allow their columns to become a platform for this sort of thing.

The Council therefore upholds the complaint, on grounds of unfairness, and urges the editor of *Vibrant Hutt* to exercise some restraint.

The Council is also conscious that its concerns could provide further grist for the column's mill. If so, it would be an opportunity to demonstrate that the best response to this sort of humour is to ignore it.

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

## **'Spousal abuse' is not 'good natured banter' – Case 2096**

The Hon Peter Dunne, Minister of Revenue, complained to the Press Council about a sidebar and headline published in *The Dominion Post*, citing the Council's Principles applying to accuracy, comment and fact, and headlines and captions. His complaint is not upheld.

### **Background**

The sidebar was printed on the front page of the October 31 edition of *The Dominion Post*.

It carried a head-only photograph of Mr Dunne with the words Spousal Abuse (in bold type) immediately below his image.

A single sentence provided the context: "Three Government ministers confirm taxpayers footed the bill for their partners to travel with them overseas – defying the prime minister's edict to stay home or pay their own way."

Readers were directed to page A2 for the full story.

## **The Complaint**

Initially Mr Dunne complained to the newspaper (via his lawyer). When he failed to obtain a retraction and apology, he made a formal complaint to the Press Council.

He contended that “Spousal Abuse” was obviously inaccurate. It referred to domestic violence and the inference that he had hit his wife was false. He was deeply offended and the newspaper was being malicious.

He further argued that even if “abuse” referred to using taxpayer funding for his wife to accompany him on international travel, the term was inaccurate because the funding entitlements for the House of Representatives and its members were “absolutely clear that my wife is entitled to a rebate on private air travel” (Mr Dunne).

The claim that “taxpayers footed the bill for their partners to accompany them overseas” was also inaccurate because firstly, the taxpayer had not paid the whole bill and secondly, because “the taxpayer funding in question operates on a rebate basis for expenses incurred personally”.

He also disputed that his actions were in defiance of the Prime Minister’s “edict”. The Prime Minister had “informed” Ministers that Ministerial Services would no longer pay for spouses accompanying Ministers on official overseas travel but this did not mean there was an “edict” against using an alternative – that is Parliamentary Services.

In short, both the headline and the text failed the test of accuracy.

He explained that he had declined the offer of a right-of-reply letter because he wanted the newspaper to take responsibility for its “objectionable” behaviour and because he would not have control over any context in which his letter might be published.

## **The Newspaper’s Response**

The editor explained that media investigation of MPs’ expenses had created considerable public concern.

She referred to the role of the press in exposing Parliament’s spending of taxpayer money. Such scrutiny included MPs using perks of office, even if rules governing such use had not been infringed.

The Prime Minister had announced, in June, that Ministers had been told they were not to take spouses on overseas travel, “unless they paid their own way”.

She stressed that “Spousal Abuse” was a play on words, a pun, that would give the phrase, because of its context, a different meaning.

There was a link between “spousal” (Ministers using public money to allow spouses/partners to accompany them on overseas travel) and “abuse” (such use might be seen by the public as an abuse of position, especially given the public statements by the Prime Minister).

She argued that the context, the accompanying sentence, made it clear that the issue was misuse of taxpayer money, not that Mr Dunne was a perpetrator of domestic violence.

The statement that Mr Dunne was “defying the Prime Minister’s edict” was true at the time of October 31 although later Mr Key seemed to step back a little from his earlier position. He was reported (November 3) as saying that “he did not believe the

ministers were deliberately flouting his orders, as Government was not paying – Parliament was”.

The complainant was not entitled to quote what had only emerged later to complain about what had been published earlier.

In any case, the Prime Minister had said “any member that chooses to use their travel discount to take their spouse ... needs to be able to stack that up against public opinion”.

She noted that the sidebar pointed to a detailed article within the newspaper and the headline had to be read in context with that full story.

### **Further exchanges**

Mr Dunne argued that the newspaper had not known the details of the Prime Minister’s June “advice” to Ministers though it had constantly referred to an “edict” and had continued that assertion as fact. Advice was not an “edict.”

He could not be accused of defying any edict when he had checked with the Prime Minister’s office and been told that it was “perfectly proper” for his wife to use her travel entitlement through Parliamentary Services.

The editor explained that the word “abuse” applied to Mr Dunne taking advantage of a perk, even a perk clearly within the Parliamentary Services rules.

She noted that the Prime Minister had maintained his June position when he reiterated (October 6): “I’ve said to my ministers who are taking their spouses – ‘Pay for it yourself’.”

Despite this widely reported comment, three Ministers had used public money to pay for spouses to travel with them and the public was entitled to know.

The newspaper had never suggested that any rule had been broken. For example, the headline to the article of October 31 read, “Ministers ‘Entitled’ to dip into public purse.”

### **Discussion and Decision**

The core of Mr Dunne’s complaint is that readers would have thought he had assaulted his wife the moment they saw “Spousal Abuse.”

If that headline had been printed on its own, this complaint would have been upheld.

However, it is the Council’s view that the sentence appearing directly below “Spousal Abuse” provides such an immediate context that the headline can only be read as leading to a report about taxpayers paying for spouses to travel with ministers. Word play is a common feature of newspaper headlines, and the Council has previously allowed some licence for headlines.

In addition, the detailed report on Page 2 provided extensive explanation and background for the abrupt headline for the front page sidepanel.

The Council accepts that Mr Dunne was offended, especially when he was singled out for attention by featuring his photograph.

“Spousal abuse” is hardly “good natured banter”, as suggested by *The Dominion Post*.

The complainant also accuses the newspaper of inaccuracy in referring to an “edict”

that Ministers should pay for their spouses to travel overseas with them.

The Prime Minister gave a press conference in late June where he explained that Ministerial Services would no longer pay for spouses/partners accompanying Ministers on overseas travel. This was widely reported as a “ban” or an “edict” against this practice, and neither the Prime Minister nor anyone from his office seems to have wished to correct the term.

The Prime Minister himself publicly reiterated that position on October 6 when he said, “... I’ve said to my ministers who are taking their spouses – ‘Pay for it yourself’.”

The Prime Minister also referred to the “ban” on official ministerial spousal travel when he defended three ministers who had used their parliamentary travel perk to take spouses/partners on such trips.

The Council accepts that *The Dominion Post* was entitled to use the term “edict” in its reports on this issue, at least until the Prime Minister later (Nov 3) said he was “not unhappy” about ministers using the Parliamentary Services perk.

For these reasons, this complaint is not upheld.

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

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

## **School lunchroom not a public place – Case 2097**

Ian Edwards, of Paihia, complained that a *Northern Advocate* columnist behaved unethically by using information gained from a casual conversation in a fishing column published on August 26, 2009.

The complaint is not upheld.

### **The Complaint**

Mr Edwards, a teacher, told his workmates about a recent fishing trip. Present in the staff room was a relieving teacher, who was also a sometime fishing columnist for *The Northern Advocate*.

The next day (Tuesday) the columnist advised Mr Edwards he intended using some of the information in his column. Mr Edwards was upset that a conversation that he had considered to be private was to be published. The columnist is reported to have said “too bad” and the Press Council is advised the conversation “continued in a robust manner”, before the columnist apologised.

The material was published and Mr Edwards complained to the editor about the unethical behaviour of the columnist.

Mr Edwards advised he did not know the relief teacher was also a columnist for the newspaper; that he considered conversations in a staff room should be regarded as confidential; and that the story should not have gone to print without his approval.

### **The Newspaper’s Response**

Craig Cooper, editor of *The Northern Advocate*, said that had Mr Edwards ad-

vised the newspaper in time the paragraph could have been removed from the column. As it was this advice came too late.

Mr Cooper, while noting that he did not regard such a conversation as confidential but rather a common source of inspiration or material for columnists, apologised to Mr Edwards largely for the behaviour of the columnist.

He said the columnist had been reminded that, where practicable, he should advise people if information was to be used; that he should consult the editor if people were unhappy with the situation; and that he should not “inflame the situation.” Although a part-time employee he was still representing the newspaper.

He noted that the material complained about was innocuous and did not identify Mr Edwards.

### **Discussion**

Unusually, this complaint is not concerned with the actual words published, but rather the way in which the information was gathered.

The newspaper contends the school staff room is a public place, and that the lunchroom scenario described is a common source of information for columnists. However, it is not a public place - those present were there by virtue of their employment, nothing else. The columnist was only there because of his primary role, as a relieving teacher. Mr Edwards says he did not know the relief teacher was also writing for the newspaper.

The Press Council observes that columnists frequently draw on experiences in their daily lives to provide content for their columns. The complainant was, however, aggrieved by the way the columnist obtained the information. Had his concerns been brought to the attention of the editor immediately, the paragraph could have been omitted.

No harm was done in this instance and the information published was inoffensive. The source was not identified and indeed the complainant has not taken issue with the actual words published.

The Council notes that the paper has taken remedial action against the columnist and has apologised to Mr Edwards. Under the circumstances the Council considers the editor’s actions sufficient remedy.

The complaint is not upheld.

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

## **1000 teaching students in NZ or 1000 teaching students at Massey? – Case 2098**

The Press Council has upheld a complaint by James Gardiner against *Hawke’s Bay Today* over an article published on November 13, 2009.

### **Background**

A Hawke’s Bay Today reporter approached Mr Gardiner, communications direc-

tor Massey University, to seek information around a suggested threat to Massey University's provision of primary teaching training and teacher aide programmes in Hawke's Bay via an arrangement with Eastern Institute of Technology.

The paper subsequently published an article based on responses from Mr Gardiner, in which he was cited as saying "of the 1000 students in New Zealand in teaching programmes, 70 percent were extramural." Mr Gardiner emailed the reporter the day after the article was published, claiming that the article read as though he thought there were 1000 students in teaching programmes across New Zealand, not just at Massey. He stated that the article made him look ill-informed.

An exchange of emails between Mr Gardiner and the reporter then followed, in which the reporter apologised for the error and proposed wording for a subsequent statement to be published in the paper. A suitable wording, making clear that it was Massey University that had 1000 students in teaching programmes, was agreed.

The next day the reporter forwarded the proposed wording to her editor, Natalie Gauld, who responded to Mr Gardiner that she would not run a correction as she believed that anyone reading the article would understand, in the context, that it was only Massey University's student numbers that were referred to, not "1000 students in the whole of New Zealand".

Mr Gardiner rebutted Ms Gauld's position, stating that it was the *Hawke's Bay Today* reporter who made the error, and that people would be misled by the paper's article. He requested that Ms Gauld reconsider her decision.

### **The Complaint**

When no reply was forthcoming from Ms Gauld, Mr Gardiner laid a complaint with the Press Council alleging breach of Principle 1 (accuracy), although he admitted that the error was neither major nor apparently deliberate. He stated that his credibility as a professional working in the field of tertiary education was undermined.

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

Ms Gauld in reply stated that she held to her position that, in the context, the meaning was clear to readers. No other university had been cited in the article, and none of the two sub-editors, two proof readers or reporter who wrote the article had perceived any lack of clarity.

She mentioned Mr Gardiner's admission that there was no major or deliberate error and stated her belief that Mr Gardiner had overreacted. She would not be changing her decision.

### **Further Responses**

Mr Gardiner stated that Ms Gauld had ignored his rebuttal of her decision, and that he did not lack understanding of her role as editor or her reasons for not correcting what she concedes was an error.

He reiterated that the Press Council's Principle of accuracy states "at all times" and does not distinguish between major or minor errors of fact. He claimed that there were two errors – the fact that was wrong and had been attributed to him, and the allegation, contained in his complaint, that the paper was misleading readers.

Ms Gauld responded to the Council that she still did not believe there was an error or need for correction. The whole story referred to Massey University and she felt that any fair and reasonable reader would understand the context of the quote.

### **Discussion**

This whole complaint revolved around the failure of the *Hawke's Bay Today* reporter to include the phrase "The College of Education" at the start of her statement that there were more than 1000 students in teaching programmes. Mr Gardiner's full sentence, emailed to the reporter, read, "The College of Education has more than 1000 students in teaching programmes, 70 per cent of them extramural."

The pertinent issue is whether that omission would be perceived by readers to be 1000 readers across the country, rather than at Massey University.

Although Ms Gauld pointed out in one of her responses, "We received no calls from universities or training providers questioning the article," Council members felt that the article was misleading.

### **Conclusion:**

Mr Gardiner is correct that the paper had not published his statement accurately (in its omission of the words "The College of Education"). It would have been easy for Ms Gauld to have corrected the error in a subsequent edition and she should have done so.

The complaint is therefore upheld.

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

## **Review 1 – Book – Case 2099**

The Press Council has not upheld a complaint from Lorraine North against the *New Zealand Herald* over a review of a book about New Zealand artists, titled "Inner Landscapes: New Zealand artists with Canterbury Connections".

### **Background**

The book features 15 New Zealand artists and includes an essay, photographs and interviews. The review, by Peter Simpson, was published on October 31, 2009.

Ms North, chair of the Canterbury Arts and Heritage Trust and project director for the book, rejected the reviewer's judgment that the book lacked a sense of purpose and coherence. She rejected his criticism that the book was loosely conceived and his remarks questioning the basis on which the participating artists were selected.

She says it was unfair that the book had been reviewed by a publisher who had rejected it for publication and she sought to defend the book in a right of reply in the *Herald*. This was denied.

### **The Complaint**

In her complaint to the Press Council Ms North says the review made no sense and was damaging to her professional reputation. She says though the review was

positive about the work of the artists, the photographs and the interviews, she was singled out as the object of a “nasty attack”. She says she has been criticised for things that she did not set out to achieve - the parameters of the book were clearly expressed in the preface. She believes the reviewer has ignored her innovative approach to the book.

### **The Response**

*Herald* editor Tim Murphy says the review was factually accurate, fair and balanced and the genuinely held opinion of the writer. He acknowledged that Simpson, as a publisher, had earlier been approached by Ms North about the concept for the book. Simpson had, however, forgotten Ms North’s approach and had not connected the book with that incident. He says Simpson has no bias against the book and stands by his review.

### **Discussion**

Any book submitted to a newspaper for review must take its chances. The Press Council backs freedom of expression, and reviewers are free to like or dislike a book.

Ms North describes her approach to the selection and treatment of the 15 artists covered by the book as innovative. Simpson, an established reviewer and publisher, does not think it worked. This is something they are not going to agree on.

The review handed out both criticism and praise and, in the end, provided a platform for readers to make up their own minds.

The complaint is not upheld.

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

## **Review 2 – Fashion show – Case 2100**

### **Introduction**

The Press Council has not upheld a complaint by Colin Pannell against nzherald.co.nz regarding a review of an Air New Zealand Fashion Week show.

### **The Article**

On September 22, 2009 nzherald.co.nz published an 82-word review of a showing by fashion label Basquesse under the heading Expert Eye by Janetta Mackay. The article conveyed a description of the clothes and identified the designer as Peruvian-born Wellington-based Viviana Pannell.

### **The Complaint**

Colin Pannell, who identified himself as the husband of Viviana Pannell and referred the Basquesse brand as “ours”, complained on various grounds covering a range of objections from inaccuracy, inappropriateness, offence at what he said was a description of his wife as “Dynasty meets EuroTrash” and an accusation of plagiarism. He required the article be removed, the *New Zealand Herald* publish a printed apology, the *New Zealand Herald* investigate why the journalist Mackay dislikes Basquesse,

financial recompense and ongoing dialogue over the racial content of the article.

## **The Response**

The nzherald.co.nz stated the article was opinion commentary written by a fashion journalist with seven years' experience in covering the Air New Zealand Fashion Week. It was written in the language of fashion critique, under the heading Expert Eye to identify it as opinion.

Jeremy Rees, responding for nzherald.co.nz, did not dispute that there might be errors but offered to correct them. He rejected suggestions that "Dynasty Meets EuroTrash" was a pejorative phrase and that it extended to Basquesse designer Viviana Pannell herself. He explained the reference to diplomats was to highlight the vibrancy of the fashion label when juxtaposed against what the writer presumed was a grey bureaucrat mode of dress. He chose to ignore Mr Pannell's comment about Aucklanders dressing as tramps, the suggestion Mackay should get out more beyond the western suburbs and Mr Pannell's observation that a designer might have to come from Mangere to have talent in the eyes of the nzherald.co.nz. He also ignored Mr Pannell's comments regarding a private email exchange between Viviana Pannell and Mackay and allegations about restricted access to a fashion week show. Mr Rees advised that the Runway Reporter website had no connection to the *New Zealand Herald*.

## **Discussion**

Mr Pannell was advised that the Press Council was unable to have the original article removed, unable to order a printed apology, unable to investigate his claims nor able to seek financial recompense.

Reviews are by the nature of the content prone to evoking a reaction in those whose artistic creations and endeavours are criticised. However, so long as the opinions reported are those of an expert observer whose approach is independent of bias, the publication is entirely in order to publish even should the review be critical. Those who put their creations up for review in a public arena such as the Air New Zealand Fashion Week must let the work speak for itself and accept the outcome.

Mr Pannell challenged the accuracy of the description of the garments from the Basquesse label (for example, animal print not leopard print, French beading not sequins) and this was not rebutted in the response from nzherald.co.nz. The offer from nzherald.co.nz to correct any errors of fact in the article was not one that Mr Pannell has taken advantage of to this date, but could still do so.

If errors were significant, it would be beneficial to correct them. The Press Council urges both parties to consider this as a way forward.

The Press Council does not accept that the article made pejorative statements about Viviana Pannell, or located her private residence and is at a loss to understand Mr Pannell's references to being born in Mangere and his observation regarding people in Auckland dressing like tramps.

His response to the review is not that of a disinterested observer and his emotional interpretation that the article is negative is not upheld by a Council of unattached observers.

The Press Council upholds the right of publications to bring their readers unbi-

ased, informed opinion free from fear of those who may be criticised.

The email dialogue between Viviana Pannell and Mackay is irrelevant to these deliberations. The Press Council chose to ignore the possibly inflammatory nature of Mr Pannell's criticism of Mackay.

The Council notes that Mr Pannell has been unable to provide the item from Runway Reporter, as the website is now defunct, so the claim of plagiarism must be put to one side.

The complaint is not upheld.

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

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

## **Complainant urged to be more candid – Case 2101**

Harmeet Sooden, an active opponent of the American occupation of Iraq, was taken captive in Baghdad in November 2005 and held until March 2006 by a group calling themselves the Swords of Justice Brigade. His complaint concerned an item that appeared in *Sunday News* on October 5, 2008, after he had been deported from Israel during an attempt to visit Palestinian territories. The complaint was not upheld.

### **The Complaint**

Mr Sooden complained that a *Sunday News* columnist, Martin Devlin, was inaccurate in references to the events in 2005-06. The columnist referred to the release of Mr Sooden and two fellow survivors as a "rescue". Mr Sooden said the governments involved had never said how they were freed. He also said he was not a "Canadian-born.....part-time New Zealand resident", he was a New Zealand citizen and was born in Zambia. Furthermore the column was wrong, he said, to describe him and his companions as "self-styled freedom fighters" and "peace prophets". They were members of an organisation called Christian Peacemaker Teams, which Mr Sooden described as a "legitimate human rights organisation". And it was not true, he said, that he "refused to thank his rescuers". His gratitude was on record. He contested the column's description of his work as, "thinking they could fly to Baghdad, walk the streets, stop the war and change the world..." He did not agree that it was "twisted logic" to blame the occupying forces for his capture and said he never blamed individual soldiers, only the United States Government. He also objected to a statement that more recently he was "attempting to enter a part of Palestine he was neither wanted nor invited to be in". He said he went there, "at the behest of Palestinian communities".

He added that he considered *Sunday News* "a valuable resource in the struggle to promote human rights" and would gladly assist the newspaper to write a serious story on his deportation from Israel.

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

*Sunday News* was slow to respond throughout this case. Mr Sooden made his initial complaint on October 15, 2008. It was resent on November 19 after the then

editor told the Press Council he had not received it. On January 20, in response to another reminder from the Council, the editor said he would offer Mr Sooden an interview in an attempt to deal with the issues.

The interview was discussed during March. Mr Sooden preferred to have a list of questions submitted by email, which he would answer the same way,

so that there would be “less chance of me making a blunder”. He had a meeting with a reporter from *Sunday News* in July but nothing came of it. In August and September the Press Council sent reminders to *Sunday News* that Mr Sooden’s complaint was still standing. A formal response from the newspaper was not received until November. In it, the assistant editor, Steve Hopkins, said that since Mr Sooden had forfeited an opportunity to resolve his complaint by way of an interview, *Sunday News* believed his complaint should be dropped. But in response to the specific points of complaint, Mr Hopkins contended that each of them fell into the category of either fair comment by a columnist or information that had been widely reported.

### **The Decision**

The Press Council finds that the opinions expressed in the Martin Devlin column were fair comment based on what was publicly known about Mr Sooden’s activities before and after his captivity in Baghdad.

On contested issues of fact - the complainant’s country of birth, his expressed gratitude to the governments that worked for his release, and whether he was invited to Palestine last year - the Council finds the errors, if they were errors, forgivable. It was widely reported that Mr Sooden was a Canadian at the time of his capture and that he was applying for New Zealand citizenship (since granted). If he expressed gratitude for his rescue the sentiment was overwhelmed in reports of a press conference in which he criticised the Iraq occupation and believed the risk he posed to his rescuers was no worse than any they faced by being in Iraq.

The information in his complaint is not sufficient to allow the Council to rule on whether or not he was invited to Palestine. The Council notes that Mr Sooden is guarded in offering any information to support his complaints. For example, he objects to the word “rescue”, saying, “A bona fide rescue is just one of many possibilities of what might have constituted a release scenario. There is currently no evidence available in the public domain that supports this or any other eventuality.”

Mr Sooden might have good reason for saying very little, then or since, about what he and his companions were doing when they were captured, what happened to them over the months they were held and how they were released. But if he makes it his mission to go into conflict zones and put himself in harm’s way he must expect critical comment.

If he considers press coverage to be “a valuable resource in the struggle to promote human rights”, as he said of *Sunday News*, he will need to be more candid about his activities. He will not find newspapers content with interviews by email and cannot expect that his attitudes and conduct will be always described in the terms he appeared to be trying to prescribe with this complaint.

The complaint is not upheld.

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

## **Geography and the apostrophe – Case 2102**

### **Introduction**

W Garry Whincop complained that all publications should use the apostrophe in the spelling of Hawke’s Bay and in particular lodged a specific complaint relating to the non-use of the apostrophe by the *New Zealand Herald*.

Mr Whincop’s complaint is not upheld.

### **Background**

Mr Whincop contacted the *New Zealand Herald* to request it use the apostrophe in Hawke’s Bay.

The writing style currently in place with the *New Zealand Herald* omits the apostrophe and Mr Whincop believes this is disrespectful to Hawke’s Bay.

Mr Whincop said that the editor, Tim Murphy “stated that the New Zealand Geographic Board had decided to shun the use of possessive apostrophes in place names and that was the basis of the *Herald*’s policy”. This comment was later denied by the editor.

Mr Whincop contacted the New Zealand Geographic Board’s secretary, who confirmed that the apostrophe is still included in the official spelling of Hawke’s Bay.

Mr Whincop supplied this confirmation to the *New Zealand Herald* with the request that it change their policy immediately.

### **The Newspaper’s Response**

The editor responded stating that “all newspapers make their own style decisions and establish a Style Guide. Ours has determined some years ago that Hawkes Bay – and all other New Zealand place names – carry no apostrophe”.

The Style Guide was reviewed from time to time but this did not mean that the current policy regarding apostrophes would change. He noted that the Geographic Board could not be the arbiter of *Herald* style.

He went on to state “There is no question of the *Herald* showing disrespect to the people of Hawkes Bay.”

### **Discussion and Conclusion**

Though the New Zealand Geographic Board’s official spelling includes the apostrophe, it is also common usage in New Zealand to omit the apostrophe.

The lack of apostrophe in the *New Zealand Herald* is a style issue. It is the view of the Press Council that a newspaper may determine such issues and we note that no disrespect is intended to Hawke’s Bay/Hawkes Bay.

The complaint is not upheld.

Press Council members considering this complaint were Barry Paterson (chairman), Pip Bruce Ferguson, Ruth Buddicom, Kate Coughlan, Sandy Gill, Penny

Harding, Keith Lees, Clive Lind, Lynn Scott and Stephen Stewart.

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

## **Review 3 – Food – Case 2103**

The Ariake Restaurant, through its senior managers, laid a complaint about two reviews of its food and service published by the *New Zealand Herald*. One article, written by Ewan McDonald, was published in *Viva* magazine on November 27, 2008. Another review of the restaurant, written by Carroll du Chateau, was published in *Canvas* on July 9, 2009. Although alleging bias about two negative reviews within an eight-month period, the complaint specifically was about the du Chateau review. The November 2008 review was out-of-time for a Press Council complaint, and could be considered only as background. The complaint is not upheld.

### **Background**

Both pieces were critical of the restaurant. The first particularly criticised a flounder croquettes dish, Karei Kara-age. The du Chateau review created the impression of a rather lack-lustre meal and service, and was particularly critical of what the reviewer said was stale oil used in the cooking. This review was published under the heading “The Bad Oil.”

### **The Complaint**

Writing on behalf of the company operating the Ariake Restaurant, Miyuki Sakairi complained that the articles were damaging to the restaurant’s business at a time when restaurants are struggling to survive in hard economic times. Two bad reviews in *Herald* magazines within a short time were, in her opinion, an indication of the newspaper’s bias against the Ariake Restaurant.

Her letter of complaint to the editor (in July) stated that the first article showed ignorance of a popular Japanese dish. The second article demonstrated that the writer clearly did not understand or appreciate the flavour of sesame oil, which had been used in the cooking.

In particular, the second article, suggesting that stale oil was used in cooking, would suggest to readers that the restaurant was careless of its hygiene. The restaurant had consistently scored an “A” rating from Auckland City Council in its standards of hygiene.

She further stated that unless food reviewers were knowledgeable about the cuisine of a country, they should not review restaurants with a strong ethnic focus in the food they serve. The reviewers failed to meet this requirement.

The Ariake complaint to the Press Council further identified the concern that Ms Sakairi’s letter of July 22, 2009 to the editor of the *NZ Herald* had received no response by September 16 when the restaurant initiated its complaint to the Press Council.

In essence, the Ariake Restaurant has been in business for 29 years. A review, in a nationally recognised newspaper that questions the restaurant’s hygiene standards, is a very serious matter; as well, the restaurant feels that a new review should be written by someone familiar with Asian food and culture.

## **The Newspaper's Response**

The editor responded that the initial letter of complaint from the restaurant did not seem to indicate any action from the newspaper was required; therefore, the *Canvas* editor had simply acknowledged receipt of same. (Evidence was supplied of this.)

The two articles were fair and honest accounts of the experiences of two different reviewers on two separate occasions. The two editors of *NZ Herald* magazines are independent of each other and the implication of collusion was denied.

## **Conclusion**

Although the restaurant complained that two critical articles published by the same newspaper within a relatively short time was evidence of bias, the Press Council accepts that the articles were published in two separately and independently edited magazines of the *NZ Herald*.

Restaurant reviews are opinion pieces written about the actual experiences of the reviewers on particular occasions.

This review caused considerable concern to the complainants. However, newspapers choose reviewers who, in their opinion, have mana and expertise in the area in which they comment.

Moreover, the Press Council reiterates that opinion pieces might challenge or offend, but that is a legitimate role of the press. A reviewer is entitled to express an honestly held opinion of a particular dining experience.

The complaint is not upheld.

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

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

*The following Statement of Principles and Complaints Procedure were applicable throughout 2009. For the revised Statement of Principles and Complaints Procedure which became effective in 2010, please see the Council's website at [www.presscouncil.org.nz](http://www.presscouncil.org.nz)*

# Statement of Principles

## Preamble

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

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

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

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

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

## 1. Accuracy

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

## **2. Corrections**

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

## **3. Privacy**

Everyone is entitled to privacy of person, space and personal information, and these rights should be respected by publications. Nevertheless the right of privacy should not interfere with publication of matters of public record, or obvious significant public interest. Publications should exercise care and discretion before identifying relatives of persons convicted or accused of crime where the reference to them is not directly relevant to the matter reported. Those suffering from trauma or grief call for special consideration, and when approached, or inquiries are being undertaken, careful attention is to be given to their sensibilities.

## **4. Confidentiality**

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

## **5. Children and Young People**

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

## **6. Comment and Fact**

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

## **7. Advocacy**

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

## **8. Discrimination**

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

## **9. Subterfuge**

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

## **10. Headlines and Captions**

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

### **11. Photographs**

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

### **12. Letters**

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

### **13. Council Adjudications**

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

# Complaints Procedure

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

8. The council's adjudication is communicated in due course to the parties. If the council upholds a complaint (in full or in part), the newspaper or magazine concerned must publish the essence of the adjudication, giving it fair prominence. If a complaint is not upheld, the publication concerned may publish a shortened version of the adjudication. All decisions will also be available on the council's website [www.presscouncil.org.nz](http://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 2009

	2009	2008
	\$	\$
<b>Revenue</b>		
Union	2,700	2,700
NPA Contribution	220,000	195,000
Community Newspapers	5,000	4,905
Magazines Contribution	8,875	8,594
Interest	1,162	1,410
<b>Total operating revenue</b>	<b>237,737</b>	<b>212,609</b>
<b>Expenses</b>		
ACC levy	471	324
Accounting	907	907
Advertising & Promotion	1,210	1,229
Audit (2008 \$560, plus 2009 accrued \$500)	1,060	709
Bank fees	92	53
Cleaning	627	697
Computer	1,530	2,240
Depreciation	927	1,251
General Expenses & Subscriptions	7,440	6,726
Insurance	2,730	2,405
Internet	880	308
Legal (Constitution revision)	6,935	
Postage & Couriers	2,538	2,479
Power & Telephone	3,196	2,490
Printing & Stationery	9,392	8,603
Reception	2,311	2,600
Rent & Carparking	14,400	14,400
Salaries & Board Fees	157,322	133,964
Training (Review implementation)	14,866	
Travel & Accommodation	16,230	17,091
Website Development	5,000	
Holiday Pay Accrual	6,615	
<b>Total operating expenses</b>	<b>256,679</b>	<b>198,476</b>
<b>Net surplus/deficit for the year</b>	<b>(18,942)</b>	<b>14,133</b>

The notes on page 106 form an integral part of the financial statements.

# Statement of Financial Position

As at 31 December 2008

	2009	2008
	\$	\$
<b>Assets</b>		
Current assets		
BNZ Current Account	6,412	3,700
BNZ Call Account	32,285	53,787
Accruals and Receivables	-	108
	<hr/>	<hr/>
	38,697	57,595
	<hr/>	<hr/>
Non-current assets		
Fixed assets	5,778	6,706
	<hr/>	<hr/>
<b>Total Assets</b>	44,475	64,301
	<hr/>	<hr/>
<b>Liabilities</b>		
Accounts payable	1,218	5,887
PAYE payable	3,432	2,192
GST payable	3,827	8,396
Accrued Expenses	7,115	
	<hr/>	<hr/>
<b>Total liabilities</b>	15,592	16,475
	<hr/>	<hr/>
<b>Net Assets</b>	28,883	47,826
	<hr/>	<hr/>
<b>Equity</b>		
Opening Balance	47,826	33,693
Net surplus/deficit for the year	(18,942)	14,133
	<hr/>	<hr/>
<b>Closing Balance</b>	28,884	47,826
	<hr/>	<hr/>

The notes on page 106 form an integral part of the financial statements.

# Notes to the Financial Statements

## For the year ended 31 December 2009

### 1. Statement of accounting policies

#### Reporting Entity

The New Zealand Press Council is an unincorporated body.

The financial statements have been prepared in accordance with Generally Accepted Accounting Practice.

#### Differential Reporting

The New Zealand Press Council qualifies for differential reporting as it is not publicly accountable and it is not large as defined in the framework for differential reporting. The organisation has taken advantage of all available differential reporting except for that of GST. The financial statements have been prepared on a GST exclusive basis.

#### Measurement Base

The accounting principles recognised as appropriate for the measurement and reporting of earnings and financial position on a historical cost basis have been followed.

#### Specific Accounting Policies

The following specific accounting policies which materially affect the measurement of financial performance and position have been applied:

##### *Taxable Income*

The only taxable Non Member income is interest.

##### *Accounts Receivable*

Accounts Receivable are stated at their estimated realisable value.

##### *Fixed Assets*

All fixed assets are recorded at cost.

Depreciation has been calculated using a straight line basis as follows:

Furniture and fittings	4-15%
Office Equipment	36%-48%

##### *Changes in Accounting Policies*

There have been no changes in accounting policies in the year under review. All policies have been applied on bases consistent with those used in previous years.

## 2. Fixed Assets

	Net Book Value	
	2009	2008
	\$	\$
Office equipment	103	250
Furniture and fittings	553	674
Office Fit out	5,122	5,781
	<u>5,778</u>	<u>6,705</u>

There were no acquisitions of Fixed Assets during the year ending 31 December 2009.

## 3. Commitments and contingencies

There were no known commitments and contingencies at 31 December 2009 (2008: \$ Nil).

# Auditor's Report

## AUDITOR'S REPORT TO THE MEMBERS OF THE NEW ZEALAND PRESS COUNCIL

I have audited the financial statements that provide information about the past financial performance of the Council for the year ended 31 December 2009 and its financial position as at that date.

### *Council's Responsibilities*

The Council is responsible for the preparation and presentation of financial statements that present fairly the financial position as at 31 December 2009 and its financial performance for the year ended on that date.

### *Auditor's Responsibilities*

I am responsible for expressing an independent opinion on the financial statements and reporting my opinion to the members.

### *Basis of Opinion*

An audit includes examining, on a test basis, evidence relevant to the amounts and disclosures in the financial statements. It also includes assessing:

- a) The significant estimates and judgments made by the Council in the preparation of the financial statements; and
- b) Whether the accounting policies used are appropriate to the circumstance of the Council, consistently applied and adequately disclosed.

I conducted my audit in accordance with generally accepted auditing standards in New Zealand. I planned and performed my audit so as to obtain all the information and explanations which I considered necessary to provide me with sufficient evidence to give reasonable assurance that the financial statements are free from material misstatements, whether caused by fraud or error. In forming my opinion I also evaluated the overall adequacy of the presentation of information in the financial statements.

I have no relationship with or interests in the Council other than in my capacity as auditor.

### *Unqualified Opinion*

I have obtained all the information and explanations required.

In my opinion the financial statements of the Council presents fairly its financial position as at 31 December 2009 and financial performance for the year ended on that date.

My audit was completed on 22 March 2010 and my unqualified opinion is expressed as at that date.



Walter Brock, CA (Retired)  
Wellington

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