NEW ZEALAND PRESS COUNCIL

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Sandra Goodchild	Chartered Accountant, Dunedin
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Stuart Johnston	Emeritus Professor, Lower Hutt
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Suzanne Carty	Editorial consultant, INL, Wellington
Jim Eagles	Business Herald Editor, Auckland

Representing Magazine Publishers

Terry Snow	Managing Editor, W & H Publications, Auckland

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

Audrey Young	Press Gallery, *New Zealand Herald*
Alan Samson	Formerly Senior Reporter, *The Dominion*

NEW ZEALAND
PRESS COUNCIL

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Chairman's Foreword

The year 2002 was of significance to the New Zealand Press Council as it was the 30th anniversary of its founding. Thirty years is not a long time for some institutions but for those of us on the Press Council, it provided an occasion to stop, reflect and remember just how we came into being and why.

The Constitution was signed on 21 September 1972 by our two constituent founding bodies, the New Zealand Publishers Association and the then journalists union, now titled the Amalgamated Engineering Printing & Manufacturing Union.

Steps were taken as early as 1968 to sound out various protagonists in the print-publishing industry to explore the foundation of a press council. Then it seemed perfectly natural to turn to Great Britain, as it was the only press council in the world and in any event we were still closely bound to that country through the Queen and the Commonwealth.

The British Press Council was formed in 1953. It was a self-regulatory body at that stage made up entirely of industry members. It had no code, it being thought then

The New Zealand Press Council 2002. Photo from the left: Denis McLean (Wellington), Stuart Johnston (Lower Hutt), Mary Major (secretary), Dinah Dolbel (Auckland), Sir John Jeffries (chairman, Wellington), Terry Snow (Auckland), Suzanne Carty (Wellington), Alan Samson (Wellington) Sandra Goodchild (Dunedin). Inserts from the left: Audrey Young (Wellington), Richard Ridout (Christchurch), Jim Eagles (Auckland). Sir John Jeffries, formerly a judge of the High Court, is the independent chairman. The members representing the public are Mrs Goodchild, Ms Dolbel, Messrs McLean Johnston and Ridout. Ms Carty and Mr Eagles represent the Newspaper Publishers Association and Mr Snow represents magazines on the Council. Miss Young and Mr Samson are the appointees of the Media Division of the New Zealand Amalgamated Engineering, Printing and Manufacturing Union.

that the development of principles would follow common law lines. New Zealand, 19 years after the BPC was established, decided it was time to do the same. The then secretary of the BPC was consulted as to its formation. Britain was the first and New Zealand probably the second, in the Western world to form a press council. Unlike Britain, New Zealand began with a majority of public members and with an independent chairman, the recently retired President of the Court of Appeal the Rt Hon Sir Alfred North. We eschewed a code but, like Britain, we changed.

A constitution was drafted and adopted. Unquestionably the founders closely followed the British precedent in form and procedure so as to make them virtually identical. Both bodies have changed, as would be expected, but even there the major changes have had a similarity such as codes/principles produced for guidance and Great Britain followed New Zealand and included public members with the chairman drawn from those ranks. The mission of the two bodies is still the same which is to provide an independent complaint resolution body for the general public. The model for both is firmly self-regulation without any statutory control.

From its inception to its 25th anniversary in 1997, little changed within the Press Council either by way of jurisdiction (then almost entirely newspapers) or its procedure. By then the Press Council became aware that both the print industry itself had made immense changes and so had the expectations of the general public of the Press Council. The Press Council may have been the first after the Ombudsman to offer public complaint resolution over an industry such as the newspapers but by the early 1990s there were innumerable bodies offering the same service to the public. In 1972 the magazine aspect of print journalism was relatively small.

Also community newspapers in 1972 had barely made an impression. Both of these branches began to play important roles in New Zealand society and they were technically outside the jurisdiction of the Press Council.

In the 1997 Annual Report the following appeared:

> At about the anniversary of 25 years the Council was ready to reappraise itself. There is now an active desire to carry forward the changes under contemplation. In the second half of 1997 the Press Council faced itself and not uncritically. It identified areas where change could usefully be achieved and reached its own decisions before taking its views outside Council. The Council was instrumental in establishing a committee (named for convenience the Working Party) comprising high-level personnel from its own constituent members and representatives of the Council. The Working Party met on 3 December 1997 where several important new initiatives were discussed and which will be briefly mentioned.
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> At present the Council has jurisdiction for complaints over nearly all metropolitan and provincial newspapers regardless of frequency of publication. The great majority of community newspapers are covered, but there are some exceptions. The obvious and frequently mentioned publications not under jurisdiction are magazines, which comprise a signifi-

cant and influential part of print publications in New Zealand. The Press Council reached its decision and says, in the public interest; magazines should be under the Press Council. In the United Kingdom and Australia magazines are under the respective Press Complaints Commission and the Australian Press Council.

Jurisdiction over the print industry (here and foreign publications if they have a significant readership in New Zealand) is now virtually complete, and that includes the Internet where newspapers have sites. The Statement of Principles has now been operating for almost four years and a review is contained in this report as a separate item under the heading "NZPC Constitution and Statement of Principles". That we are still dedicated to objective self-appraisal is evidenced by the item in this Report "The Press Council: Is There a Measure of its Effectiveness?"

The New Zealand Press Council has been well aware that it needed to make changes in several areas to maintain the public's confidence and has made those changes. Judged by the level of criticism directed at the Press Council, it is a fair inference that there is general satisfaction with the New Zealand Press Council. There are no allegations over the conduct of the Council. On occasions there have been adverse comments on the wording of the Statement of Principles, but that is to be expected considering the purpose of the document.

The fundamentals of the Press Council, self-regulation and uncompromising support for freedom of expression, remain key objectives.

The Council, through its members, takes every opportunity to address groups and students. On 31 July 2002 a Council member Audrey Young and I spent a session with Massey University Wellington Campus School of Journalism. I also attended a meeting of the New Zealand Women's Graduates in Wellington on 15 October 2002 and addressed them on the Press Council and its mission.

An important innovation was made last year (it being the year of the General Election) when we instituted a fast-track procedure for dealing with complaints connected with the election. The central purpose was to complete an adjudication while it was still relevant to the election. One such complaint was upheld and published in the newspaper concerned before polling date. See Case No. 889 in this annual report.

The Statement of Principles Review

During 2002, some revisions were made to the Constitution to take account of the extended scope of the Council's jurisdiction and to update some of its provisions. This was done in concert with a revision of the Council's pamphlet, which sets out the Statement of Principles and the Council's procedures.

Some adjustment of wording has been made to two of the principles but there are no changes of substance. When the Statement of Principles was issued in 1999, it was intended that a review of their operation would take place after 12 months. However, the Council soon realised that complainants and the industry would need more time to appreciate the function of the principles and to use them in a practical way. Such an early review would have been impracticable.

More recently, the placing of the Council's principles and procedures on the NZPC website has accelerated familiarity with the principles, and reference to them is now made by most complainants. The Council has been at pains, however, to emphasise that the Statement of Principles is not a definitive menu of topics, and complainants are still able to raise their concerns in their own terms.

In the course of conducting its own stocktaking of the principles in 2002, the Council gave close consideration to two papers by University of Canterbury authors that had criticised the Council's Statement of Principles.* The following comments respond to the main criticisms.

The Council thinks that there is need for greater understanding of the purpose of the Statement of Principles. The Statement informs the industry and the public of the ethical values that the Council brings to bear in considering complaints. It has been criticised for lacking detail. In 1999 the Council deliberately chose not to fashion a document with the detailed coverage of numerous aspects of conduct that is found in many of the codes of conduct or other ethical statements developed within the industry in various countries. In contrast, in the UK a complaint can only be advanced if it is said to be in contravention of the written code. In New Zealand the Preamble to the Statement allows for the complainant to frame his or her allegation of breach of principle or conduct. The Council reaffirms its belief that its function as a complaints resolution body is best served by such a Statement of Principles, and that to attempt to give an exhaustive list of specific prohibitions, or exhortations to virtue, would be misguided.

The Australian Press Council also confines itself to a Statement of Principles. The United Kingdom Press Complaints Commission does issue a detailed Code of Practice, but notes that the code "was framed by the newspaper and periodical industry and ratified by the PCC". The New Zealand Press Council endorses the view frequently expressed by writers on ethical issues that the most effective codes of ethics are those created and owned by members of a profession or industry with a strong commitment to internalising the codes' values, not codes defined and promulgated from the "outside".

Comparison with other countries suggests that the time is ripe for more detailed statements of journalistic ethics to be developed in New Zealand, but the Press Council believes that the place for these is the industry codes produced by journalists and newspapers, rather than NZPC's Statement of Principles. This seems particularly appropriate for such topics as "conflicts of interest" and "cheque-book journalism". The Council will do all it can to promote and support industry initiatives to strengthen and extend such codes, which can have an important role in staff development. Researchers at the country's schools of journalism could make a very constructive contribution by comparative studies of international practice.

Two of the NZPC principles criticised for lacking detailed direction to the industry are those which refer to "the public interest" and to "privacy". The Press Council is criticised because the Statement of Principles gives "no criteria for what constitutes the public interest which it says can be invoked to justify privacy intrusion or subterfuge".

Neither paper criticising the Statement of Principles considers the strong arguments for not attempting to specify what is meant by "the public interest", nor the multiplicity of places where that term is used, without any explanatory gloss, in legislation of many different kinds. Parliamentary legislators are very chary of attempting to define "the public interest".

The Press Council believes that the better course is for it to survey, from time to time, the adjudications in which "the public interest" has been an issue, and thus present an overview of how the Council has interpreted and applied the principle. Such a survey of cases would be available on the NZPC website as well as in the annual report.

The Council's treatment in individual cases of privacy and other leading considerations in the Statement of Principles could similarly be surveyed from time to time and reported on. The Council is strongly of the view that such post-adjudication overviews are of much greater assistance to the industry and to the public than attempting to spell out in great detail, in advance of particular cases, the scope of each of the principles. As noted earlier, the Council believes that the place for detailed advice on ethical conduct is the codes of conduct created by the industry itself.

In any discussion of the Statement of Principles it is important to note the emphasis the Council places in the preamble on freedom of expression as a fundamental principle. Every adjudication involves weighing that principle, that value, against other principles, other values.

* *Jim Tully and Nadia Elsaka, ch 9 in What's News? ed. Judy McGregor and Margie Comrie, Dunmore Press, 2002; Nadia Elsaka The Development of Print Media Codes of Ethics in New Zealand, University of Canterbury, 2002.*

Newspapers and their Readers – a Question of Attitude

The Press Council has noted with interest different ways in which newspapers worldwide have been developing interaction with their readers about their complaints and concerns, from points of inaccuracy to questions of policy and conduct that involve large ethical issues.

There is, to begin with, the increasing use by newspapers of columns, boxes or paragraphs that set out corrections and clarifications of things said in earlier issues. The website www.slipup.com carries links to newspapers with such sections.

The *New York Times* makes no bones about the need to recognise that newspapers are not infallible. Al Siegal writes: "Probably a third of the words in each day's Times are written between 4 and 9pm; soon after that, printing plants around the country begin spinning out early editions. In the 'hard news' departments of the paper at that hour, 65 copy editors [sub-editors] hold the fort. Ask those copy editors about detailed fact-checking, and they will tell you about trying to drink from a fire hose or bail Lake Michigan with a teaspoon."

He sums up the *NYT*'s attitude to making prompt corrections in this way : "Perfection is elusive, but accountability need not be." Alan Rusbridger, the editor of *The Guardian*, is an enthusiastic supporter of corrections columns: "Our readers increasingly trust us because of – not despite – our willingness to admit we get things wrong."

Both these newspapers have demonstrated that handling corrections can be much more than a dull or embarrassing chore. The necessary revisiting of an error or muddle can be made interesting and entertaining in its own right. The wry wit with which Ian Mayes conducts *The Guardian*'s corrections and clarifications column can be seen in the two paperbacks of selections from it that *The Guardian* has published. The *NYT* recently published *Kill Duck Before Serving: Red Faces at the New York Times*: *A Collection of the Newspaper's Most Interesting, Embarrassing, and Instructive Corrections*. (A few examples from these books are given below).

This readiness to admit mistakes and make prompt corrections implies an openness to readers, a willingness to listen and to respond to their complaints. Not all complaints, of course, can be dealt with by pithy correction in the next day's issue. Many involve complex issues to do with the credibility of sources and the adequacy of investigation. Sometimes a gulf opens between the complainant and the editor because, although the editor may offer a chance to reply, the complainant sees that as no more than an invitation to present another point of view, when what is sought is a direct acceptance by the publication that it got significant facts wrong.

Dealing fairly with complex complaints takes time and energy, and a strong commitment to openness and accountability. In some newspapers this open attitude has developed into a much broader interaction with readers through the appointment of readers' editors or ombudsmen. The Organisation of Newspaper Ombudsmen web-

site, www.newsombudsmen.org, has interesting information about the work such senior journalists do.

The Press Council has taken particular note of the way in which such opportunities to enter into discussion with newspapers can lead to early resolution of readers' grievances, without recourse to formal complaint procedures or to legal action. As well as this behind-the-scenes activity, some readers' editors and ombudsmen run regular columns of comment on a wide range of relevant issues. The two *Guardian* paperbacks mentioned above include selections of the readers' editor's weekly Open Door columns, which discuss, for example, ethical issues arising from what has been published, or explain changes taking place in the newspaper or the way different elements of it work, or respond to readers' points about style and English usage.

Only the largest newspapers, of course, can commit resources to interaction with readers on this scale. The attitude that prompted such developments, however, can be shared by publications of every size. Some of the complaints that the Press Council has had to deal with would not have come its way if there had been a readiness to deal promptly with them, to avoid confrontational assumptions that it must be the complainant who has got things wrong, and to print prominent corrections when they are justified.

Newspapers and journalists vigorously affirm the advantages of self-regulation over external imposition of standards. The Press Council suggests that the most basic test of that commitment to self-regulation and accountability is the way publications handle readers' complaints and grievances.

Kill Duck Before Serving: Red Faces at the New York Times, edited by Linda Amster and Dylan McClain with an introduction by Allan M Siegal, St Martin's Press, 2002:

"An article about decorative cooking incorrectly described a presentation of Muscovy duck by Michel Fitoussi, a New York chef. In preparing it, Mr. Fitoussi uses a duck that has been killed."

"Because of a transcription error, a dispatch from Tel Aviv on negotiations for a new Israeli government referred incorrectly to Yosef Burg, leader of the National Religious Party. It should have described him as a veteran (not a Bedouin) of Israeli politics."

"A theater review about the Roundabout Theater Company's production of Shakespeare's *Tempest* misinterpreted a gesture. The actors' intent was to portray 18th-Century gentlemen taking snuff, not cocaine."

"Because of a telephone transcription error, an article yesterday ... included an erroneous description. The first sentence should have begun 'Attorney Marcia Robinson Lowry,' not 'A tiny Marcia Robinson Lowry.' (Ms. Lowry is 5 foot 7.)"

Corrections & Clarifications, 2000; More Corrections & Clarifications, 2002, both published by Guardian Newspapers Ltd.:

"Readers of the obituary of Mel Torme ..... may be glad to know that his nickname, which appeared in a heading as Velvet Frog, was corrected to Velvet Fog for later editions."

"...we referred to the Six nations rugby tournament [and] we said 'Wales thrashed France' – a possibly partisan way of interpreting the actual result : Wales 3, France 36."

"In the obituary of Joan Heal ... we referred to the show 'which turned her into a star' as *Grab me a Gondolier*. Not quite. It should have read, *Grab me a Gondola*."

"The absence of corrections yesterday was due to a technical hitch rather than any sudden onset of accuracy."

Freedom of Speech

More than two years ago, on the occasion of World Press Freedom Day, New Zealand Press Council chairman Sir John Jeffries penned a piece on the significance of the occasion for a number of daily newspapers.

In it he said that without freedom of expression, no people could be truly free. It is a theme he has returned to many times since, most recently in an interview with the Pacific Area Newspaper Proprietors Association Bulletin, based in Australia, in December 2002.

Critics who focused on the concept of self-regulation, he said, put undue emphasis on the word "regulation" in terms of the Council's relationship with the Press. That was to place the wrong stress on the Council's purpose, Sir John said.

The Council wants to reiterate that it is not its role to instruct publications how to govern themselves. As we explain in our preamble to the Statement of Principles, 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 those Principles.

Free speech should be equally available to individuals as to institutions, such as newspapers, Sir John told his interviewer.

"In the view of the Press Council, free speech is indivisible and we must leave it to the good sense of the public to decide whether our basic freedoms are being infringed by the conduct of institutions. But it would be a mistake to attempt strict authoritarian controls, even if a concept, such as free speech, which has provided so much enrichment of our democratic life and government, comes with some cost.

"New Zealanders have a very strong sense of fairness but they generally still have to learn that free expression is the freedom to say what may be abhorrent or wrong," he concluded.

The right to free speech – also described as freedom of expression and freedom of the Press – has exercised the collective mind of the Council and its chairman on many occasions in the previous 12 months. A number of complainants have, in the view of Council members, been provoked into complaining because they disagree with the points outlined by a columnist, set out by a letter writer, or expressed in a newspaper editorial.

Council members have endeavoured to help those complainants – and others who read the Council's adjudications – come to terms with the reality that the right to free speech means being able to espouse views that are politically incorrect, unpopular and often, downright wrong.

A writer in *The Times* of London put it superbly: "It has to be said at regular intervals that press freedom is empty if it means the freedom to be caring, compassionate, thoughtful, sensitive and sensible. True freedom of the press can only mean the freedom to be vulgar, stupid, ignorant, offensive and just plain wrong, all of which

Miss XXX *[the columnist of whom he was writing]* sometimes is." He is speaking, of course, about opinions as being wrong, not about factual error, for which there can be no tolerance.

The value of freedom of speech, especially in tense times such as war, is – if anything – increased. The opinions of columnists and those being interviewed become more firmly held and robustly expressed, cartoonists become more trenchant, and editorials take a stronger line – all in the hope of influencing the policy-makers.

But it is important to remember that a newspaper's right to free speech is no more – and no less – than the rights enjoyed by all New Zealanders under the Bill of Rights Act in this small democracy at the bottom of the world.

Were the Government to ever place limits on a newspaper's ability to express a wide range of opinions, the shackles thus would be similarly worn by Joe and Joanna Public who often like to express strongly held views through letters to the Editor or on talkback radio.

There is no indication that the current Government – or any political party in New Zealand, for that matter – wants to generally restrict what the Press can and cannot say. But that is the case only because institutions such as the Council itself and its constituent bodies – the Newspaper Publishers Association's Press Freedom Committee and the Engineering, Printing and Manufacturing Union – keep a close eye on legislative incursions that inadvertently, as well as deliberately, would curb the way journalists go about their jobs.

During 2002, for example, legislation came before Parliament, after the public submission process had closed, to reintroduce criminal libel to the statute books, a provision that has not pertained in New Zealand for many decades. It was only through joint pressure from cross-media organisations, including the Council, that the Minister who was involved backed down.

Freedom of speech – of expression – is one of the freedoms over which numerous wars have been fought. In this country, no one risks death or injury for saying loudly or writing vehemently what he or she believes in. But freedoms can be whittled away quietly, insidiously, with one small measure here, a changed practice there.

The price of freedom truly is, in the Press Council's view, eternal vigilance.

Suicide Reporting

Although no complaints about stories covering suicide came to the Press Council during 2002, the topic is still difficult to report and one of major public interest. While the New Zealand rate of youth suicide, the most tragic and concerning aspect of this problem, has declined in recent years it is still too high, and when outdated statistics are reported by a body like the OECD, the press has to be free to comment on this problem openly and without shackles.

This leads the Press Council to reinforce the comment in last year's annual report that the Coroners Act 1988 gives the press little help in covering this issue of major public concern. "Newspapers and magazines still face what the Press Council has called the 'impenetrable thicket' of the Coroners Act, 1988 especially Section 29, which deals with suicides. Section 29 says that coroners may provide publicly the basic details of a deceased person's age, name and occupation, and find that a death was self-inflicted. They have discretion also to release the "detail relating to the manner in which the death occurred or to the circumstances of the death or to an inquest into the death".

"Circumstances of death" is a very vague term and is conducive to confusion as to where the line may legitimately be drawn.

Euthanasia, always a contentious topic of public debate, has come once more into prominence and the news media have to be free to explore this public issue equally forcefully.

Euthanasia as a topic is distinguished from suicide as it is generally discussed, although it overlaps where death is deliberately induced and premature. New Zealand society's concern about suicide usually focuses on the tragedy of the high incidence of youth suicide, and focuses on understanding and prevention. The discussion about euthanasia almost invariably concerns the plight of the chronically ill and elderly or those suffering painful and incurable illness, and is more focused on whether euthanasia should be legally permitted.

The debate on euthanasia, often touching on suicide, is rightly being tackled vigorously by the press, which should not be constrained. As an aid to the media, the Ministry of Health booklet *Suicide and the Media* has published guidelines that are mostly negative, and include: never report "how-to" descriptions of suicide; avoid the word "suicide" in the headline; avoid placing the story on the front page. But recommendations to the news media in a Ministry of Health booklet have no force as prescriptive rules for running stories.

The guidelines are essentially thoughtful suggestions that are presented as strongly worded advisories from the Ministry. If a publication fails to observe them, that cannot be grounds on which the Press Council upholds a complaint. In its publication on this subject the Ministry seems to avoid mention of the Coroners Act 1988 that is now plainly outdated and in need of urgent revision.

In any story, and this includes stories about suicide and euthanasia, publications should be guided by the general professional and ethical standards required of journalists and as embodied, for example, in the Press Council's Statement of Principles. At the same time, while supporting the benefits of publicity and greater openness in the reporting of suicide and attendant issues, the Press Council reminds editors of the utmost responsibility to readers for recognising that such issues are complex.

They would be helped by an urgent conclusion to the review of the Coroners Act 1988.

The Press Council: Is There a Measure of Effectiveness?

The Press Council has set for itself some lofty roles: adjudication of disputes; protection of the right of freedom of the press; upholding the standards of the print media in New Zealand.

By what criteria should its performance be judged and evaluated? How should the Council assess its own outcomes in order to improve its effectiveness in fulfilling its responsibilities?

Some analysts over the past year or so have suggested that in several ways and in various degrees the Council is falling short: that the record suggests it is insufficiently exigent in monitoring the performance of the print media and that it operates to insufficiently precise criteria in defining the public interest and establishing ethical standards in relation to the roles of the press. This latter issue is dealt with under the subject "The NZPC Constitution and Statement of Principles".

The Council makes no claims to infallibility. Its adjudications turn, often enough, on fine points of ethical judgment. Individual members often find themselves at odds with their colleagues and in need of persuasion to reach a consensus. Very occasionally some may insist on dissenting from a majority decision. We on the Press Council regard this as a healthy outward manifestation of vigorous debate.

The Press Council should not set out to do the work of editors. They must determine the ethical standards by which a newspaper will operate and issue rules of conduct if necessary.

The Press Council adjudicates on the complaints which come before it on the basis of broad principles, especially to do with fairness, balance and accuracy. By publishing its adjudications in the Annual Reports it is hoped to build up a body, as it were, of "case law". The Annual Report is a journal of record. As such it is put forward as a guide to which journalists, public relations officers, students and others involved with the print media will, hopefully, refer for interpretation of the sorts of issues they will face. This is the basis on which the Press Council hopes to be judged.

It was suggested in a major opinion piece by one critic that a Press Council that upheld only one complaint in the 2001 year and part upheld only three (out of a total of 47) cannot be doing its job and must be too "soft" on the media. There are two points to be made here. First, it would perhaps have been a tad more balanced to evaluate performance over the longer term, rather than to take one year's outcome as a measure of effectiveness. For example, the 1999 Annual Report cites nine upholds, out of a total of 47 complaints, while in another five cases part of the complaint was upheld. In 2000, 45 complaints were dealt with; nine were upheld, nine were partly upheld. This Annual Report (2002) notes that of 48 complaints, eight were upheld and two part upheld; one complaint was declined; a majority decision not to uphold one complaint caused several members to ask that their dissent be recorded and it was

published as a dissent (see Case No 862). On an average then, over the four years from 1999 to 2002, 24.5 per cent of complaints, or almost one in four, were upheld or part upheld.

Second, as in all adjudicatory bodies, outcomes will largely depend on the kinds of cases presented for decision. It would be improper to determine the effectiveness of the criminal courts merely on a count-back of the number of guilty and not guilty decisions. It is necessary to delve more deeply, to assess the decisions reached against the nature of the issues. In the 2001 year, taken as the benchmark for criticism of the Press Council's performance, many complaints – 16 out of 47 – were to do with ways in which editors had dealt with Letters to the Editor. Many complainants naturally feel aggrieved when their letter is either not published or abridged or otherwise not treated to their liking. The Press Council, however, has consistently taken the view that an editor must be free to arrange editorial pages, including the Letters to the Editor columns, to their wishes. This section of the newspaper is the editor's responsibility, pure and simple. The Council will accordingly be unlikely to uphold complaints in this area. Where a large proportion of complaints fall under this heading, as in 2001, the overall pattern will be skewed in favour of "Not Uphold" adjudications. Some press councils elsewhere in the world will not entertain a complaint about non-publication of a Letter to the Editor.

No doubt the Press Council doesn't always get it right, and is occasionally inconsistent in its adjudications. But the Council does not aspire to establish subjective rules and criteria by which to assess or guide the press or the public. Rather it views its role as one that deals with the issues on their merits, and as they arise, conscious of an inevitable ebb and flow in the significance to be attached to the various criteria on which it must base its judgments.

It is important to remember too that the Council has other roles and responsibilities. These include vigilance about possible threats to infringe the freedom of the press. The Chairman has made representations against recent proposals by the government to extend the law of libel at election time and to establish a degree of protection for politicians by abridging the "qualified protection" principle that the Courts have traditionally extended to journalists. These ideas have not progressed in the face of opposition from the Press Council and a number of others. The Council is also especially concerned about talk from time to time on the subject of establishing a government-appointed "one-stop shop" for hearing all complaints against the media, print and broadcasting. Such a concept would be at variance with the principle of self-regulation of a free press independent of government intervention. The Press Council has expressed its opposition.

In general the Council is content to deal with the issues as they arise. It is sceptical about claims that there must be fixed and firm criteria by which its performance can be evaluated. It would claim that case histories establish precedents in this field, as in the law itself. Perhaps the last word is with Robert Louis Stevenson: "To travel hopefully is a better thing than to arrive, and the true success is to labour."

The Press Council at Work in 2002

Most of New Zealand life was there in the complaints that came before the Press Council for resolution in 2002. For example, a Cabinet Minister with standing equal to that of the person writing a letter to the local community newspaper, local body councillors, school teachers, interested citizens and the sad families facing bereavement all appealed to the Press Council in the year under review. Equally varied were the kinds of media, from metropolitan newspaper to giveaway tabloid and a retail magazine – all forms of publication fell within the ambit of the Press Council's complaints resolution.

And the topics – the Press Council was told a newspaper misrepresented the character of Waitakere City (Case Number 875), that an Auckland headline "Osama boasts 'We did it' in chilling video" was not accurate (Case Number 876), that the photo of a dead man in Christchurch was offensive (Case Number 883) and that a protected witness wrongly had his photo taken outside the Court in Wellington (Case Number 893) – refer to cases printed later in this report, or on the Press Council website, www.presscouncil.org.nz.

A common complaint was that the press had sacrificed accuracy, balance or fairness, for example in Hawke's Bay in comments on the teachers' pay dispute (Case Number 898), in Canterbury on an environmental story (Case Number 880), in Northland in an editorial on the Regional Council (Case Number 887), in Masterton on local body affairs (Case Number 873), in Christchurch on an immunisation report (Case Number 861) or in Invercargill in a story on the closure of a rest home (Case Number 874).

There was also a first case from a complainant who had read the story in question on the publication's website (Case Number 866).

The Press Council by no means agreed with all the claims of complainants, but the supporting material and the explanations from editors were examined in detail – sometimes in serious detail for submissions that ran to great length in order to impress the gravity of the case on the Council. Equally weighed were complaints that nonetheless had a touch of humour to them – full consideration was given both to the reader who objected to a Footrot Flats cartoon being risqué, which Press Council members thought somewhat a stretch of the imagination (Case Number 904), and to the reader who objected to the photo of a dead possum-throwing contest (Case Number 895), although the editor added to the 1080 poison debate with the comment that hunting possums was better.

Among the significant issues raised as topics in the course of complaints were the use of embargoes, the development of a fast-track committee process by the Press Council, the highlighting of the problems with Rule 2B6 of the "Guidelines And Voluntary Code Of Conduct For Expanded Media Coverage Of Court Proceedings" and an unusual legal analysis of a union complaint about behaviour towards a journalist.

Embargoes

A majority of the Press Council (six) did not uphold a complaint by Ruth Dyson, the Minister for Disability Issues, against *The Dominion* (Case Number: 862). The case was intensely debated by the Council and a dissenting opinion attached by the members who wanted to uphold. The Minister accused the newspaper of having broken an embargo on an announcement that the Kimberley Centre in Levin for the intellectually handicapped was to close. *The Dominion* said it did not breach the embargo because it compiled a story from information sourced independently of Ms Dyson.

The Minister argued that "embargoes are agreed upon by convention because it is well recognised that valid embargoes may benefit all parties including, most importantly, the public" and this is broadly supported by the Press Council.

Although, as the Press Council acknowledges, this form of restraint on the freedom of the press can obviously be misused by agencies or officials seeking to advance special agendas, it is useful for publications to have time to prepare their own story for an agreed release date on the basis of embargoed information.

In earlier cases The Press Council has been strict in its support of the embargo. In 1979, when the Union Steamship Company complained about three newspapers publishing embargoed news before it had a chance to inform all trade union employees, governments and the shippers affected, the Press Council asked the Newspaper Proprietors' Association to remind editors of the importance of release times being observed.

In 1985, the council also agreed with the then Postmaster-General Jonathan Hunt that embargoes on material such as is released by a Minister of the Crown were a long-standing practice, and newspapers could reasonably be expected to adhere to them.

In 1999, in the case of the Dairy Workers Union against the *Waikato Times,* the Press Council upheld a complaint against the newspaper, which deliberately discarded the embargo and used the information.

Those who supply embargoed statements to the media have an expectation that the media will abide by the convention of the embargo, giving them time to organise their affairs to coincide with the timing of the release. If made public earlier, the information can cause embarrassment and harm to them. The essence of an embargo is that it is the fairest system to all participants.

At the same time, the Press Council recognises that experienced editors are reluctant to be fenced in by those who would manage the news, whether by carefully crafted public relations language, by delaying the release of information or by favouring sympathetic outlets.

The diligent pursuit of real news with the aim of being the first to break it is at the heart of good journalism, but simply discarding the embargo on a planned announcement is not a justifiable substitute.

Fast-Track Committee

The Press Council at its meeting of 24 June 2002 established a fast-track procedure for dealing with complaints arising out of the general election. This was on the grounds that a decision of the Press Council weeks after an election, particularly when a story about a candidate in that election might have an adverse effect, is of little use to a complainant. The complaint (Case Number 889) by Robert Welch against the *Waikato Times* fell squarely within that requirement of one that needed to be dealt with on the fast track.

Mr Welch complained about a column with off-beat, humorous items from the election campaign, which referred to postcards distributed by Dianne Yates, the Labour candidate for Hamilton East, and commented: "Nice sentiment but slightly undermined by the accompanying picture of Ms Yates relaxing with a glass of wine." The panel of election snippets was headed bluntly "Yates undoes her work when she wines". Mr Welch, chairman of the Hamilton East Labour Electorate Committee, complained that "the headline and text suggests that Dianne Yates … drinks alcohol (specifically wine) to the extent that it affects her work." He says he has known Dianne Yates for several years and that she is extremely careful and considerate in her drinking on social occasions, and was drinking orange juice.

It was impossible to tell from the photograph on the election postcards what was in the glass and the complaint was upheld on the grounds that such a potentially damaging allegation could not be passed off as lighthearted humour in the heightened sensitivity of a political campaign.

The time from initial complaint to resolution was a matter of one week. The fast-track committee remains as a process that the Press Council can invoke when needed.

Rule 2B6 of the "Guidelines And Voluntary Code Of Conduct For Expanded Media Coverage Of Court Proceedings"

In the moves by Courts in recent times to be more open to media coverage, some dilemmas have arisen when witnesses are protected from being photographed. This dilemma became clear when Craig Lundy complained against The Dominion (Case Number 893).

Mr Lundy was a witness at the trial for murder of Mark Edward Lundy, which took place at Palmerston North High Court commencing February 2002. Craig Lundy had applied for and been granted by the trial judge what is conveniently called B6 protection against publication of any material identifying him by way of pictorial or voice means.

Rule 2B6(i) of the "Guidelines And Voluntary Code Of Conduct For Expanded Media Coverage Of Court Proceedings" states: "Any witness who conveys to the Judge prior objection to being identified shall have their identification (whether pictorially or by voice) protected." In the notes headed Voluntary Code of Conduct under 2 is the following: "There are likely to be some media organisations who decide not to take part in in-court coverage and who will therefore be gathering news material in the

conventional way. In that case the Guidelines do not apply to that news organisation."

The B6 protection also extends to witnesses, where applicable, out of the courtroom, but as already stated the guidelines are drafted so that they apply to only those who apply come within them.

When the complainant gave evidence, he asked for and was granted by the trial judge B6 protection. One readily understands that a witness from the public who is granted this would understand that all media are thus bound. But not so, as only those who made the application are bound. In this case The Dominion made no such application.

The complaint against *The Dominion* was not upheld, but the Press Council expressed its sympathy for the complainant and reiterated its view that it is up to the Media in Courts Committee to remedy the anomalous situation that has arisen.

Case Number 885 Andrew Little and The New Zealand Engineering Printing & Manufacturing Union

The NZ Amalgamated Engineering Printing & Manufacturing Union (the Union) lodged a complaint with the Press Council alleging unethical journalistic practice on the part of The New Zealand Herald newspaper. At that stage the Council accepted it because an actual dispute existed between the parties but the Council did not issue an adjudication and formally declined jurisdiction.

While the detail at issue concerned the alleged use of a reporter's notebook, at some point after the complaint to the Press Council the case by the newspaper against the Union and the employee was abandoned. While the Union did not withdraw its complaint to the Press Council, the Employment Relations Authority was not going to hear the case for it had been discontinued.

At that point, the Press Council, with the benefit of a retired High Court judge as its chairperson, issued an unusual analysis of the situation:

"Any decision by the Press Council would at best be an opinion and not a decision of the Press Council. Furthermore it could have a possible deleterious influence on other similar but not exact situations in the future.

"Ordinary courts decline to give a decision of academic interest only. In the courts it is sometimes argued that a court's opinion (for example on a case that has been settled by the parties) on a certain set of facts might act as a guide for future conduct to the parties and others, but wisely the courts resist that as a potentially dangerous precedent.

"In law it is known as the doctrine of futility and mootness.

"When a dispute between parties ceases to exist, for any number of reasons, the proper course is to leave it extinct and not to try to use it for any supposed benefit that might result from an opinion of a complaint resolution body. For the foregoing reason the Press Council formally declines jurisdiction."

Press Council FAQs (Frequently Asked Questions)

Isn't the Press Council a rubber stamp for the industry, allowing newspapers to do what they want?

No. Even though the Press Council is entirely funded by the industry in an exemplary model of self-regulation, the public members are in a majority on the Press Council. All complaints are carefully examined, using as a benchmark the ethical practices that are outlined in the preamble of the Press Council's Statement of Principles and in the principles themselves. Both industry and public members refer to this independent set of standards when assessing complaints, and use as a practical yardstick by which to apply these standards, service to the public.

Does the Press Council in its decisions usually divide down the middle between members of the public (six, including the chairman) and members of the press (five)?

No. Intelligence, a shrewd sense of everyday reality and a deal of commonsense are the requirements for membership of the Press Council, not stereotyped thinking. There is no compartmentalised thinking by the journalists in favour of the press, or members of the public for John and Jean Complainant. In fact sometimes the opposite - public members can be most vocal and realistic as readers in their support for freedom of the press to publish what they do, and journalists can be quite scathing of their colleagues where less-than-professional practices are uncovered.

Is there ever a vote on whether a complaint is upheld?

Occasionally, but very rarely. There have been two votes leading to split decisions in the past four years. The complaints were not upheld, but a minority felt intensely enough about their point of view to vote for a dissenting opinion, which was published with the adjudication. These were Case Number 768, concerning items of sexist humour in the *Northland Age* (Annual Report 1999) and Case Number 862, where the Minister for Disability Issues, Ruth Dyson, complained that *The Dominion* had broken an embargo (Annual Report 2002). In each case, the minority would have upheld the complaint. These dissents are healthy, and indicate some of the Council members will go down to the wire.

Apart from these examples in recent years, decisions are reached by consensus and discussion occurs across the board. When Council members disagree with aspects of the final decision, their opinions can be incorporated as qualifying comment within the final adjudication.

How are members appointed to the Press Council?

The membership of council is determined by the Constitution. On the industry side, the constituent bodies of the Press Council appoint five members: the Newspaper Publishers Association (NPA) two, the Engineering, Printing and Manufacturing Union (EPMU) two and the Magazine Publishers' Association one. The six members

of the public come from applicants who answer public advertisements and are confirmed by an appointments panel comprising a nominee of the NPA, a nominee of the EPMU, the Chief Ombudsman and the current chairperson the Press Council. Ordinary members are appointed for four years, renewable for one term, the Chairperson for five years, with reappointment by agreement.

Address given by Rt. Hon. Jonathan Hunt

The Press Council was delighted on 24 June 2002 to have as its after-meeting luncheon guest the Rt. Hon. Jonathan Hunt, Speaker of the House of Representatives. Printed hereafter is his address to the Council. The observations of such a long-serving and experienced parliamentarian as Mr Hunt we think are of sufficient interest to record his remarks in our annual report:

I would like to take the time today to reflect on changes in the press gallery and the way Parliament is reported since I entered Parliament in 1966.

These changes have occurred in the context of political and economic changes within Parliament, the country and the media industry.

Back then Parliament met for less than six months of the year and during that time journalists were required to work very hard covering the House in session. When the House was not sitting, the Government information machine slowed down to two or three press releases a day.

There were no such things as press secretaries and now of course, every Minister has one, so the flow of information from the Government has increased dramatically.

Likewise, the Opposition expends more energy in securing media coverage than in times past, and of course there are now more Opposition parties, all wanting their views known. The stage is inevitably crowded with the advent of MMP. Political debate is more complex as a consequence.

Debates were covered in full when I entered Parliament with local MPs relying on their local newspapers to report extensively on their contribution to parliamentary debate, which gave their readers the chance to see what stance their local MP was taking on a particular issue.

Voters could follow the passage of legislation, the media coverage concentrated far more on the content of the debate inside the chamber and far less on the personalities of the individual politician.

In the place of this straight reporting of the activities of the House, we have seen the growth of political commentary.

While the political commentator provides a useful role in the political process, it must be informed commentary. This can only come from experience and close observation.

There is a world of difference between informed commentary and some of the random thoughts that are aired or printed in the guise of commentary today.

Offering up a series of disconnected thoughts about the day's political events without providing context is not commentary. What is required is understanding, experience … perspective.

There is now a much greater turnover in the gallery than there once was and while having people in the gallery for long periods of time does have its dangers – some

might say they become part of the "establishment" – it's important that political journalists, particularly those producing commentary, write their copy from an informed basis.

Press gallery journalists who have been around long enough develop intuitive skills from observing Parliament over a long period – they start to read the mood of the House.

It's no good sending a journalist for just one or two years, as the first year of a Government's term in office is quite different from its second or third. Journalists being groomed for promotion should be required to spend time in the gallery to gain first-hand experience. You can tell by reading editorials about politics which of the country's leader writers have had that experience.

Political news coverage has not been shielded from the demands for instant gratification, which has evolved largely since the rise of the electronic media.

There's no time to sit back, reflect and quietly work away at a story – it must be in tomorrow's paper, and it's the readers who suffer, as quite often the whole story is not told.

In all of these changes in the way the gallery operates, its most basic constitutional function, that is to report the proceedings of Parliament, is taking back the back seat in media coverage from Parliament.

As Geoffrey Palmer pointed put in his 1992 publication, *New Zealand's Constitution in Crisis*, most media output is driven by gallery judgments of what the salient political issues are, regardless of the location of the issues in the constitutional system. Sometimes those judgments are highly questionable: issues like ministerial trips overseas or MPs' salaries receive more attention than important legislation or new economic policies.

That observation may be 10 years old, but is just as relevant today, if not more so than it was then.

Unfortunately, another of Geoffrey Palmer's observations in that publication is also still relevant – that is concerning the coverage of select committees – which he described then as inadequate.

This is a resourcing matter for media management as the workload of these committees has grown enormously over the past decade, particularly since the introduction of MMP and changes to Standing Orders, which now mean they can conduct inquiries as well as consider legislation and estimates.

Select committees are where legislative detail is decided and often deliberations over very significant legislation go unreported. It is only when controversy erupts further down the track that the gallery takes an interest.

In recognition of the difficulties the daily media faces in covering all the business of select committees, the Office of The Clerk agreed to work in partnership with Radio New Zealand on its *Week in Politics* programme. I think this programme serves Radio New Zealand's listeners well. Very often the only reporter at a select committee hearing is from that programme.

Despite having an open-door policy with the press gallery, very few journalists take the opportunity to visit me to get background briefings on the business of the House.

They often use the phone instead of their legs.

My press officer (and yes I, too, have one these days) took a phone call from a press gallery journalist shortly after the September 11 when Parliament's security was stepped up to ask was it true that a bomb detector had been placed on the ground floor of the Beehive – she was puzzled by that as she had only just walked through there.

She asked if the reporter had seen it for herself. Oh, no, said the reporter. They had been called up by a member of the public about it! That journalist works in the same complex and hadn't bothered to wander down and take a look for themselves.

The changes in the press gallery have gone hand in hand with changes in media ownership and belt-tightening generally over the past couple of decades.

Some gallery offices have far fewer journalists in them than they once did and the amount of coverage from Parliament has dropped.

Few in the gallery seem to have the time to do the leg work on even the most basic stories.

SOPAC, (South Pacific News Agency) which provided Parliamentary coverage for provincial newspapers had five journalists – now it's down to one. Similarly, the Christchurch *Press* had four journalists and now there's one.

By concentrating less on covering Parliament and downsizing in the press gallery, newspapers have, I believe, lost that depth of knowledge that the old hands once had.

The result of this is that your readers, the general public, now has less information from which to draw its political views from – there's plenty of commentary, but not enough straight reporting of the facts.

This approach means often stories are missed because it is through the gathering of these facts that a picture emerges. What today may be inconsequential can have enormous relevance tomorrow.

It is also important for the Fourth Estate to remember that politicians have been elected by their fellow citizens to represent them in Parliament. There is a tendency for journalists these days to focus on the personality rather than the issue. Some see at is their mission to discredit politicians over personal matters, not their performance as Members of Parliament.

The media today, especially in election campaigns, complains that the politicians are blow-dried and air-brushed with canned statements .. yet when any of them stumble in a statement, miss their footing in even the most minor way, it becomes a national story. It's little wonder that MPs feel the need to speak from scripted sound bites.

The role of the press gallery in a democracy comes with great responsibility to inform the public in an accurate and fair manner.

Too often there is a tendency for the media to focus on their rights rather than their responsibilities.

What is required is a balance of the two.

A participatory democracy requires that its citizens are fairly and honestly informed so that they understand the issues as they emerge and can make an informed decision later at the ballot box.

Number of Adjudications Steady

Of the 87 complaints received in 2002, 48 proceeded to adjudication. This compares with 47 in 2001. Of these eight were upheld, two part upheld, one not upheld with dissent and one declined.

The complaint that brought the dissenting adjudication concerned an embargo put in place by Ruth Dyson, Minister for Disability Issues, and involved the public announcement of the closure of the Kimberly Centre in Levin. The adjudication and the dissent are published in this report, see Case No 862.

In an unusual case the Council declined jurisdiction in the complaint of Andrew Little and the NZ Amalgamated Engineering, Printing and Manufacturing Union against *The New Zealand Herald.* The reasons are set out in the finding under Case no. 885.

Another unusual complaint was that of Nicky Cassels, publisher of a retail magazine CounterAction, against a competing magazine NZRetail. This broke new jurisdictional ground for the Press Council and, with the co-operation of both parties in the process, the complaint was considered and an adjudication issued. See Case No 871.

Of the complaints considered this year 36 were against daily newspapers, eight against communities, one against *The Sunday Star-Times*, one against *National Business Review*, one against *Rural News* and the previously mentioned complaint against *NZRetail*.

Most complaints going to adjudication are considered by the full Council. However, on occasions, there may be a complaint against a newspaper for whom a Council member works. On these occasions the Council member takes no part in the discussion on the complaint. Likewise occasionally a Council member declares a personal interest in a complaint and leaves the meeting while that complaint is under discussion.

While meetings of the Press Council are not open to the public complainants can, if they wish, apply to present their claims in person. Two complainants took this opportunity in 2002.

The Statistics

	2000	2001	2002
Total Complaints	75	106	87
Adjudications	45	47	48
Upheld	9	1	8
Part Upheld	9	3	2
Not Upheld with Dissent	-	-	1
Declined	-	-	1
Mediated/Resolved	-	1	3
Withdrawn	-	3	1
Withdrawn at a late stage	8	2	1
Not followed through	13	18	16
Out of time	1	5	2
Not accepted	1	4	3
Outside jurisdiction	1	9	3
In action at end of year	7	17	10

Use of the Statement of Principles

As part of the review of the Statement of Principles carried out this year some analysis of the use of the Statement of Principles was carried out.

Complaints received in 2000 and in 2002 were checked to ascertain whether any, and if so which, principles had been cited by the complainants as being breached. There were some complaints for which no particular principle applied, for instance complaints on suicide reporting, name suppression and some ethical issues.

However, all those complaints where Press Council principles could have been or were cited were compared for the two years. In 2000 42 per cent of complainants cited the principles. This increased to 63 per cent in 2002.

The following table sets out incidence of use by complainants of the various principles:

		2000	2002
1.	Accuracy	10	21
2.	Corrections	1	9
3.	Privacy	5	6
4.	Confidentiality	-	-
5.	Children and Young People	4	-
6.	Comment and Fact	6	8
7.	Advocacy	-	-
8.	Discrimination	2	4
9.	Subterfuge	2	2
10.	Headlines and Captions	3	7
11.	Photographs	3	2
12.	Letters	1	-

Adjudications 2002

Pricked by a dilemma – The immunisation debate – Case 861

The Press Council has not upheld a complaint by Dr Paul Corwin of Christchurch against an article on immunisation that appeared in *The Press* on 15 September 2001. The complaint is directed specifically at two paragraphs dealing with the views of a Christchurch GP, Dr Dave Ritchie, who had changed his mind in the late 1980s about the value of mass vaccination. The first paragraph on Dr Ritchie reads:

> He says he was amazed at the amount of literature questioning the procedures and even the rationale of immunisation. Since then, he has devoted most of his time to studying the latest evidence on vaccination and is regarded as a world expert.

Dr Corwin considers that the second sentence, lacking any quotation marks, is to be read as a factual statement about the extent of Dr Ritchie's research and his international standing. Dr Corwin says be has found no evidence to support these claims, and believes that the reporter's failure to check them has accorded Dr Ritchie unwarranted credibility.

The other paragraph complained of comes a little later in the reporting of Dr Ritchie's views:

> He says in Sweden, whooping cough vaccinations were stopped in 1979. "Many children contracted the disease between the age of three and five years, which is the natural time to get whooping cough, but the country has not gone back to immunising because of the risk of side effects from the vaccine."

Dr Corwin complained that the reporter failed to point out that vaccinations were restarted as it was found that Sweden suffered a catastrophic number of cases of whooping cough. To that extent Dr Ritchie's claim " the country has not gone back to immunising" is wrong.

The complainant said that insufficient background research had been done in preparing the article, and that the net effect of the demonstrably false statements would lead any reader to conclude that immunisation was unjustified.

The editor of *The Press* said in reply that the article was an account of the immunisation debate rather than an investigation into the validity of the points its participants made, and that this was a common and acceptable type of journalism. He accepted that the first paragraph complained of could have made clearer that the newspaper was summarising Dr Ritchie's view of his own expertise. He also accepted that the article would have been better if the claim that Sweden still banned the vaccine had been checked. The editor said that the newspaper had been happy for Dr Corwin to put the record straight in his letter to the editor (published on 20 September). He strongly defended the article's overall balance in reporting differing views on immunisation, and believed that Dr Corwin was attaching undue weight to these particular items within it. He rejected Dr Corwin's assertion as to the net effect of the article on readers.

The Press Council considers that the article is well-constructed and well-balanced. Its tenor is accurately conveyed by its heading and standfirst:

> "Pricked by a dilemma – The Ministry of Health is stepping up efforts to improve the rates of immunisation in New Zealand. Although many medical professionals back vaccinating our young, there are words of caution."

It presents information on the Ministry of Health policy (with a photo tied to part of the text), then the views of a practitioner who is a strong supporter of vaccination (with his photo), then the views of Dr Ritchie, and, finally, some comments from others.

Newspapers strive for total accuracy, but are not infallible. The editor was commendably frank in acknowledging the imperfections in the article, and was prompt in printing Dr Corwin's sharp letter pointing them out. The Press Council thinks that the failure to follow up the statement about Sweden and ascertain the current policy there was the more serious omission, but does not believe that these failings in an otherwise sound article would have had the drastic effect Dr Corwin attributes to them. They are not grave enough to require formal censure from the Press Council.

The complaint was not upheld.

Embargoed press release – Case 862

A majority of the Press Council (six) has not upheld a complaint by Ruth Dyson, the Minister for Disability Issues, against *The Dominion*. The case was intensely debated by the Council and a dissenting opinion is also attached.

The Minister accused the newspaper of having broken an embargo on an announcement that the Kimberley Centre in Levin for the intellectually handicapped was to close.

The Dominion said it did not breach the embargo because it compiled a story from information sourced independently of Ruth Dyson.

The Minister issued a press statement at 6.30 am on 4 September, a Tuesday. She imposed an embargo on the release of the statement until noon the next day on the basis that it would take all that time to inform the 375 residents and their families and the 379 staff.

In the information sent to news organisations, the Minister included a timetable of the briefing process and the reasons for such a long embargo. "My primary concern throughout the process was to uphold the rights of residents, staff and families to hear about the decision to close Kimberley privately in an appropriate manner, rather than through the media," she told the Press Council.

The editor of *The Dominion*, Richard Long, telephoned Ruth Dyson, on Tuesday night to tell her the newspaper would be publishing a story the following day, a story that had been compiled by material gathered independently of the Minister's material.

Ruth Dyson said it was likely that the newspaper's source was a person who was aware of the embargo. All embargoes could be breached on such grounds. "Embargoes are agreed upon by convention because it is well recognised that valid embargoes may benefit all parties including, most importantly, the public.''

She believed *The Dominion*'s actions were "simply to gain advantage over its competitors". The fact that every other news organisation had adhered to the embargo showed up *The Dominion*'s unreasonable behaviour.

Ruth Dyson believes that the news editor, Barrie Swift, received her press release and used it to confirm a tip-off the newspaper received on closure and to assign the story.

Mr Swift said *The Dominion* had known the Minister's decision had been taken some time earlier but had not reported it on the grounds of compassion. It had decided to run with the story at the point of notification.

Mr Swift says that even if the embargoed Dyson material had not been delivered, he would have insisted that the reporter, Lindsay Birnie, continue work on the story because of the tip-off she had received. The reporter had arrived at work that morning saying she had received a telephone call before work informing her that the Minister had begun a process of notification about the closure of Kimberley.

Mr Swift said the reporter had previously set up a series of affected people to contact once notifications had begun. After she had told him the notifications had begun, he told her had received an embargoed statement from the Minister. But the press release was held on the chief reporter's desk, together with an unopened courier parcel containing a report on the closure delivered later that day. None of that material was used. Ruth Dyson accuses the reporter of being unethical for not telling the people she contacted for comment that the minister's decision was subject to an embargo.

The Press Council has been firm in its support of the embargo. Most recently, in 1999 it upheld a complaint against the *Waikato Times* for breaching an embargoed statement by the Dairy Workers Union. The union had said it would recommend that its members accept a nil wage increase in pay negotiations that were about to get under way. In that case the editor argued that the press release had not been invited and that there were risks in sending it. The Press Council did not accept that argument – and still does not – unless the conditions set are patently unreasonable.

This case is different and poses greater difficulties when weighing each side's rights. The Council maintains its strong support for embargoes but each case must examined on its merits.

The Council accepts that the newspaper received its information about the closure independently of the Minister's material. It is not clear how the newspaper's informant came to be informed but that does not alter the essential facts.

It could be argued the newspaper should still have co-operated with the spirit of the embargo. That may have been a more sensitive path to follow in this case. The

closure of the Kimberley Centre, while long expected, was an emotive issue that required careful handling.

But the newspaper was within its rights to pursue and publish a story using material sourced outside of an embargo.

There is a longstanding convention in the media that a journalist who receives information about a story, which is subsequently overtaken by an embargo, should be free to publish. A majority of the Council would be reluctant to go against that convention.

Adding to the weight of the newspaper's case was the length of the embargo and the number of people involved.

The longer the embargo, the more likely information subject to it becomes a publicly known fact. It is likely that by the time the embargo expired, several hundred if not thousands of people would have known about an important news story in the region, placing the media in an invidious position.

The Council remains of the view that an embargo, properly used, is an important aspect of the information business that should be respected by all parties. Embargoes can be very useful in allowing the media to have advance notice of complex reports and decisions. The convention should be used carefully to avoid making the media an accomplice in managing difficult political announcements and should never be used to achieve a retrospective news blackout on matters of public interest.

In accordance with the majority opinion the complaint is not upheld.

•Dissenting adjudication

Four members – Sir John Jeffries (chairman), Sandra Goodchild, Stuart Johnston, Denis McLean – were in favour of upholding the complaint. In this case, a very fragile group of people and their highly concerned friends and relations were about to be subjected to a dramatic change in their circumstances. The Minister imposed an embargo so that all of these persons, who would be affected by a decision to close the Kimberley Centre, should have at the very least the courtesy of prior advice before the news broke in public. The Minister's concerns were understandable and the rationale for her approach to the announcement was entirely proper.

Media were asked to accept a relatively long delay (some 30 hours) between issuance of the notice of the embargo and release of the news item at noon the following day. The timing was determined by calculations as to mail and courier delivery times. These were circumstances beyond the Minister's control and, again no exception could be taken to the approach she adopted as a result.

The Dominion did not contest the imposition of the embargo and made no secret of their knowledge of it. The news editor stated that he became aware that release of the news of closure of the centre was subject to an embargo at 8.50am on 4 September and that he told the reporter that she should go ahead with preparation of her story when she arrived at work at 10am. The newspaper maintained it did not break the embargo because the reporter had heard – before getting to work (that is, before she

knew of the embargo) and from an "independent source" – that notifications of the Minister's decision were going out. Because they had received a tip-off that the process of notification had begun, they believed they could proceed to publication next morning, despite the embargo. In the opinion of the minority this was an error of judgment. The central timeline consideration was not the beginning of the notification process, but its completion.

The Dominion also contends that they were justified in proceeding regardless of the embargo, because the reporter was "well advanced" with a story about what was widely understood to be the imminent closure of the Kimberley Centre before the embargo was imposed. The Minister contests this rationale, suggesting that the reporter had probably done little more than compile a list of contacts from whom she could get information once it became known that the closure decision had been taken. *The Dominion*, the Minister believes, was able to confirm the reporter's tip-off by reference to the official announcement, which her office had distributed to the newspaper before the reporter came to work. The Minister accordingly claims that the newspaper was in breach of the embargo because not only the decision to proceed to publication, but the story itself, relied on the information she had provided about the imposition of an embargo.

The point here is again one of judgment. Not all embargoes are equal. This form of restraint on the freedom of the press can obviously be misused by agencies or officials seeking to advance special agendas. There is absolutely no requirement to accept without question the strictures of Ministers of the Crown or other providers of releases. Such considerations, however, simply did not arise in this case. It would accordingly have been prudent to weigh up more carefully the understandable wish, on the part of journalists everywhere, to proceed to publication with a story already in train against the humane considerations that lay behind the decision to impose the embargo. As the Minister has pointed out, newspapers could easily find grounds for breaking an embargo if the line of argument is accepted that a story already in preparation should be automatically get the green light to proceed. There are circumstances when "publish and be damned" is the proper approach. This was not one of them.

It is relevant to this particular case that, apart from *The Dominion*, all media, print and broadcasting, in the country apparently accepted the Minister's notice. The story was plainly very newsworthy in the district. It could be argued that perhaps no other newspapers had a story so well advanced. Equally of course it could be suggested that all other media had accepted the Minister's rationale for the embargo. Editorial staff of *The Dominion* have said that in pursuit of what they regarded as the higher priority – a right to publish a story already in course of preparation and confirmed from another source – they ignored the information from the Minister's office which, inter alia gave the rationale for the embargo. As a result the newspaper, to an extent, allowed itself to fly blind. There were good reasons for the Minister's request. *The Dominion* may have denied itself the opportunity fully to evaluate them.

In earlier decisions relating to embargoes the Press Council has emphasised that the central consideration for editors to address is the reasons given for imposing the

embargo, i.e. the context and circumstances involved in the request that publication not occur before a stated time. It is contended that there is a convention justifying publication where a story is in course of preparation when the request for the embargo is received. If such a convention exists it is unreasonable that it should automatically override careful consideration of the circumstances surrounding the request for the embargo. Editors should not be able to absolve themselves from their wider responsibilities.

The minority would uphold the complaint.

Mr Alan Samson, a member of *The Dominion* staff, took no part in the consideration of this complaint.

Farmers feud with Fish & Game head – Case 863

Fish & Game New Zealand (a Crown entity) and Mr Bryce Johnson complained to the Press Council against a critical article published in *Rural News* about Bryce Johnson, a director of F&G, in his personal capacity as owner of a 100-acre property at Mahana, near Nelson. Without doubt there was a strong element of retaliation by *Rural News* because of the trenchant criticism Mr Johnson, as spokesperson for F&G, had publicly levelled against farmers who fail to protect from animal pollution watercourses flowing through their properties.

The circumstances that gave rise to the complaint are large in their compass, particularly concerning such a subject as animal pollution of inland waterways, and do not lend themselves easily to straightforward answers. Nevertheless the Council does not uphold the complaint for reasons set out hereafter.

Mr Johnson is a director of F&G and in that capacity was the public spokesperson on the issue of lowland river water pollution. In the course of the campaign to keep waterways unpolluted some fairly robust and emotive language was used to gain maximum impact. Descriptions such as “dirty farming ” and “dairy industry pollution” had been used. The contest represents a classic case of two groups with firmly held, competing interests appealing to the public through the media for acceptance of their respective viewpoints.

Mr Johnson, and those writing on his behalf, has been at pains to point out no single farmer had been identified in their campaign as at fault, whereas the offending article attacked Mr Johnson personally. F&G have chosen to follow the safer course of referring to irresponsible farmers and other such generalised descriptions. To adopt any other tactic might have led them into deeper trouble that need not be explored here. However, the farmers of New Zealand and their industry newspaper have not regarded this as ameliorating the situation for them as all farmers, good and bad, are embraced equally under the generalised attack. The exact extent of the campaign is not clear, but, Mr Johnson as spokesperson, has made the farmers the target of much unwanted and critical publicity.

A response of *Rural News* was to publish a by-lined personal and critical article on 17 September 2001 of Mr Johnson’s farming practices on a property partly owned

by him at Mahana. The article had the headline "Dairy critic's antics muddy the waters", and a subsidiary headline on another page continuing the story – "Hypocritical critic". Specific mention was made in the complaint about the headlines but the Council decision on the article embraces the headlines.

The opening 2 paragraphs of the front-page article sufficiently identify the content and tone of the item:

> "The pre-eminent figure at Fish and Game is embroiled in a protracted dispute with a local authority for failing to comply with resource consents.
>
> Fish and Game (F&G) has led the charge against farmers for not complying with the intent of the Resource Management Act."
>
> The article was reasonably long and detailed an alleged dispute among Mr Johnson, unidentified neighbours and Tasman District Council over non-compliance with consents granted under the Act to build a dam on the property. A District Council compliance officer (named) was quoted as saying non-compliance by Mr Johnson represents a "serious breach" of the RMA. Neighbours (unnamed) were reported as saying " the offending dam and another already on the property, are not fenced off from cattle and sheep that graze the farm– a practise (sic) Fish and Game insists should be made mandatory for all farmers." There were other allegations made and the article finished off with,
>
> "Neighbours spoken to by *Rural News* say they find the inconsistency between Johnson's public utterances and private actions 'breathtaking'. "

It cannot be denied that by headlines and article content *Rural News* published a strongly worded attack on Mr Johnson basing it on the apparent contradiction existing between his public criticisms of New Zealand farmers and his own farming practice. The article made no attempt to balance the reported comments of the compliance officer and neighbours. Mr Johnson was not interviewed (deliberately) and he was accordingly given no opportunity to defend himself in the article. This factor was a strong element in his complaint to the Press Council. *Rural News* was careful to confine its focus on Mr Johnson's conduct to those of farming practice and his alleged non-compliance with the RMA.

Following publication of the article Mr Johnson made lengthy and forceful complaints to the then editor of *Rural News,* details of which have been supplied to the Press Council as part of his formal complaint.

Rural News printed on 1 October 2001 a response of Mr Johnson in an article under the headline "Critic cries foul". He accused *Rural News* of overstating the problems he faced. He denied his property was a dry-stock farm but was an orchard and did concede a small number of sheep and a few cattle were on the property. He challenged the District Council's treatment of the problems as "non-compliance with consents" when the opinion of the council is "just one party involved in this". The Press Council regards that as a telling comment suggesting underlying areas of factual dispute which the complainant has done little to resolve by disclosing details of exactly

what the complaint was that the District Council had against him. It seems Mr Johnson prefers to characterise the District Council's complaints as "concluding requirements". It has been left to the Press Council to deduce that Mr Johnson was somehow, or in some fashion, in a condition of non-compliance but little further is revealed. Instead the complainant seeks to concentrate the attention of the Press Council on the personal nature of the article and the alleged factual errors contained therein, all of which he says amounts to material unfairness to him. Mr Johnson repeatedly claimed to be an absentee owner and objected to the article as inferring he "knowingly engaged in this behaviour". The Press Council does not believe this claim assists his case.

The newspaper holds to its right to have printed the article and the critical editorial on his conduct on his farm property and says that the criticisms are a valid response to the campaign of F&G spearheaded by him against the farming community. *Rural News* stands by its journalist and quoted sources in the article.

The criticism contained in the newspaper article did not precisely correspond with Mr Johnson's campaign for fencing of waterways on farms generally throughout New Zealand but taking a broad view there is enough to justify bringing to the public's attention his own discrepancies. Both cases are concerned with farm management and the implementation of the RMA. Mr Johnson possibly does have some grievances such as *Rural News* apparently choosing not to communicate with him about the contents of the article before publishing it, and for some errors. However, the newspaper may say neither does he clear with them his criticisms beforehand when he is on their case. This point is made in the editorial. The Council thinks it is a little naïve of Mr Johnson to say the newspaper, as a publisher, has a duty to be balanced and fair, an obligation, by inference he says does not lie on F&G as a lobby group with its public utterances. The answer to this is that these two bodies are engaged in a vigorous public debate on public problems and realistically one side cannot be restrained by a set of rules that may have application elsewhere. *Rural News* is unapologetically an industry newspaper that is an advocate for the farming community.

For the Council the deciding factor is freedom of expression notwithstanding the robustness and even confrontational nature of the debate. These are large public issues and a complaint resolution body should be cautious about intruding with its own criticisms of the parties' conduct. The proper course, the Council believes, is to let the parties slug it out in the public arena and let the interested people come to their own conclusions. The Council may entertain some doubt about some tactics employed on either side, but that is not dispositive – freedom of expression is.

The complaint was not upheld.

Rugby accommodation ruckus – Case 864

Mr Paul Harris complained about an article in the *Otago Daily Times* headlined "Booking knockback costly for rugby fans". The article published on 12 August 2001 following the Bledisloe Cup, reported Alf Sherman's tale of disappointment, when he and three friends went to Dunedin for the big match. The article described how the

friends' room at Leisure Lodge, booked the year before in November, was not available, and the high price they had to pay Paul Harris, an accommodation agent, for alternative accommodation.

The following day the paper printed some clarification from Peter Coppens, the manager of Leisure Lodge. Mr Coppens revealed that Alf Sherman had not booked accommodation the previous year but had merely put his name on a waiting list. The paper also included comment from Paul Harris. Mr Harris said Alf Sherman's party had made their choice with the benefit of a schedule of tariff options. This had been faxed to them some weeks earlier.

Mr Harris felt he had been shown in a bad light by the first article and the second, which whilst it set the record straight, should not have been necessary. The *ODT* should have checked the claims with him before publication.

The paper in its defence said it had attempted to contact Mr Harris by phone. It had logged a call to his number, which lasted 36 seconds. It had left him a message, on his answer machine, to contact its reporter. (Mr Harris denies receiving a message).

The New Zealand Press Council notes that both Leisure Lodge and Mr Harris were unfairly criticised in the first article. If the paper had contacted either person the first article could have given a balanced account of the matter.

In the event a 36-second call to an answer machine, which after playing a greeting and possibly positioning a tape may have allowed much less time for a comprehensive message, seems a token attempt at contact. Both Barnett Lodge where Mr Harris was and Leisure Lodge were likely to have duty staff available by phone for all but short periods during the evening. There could have been a further attempt to contact Mr Harris. Mr Coppens at Leisure Lodge could also have confirmed some detail.

The New Zealand Press Council does recognise the *ODT*'s immediate follow-up article reporting clarification from Mr Coppens and Mr Harris. However, this does not remove the need to make reasonable efforts to check facts before publication.

The complaint is upheld.

Cartoon of mayoral candidate disliked – Case 865

A candidate for the Wanganui mayoralty at last year's local body elections complained to the New Zealand Press Council about a reference to him in the *Wanganui Chronicle* last October 6.

Mr Ian Little is upset that in a front-page teaser beneath the masthead, encouraging readers to delve further into the paper, there is a cartoon of him alongside the words "Spoiled for choice – P2".

On page 2 of the paper is a by-lined article headed "Voters' night-mayor?", which is accompanied by eight cartoons of the candidates for the mayoralty drawn by former Wanganui cartoonist Jim Hubbard. Each cartoon is typical of its genre, and is accom-

panied by brief captions that touch lightly on the individual's best-known attributes. The drawings are quite benign.

Mr Little sought an explanation from the *Chronicle* as to why it used the sketch of him on page 1 to promote the article inside. Dissatisfied with the reply, he complained to the Press Council calling the drawing defamatory and slanderous. The phrase "Spoiled for choice" did not, he said, reappear in the article, which reinforced his case.

Chronicle editor John Maslin said the article's flippant tone was clear from the headline. The paper's chief sub-editor had chosen at random one of the eight cartoons to promote the story in the page 1 teaser boxes, and the accompanying phrase, "Spoiled for choice", was a reasonable summary of voters' position. The editor told the Press Council that no malice was intended and that the page 1 wording could not be taken as a slur on Mr Little personally.

The Press Council does agree. It said that voters had a right to expect that during an election campaign the cut and thrust of political debate, whether among candidates or in comments in the local paper, would be robust. Candidates had to expect that. The reference to Mr Little complained of, the Council said, was mild in tone.

The Council said it believed the reference to being spoiled for choice was a fair term to use in the context of voters facing a smorgasbord of eight candidates for the mayoralty. Most reasonable people would read it as referring merely to the breadth of choice on offer, not as a comment about one candidate in particular. Spoiled for choice usually means an excess or abundance of attractive choices.

The complaint is therefore not upheld.

Friction over fractal abacus – Case 866

Fiona Walls, formerly an adviser to Nelson primary schools on teaching mathematics, complained that an article in the weekend edition of *The Nelson Mail* on 24 November 2001 compromised her professional reputation and that the quality of the journalism was "highly questionable"; comments about the attitudes of educational professionals to children's learning, which she believed to be " bordering on the slanderous", went unchallenged; moreover, she contended, the piece provided "self-advertisement" for the promoters of a mathematical teaching device and failed to evaluate the product and the claims made on its behalf.

As a matter of interest this is the first complaint dealt with by the Council as one emanating from the complainant reading the said article via the Internet. At the time of publication Ms Walls was living in Vanuatu and read the article from the newspaper company's website.

The article in question gave extended coverage to the recriminations of a couple, living in Golden Bay, about negativity, and even obstruction, on the part of the educational establishment over the introduction of a mathematical education tool (named by them a fractal abacus), which the husband had invented and which together they

had promoted, at considerable personal cost, around the country. The underlying theme was the old story of individual battlers thwarted by an indifferent bureaucracy. As such it was an unvarnished human interest story with a local context. There was no attempt to analyse the issues in terms of the national debate about educational standards or recent reports about poor performance in mathematical learning or the effect of these things on government policies about joining "the knowledge wave". Nor was any effort made to evaluate current official doctrine on mathematics teaching at the primary level.

Ms Walls was mentioned in two sentences in a 1500-1600 word piece. The couple in question were reported as alleging that although the teachers at their local school in Collingwood had been interested (in introducing the device), they "did not do anything because of the negative reaction of the Nelson regional maths adviser, Fiona Walls. (Ms Walls has now left her position but has previously expressed reservations about the product.)"

The Nelson Mail reporter could not make contact with Ms Walls before his deadline. The editor subsequently justified the reference to her previously expressed reservations about this teaching tool by citing a report in the *Sunday News* of 23 September 2001 which, he said, the reporter had before him when he wrote the piece. The *Sunday News* quoted Ms Walls to the effect that the device did not fit the broad thrust of current policy on maths teaching. Ms Walls's more specific views about the merits or otherwise of the abacus and its potential for development and improvement were not covered.

This was unfortunate. It would undoubtedly have added balance and depth to the article to have outlined Ms Walls's views and/or those of other experts with experience of the full range of issues surrounding the teaching of mathematics at primary level and the techniques and instructional aids available. It must be noted, however, that the editor of *The Nelson Mail* tried hard to persuade Ms Walls herself to write a rejoinder to the 24 November article, which she declined; she considered the 1000 words offered would not be enough to cover the issues and, in any case, she had since left the district. This, too, was unfortunate in that Ms Walls denied herself the opportunity of putting the record to rights. Nevertheless, since Ms Walls's general position on this particular device was already known and on the record (and in tune with the general thrust of educational policy), the Press Council does not uphold this element of her complaint – to the effect that her professional reputation has been compromised.

The second element in this complaint concerns journalistic standards. In their statements to *The Nelson Mail,* the promoters of the abacus maintained that failure to accept their product could be attributed to the self-promotion of a "professional mafia" not interested in helping New Zealand children. The report had the comment that this was "strong stuff" but did not subject these and other similar assertions to critical analysis. The editor justified this approach: readers were left to judge the merits of such statements for themselves. The Press Council accepted this argument. Most readers would have seen the piece as no more than a report of the views of an especially

disenchanted pair of residents of the district. The editor also noted that the article did report a range of opinions about the abacus itself. Ms Walls, for her part, however, was concerned not only about the classroom usefulness of the abacus, but about wider issues – that the quality of education had been thrown into question and the work being done to develop a new numeracy programme had been mentioned only in passing. She claimed that it was the duty of a reporter to get both sides of a story. Her concerns reflect the understandable annoyance of a professional person that those actually grappling with the issues should not be getting a fair hearing. The Press Council, however, did not see the purpose behind this article as requiring this sort of treatment.

In correspondence with Ms Walls, the editor undertook to produce in-house a further article analysing the issues surrounding the teaching of mathematics in the district. That is to be commended. Where space is limited and staff thinly spread a serial approach to stories confronting large issues is entirely appropriate. In this way *The Nelson Mail* is to address this aspect of the complaint.

The complaint by Fiona Walls was not upheld.

Rating councillors' performances offends – Case 867

Councillor Eileen von Dadelszen, a Hawke's Bay Regional Councillor and deputy chairwoman, complained to the Press Council about three articles concerned with last year's local body elections published in *Hawke's Bay Today*, the local daily paper. Councillor von Dadelszen submitted a thoroughly prepared, well-argued written complaint and took the trouble to travel to Wellington and appear, at its meeting on 4 February 2002, before the Press Council in support of her complaint. For reasons set out hereafter the Council did not uphold her complaints.

In the lead-up to the 2001 local body elections, *Hawke's Bay Today* published an article on 11 September headed "How did they do?". The introduction, or standfirst, asked "How well have the current crop of Hawke's Bay regional councillors served their constituencies? *Hawke's Bay Today* reporter Tania McCauley reflects on the past term."

The article that followed was in the style of a report card, giving the Hawke's Bay Regional Council an overall rating of 8/10 (in the sub-heading to a separate introductory section), and individual councillors similar style of scores. Each of the nine councillors and the general manager was pictured in a small box which contained a descriptive and opinionated assessment of about 40-50 words.

A second article was headed "How our community representatives earned their money", and was published on 13 September. The newspaper ran a series of tables showing the meeting attendance, remuneration and meeting fees of councillors from the Hastings and Wairoa District Councils, Napier City Council and Hawke's Bay Regional Council.

The introduction said: "Community representation cost Hawke's Bay ratepayers hundreds of thousands of dollars in the past financial year. While council and com-

munity board members' remuneration is set by central government, what did our councillors do for their money? How many meetings did they attend? The councils supplied *Hawke's Bay Today* with the tables below."

A third article, in the form of a letter from the editor, was headed "*HB Today* contributing to voters' choice" and referred to the "ruckus" raised by the council report cards. The editor defended the articles on the grounds of freedom and opinion as part of the newspaper's promise to make the elections more interesting. He denied the newspaper had behaved disgracefully or interfered with the electoral process and in an unapologetic note said the paper intended to make the report cards a regular feature.

Councillor von Dadelszen, one of those mentioned in the reports, complained to the editor about the first article, saying that the headline and sub-headline did not accurately and fairly convey the substance of the report they were designed to cover, noting that while the article purported to assess "how well they served their constituencies" it was in fact about performance at monthly council meetings.

She felt the article should have referred to work done by councillors outside the meetings. Councillor von Dadelszen said she accepted freedom of expression and the right of the editor to use a "patently subjective" article. There were some lesser complaints such as the general manager of the council, by picture and report card, ranking equally with elected councillors, and mention of the complainant as having "a superior tone", the meaning of which she did not understand. The points are arguable but really a matter of choice for the editor.

Her criticism of the second article was that the headline and comments were not accurate and misled and misinformed by omission. She said the article as published provided inaccurate information by omitting to explain the meaning of the information provided, especially in relation to the many rules about the definitions of meetings, council committees, attendance provisions, attendance rates, speaking rights, and so on.

She thought the letter from the editor misled and misinformed and was intimidating, although the strongly expressed views were in a clearly labelled opinion piece that could be accepted, or not, by the readers.

The report card format, necessarily a subjective and summary assessment on the model of teachers' reports, may be controversial but is legitimate and not unusual in newspapers. The newspaper commendably published many letters, which offered all the arguments for and against this style of article, showing the effect of the newspaper's promise to make election coverage more interesting. Councillor von Dadelszen's own published contribution pointed out how much of the councillors' work had been omitted, and how the questions of "how councillors served their constituencies" or "how they earned their money" were inadequately addressed.

Councillor von Dadelszen's complaint to the Press Council reiterates her views, but the nub is the impression given by the headlines and the introductions that follow in the first article. The editor knew what he was doing. Councillor von Dadelszen

picks out the phrase from the Letter from the Editor article which said the report cards were an accurate or valid way of "finding how councillors performed at council meetings" (not "how they served their constituencies"). She also notes that, in a letter to her, the editor says the second article was "simply to show what each councillor costs ratepayers in fees claimed", which is a much more specific result than what councillors did "to earn their money".

The first headline "How did they do?" is perfectly acceptable for the report card that follows. The sub-editor's approach to the introduction ("… how well … councillors served their constituencies") could have been more pointed, but if council service includes the capable discharge of public meeting duties then this wording for the average reader would incorporate the performance ratings that followed. The many phrases relating to meetings in each "report" – "a listener not a talker", "pretty active in debates", "thinking before speaking", "a stickler for standing orders", "well versed in council procedure" – quickly establish the context of council meetings, which this article was about.

A reasonable reader going from headline to introduction to report cards assessing how councillors served at meetings should not have been misled. Newspapers carry out ongoing normal local body reporting about different council matters throughout the year; the topic and approach in this single report was within the ambit of a newspaper's varied brief.

In the second article, the context supplied by tables of meeting allowances and attendances, another normal newspaper approach, does not contradict the heading "How our community representatives earned their money". The introductory sentences, read together, are clear: " ... what did our councillors do for their money? How many meetings did they attend?". The article complained of was not a complete and detailed picture of a councillor's life, but earning money from meetings is an important public facet of it.

Reports in the news pages of the press are of necessity a snapshot of the day. They can be followed up, corrected, expanded, commented on by Letters to the Editor or developed in other articles where the editor deems it necessary. It is a counsel of perfection that a single newspaper article and its headline or introduction should carefully and exactly encompass the minutiae which council papers, reports or minutes of meetings can do in thousands of words. Newspapers have to share their quota of space and words among dozens of different subjects and stories in a much more compact and focused way.

Opinion piece questioned – Case 868

The Water Pressure Group complained about a column by *New Zealand Herald* columnist Brian Rudman.

For the following reasons the complaint was not upheld.

In his October "Rudman's City" piece, Mr Rudman discusses the long-standing differences between the water group and two Auckland City councillors, Penny Sefuiva

and Bruce Hucker. Believing the councillors had betrayed election promises – by one voting against, and one abstaining from, an amendment that would have disbanded local authority trading enterprise Metrowater – the group had erected critical billboards on the property of one of their members. The councillors were accused of "lying" and people were urged not to vote for them.

Disagreeing with the protesters' actions, Mr Rudman had written bluntly that their accusations were "wrong" and "defamatory".

There is much more to the saga, including a court action by the group attempting to overturn the results of the Avondale-Roskill ward's election. But the focus of the complaint to the Press Council is on Mr Rudman's perceived inaccuracies and lack of balance. Under the signature of spokeswoman Penny Bright, the water group argues that the signs were not defamatory – or why had the councillors not taken legal action?

In response the *Herald* editor-in-chief, Gavin Ellis, gives an explanation for the councillors' lack of action. He says they were reluctant to stifle free speech. He also says the councillors' anti, and abstaining, votes in relation to the amendment had been "strategic". He says Mr Rudman's column reflected the facts of the matter.

The water group devotes a significant part of its complaint to arguing the rights and wrongs of the water issues and of the billboards. But neither is a matter for consideration by this Council. What the group fails to demonstrate, is the opinions aired in a robust column breach standards of accuracy, fairness and balance. It should be noted that the balance of the *Herald*'s news and feature sections have not been questioned.

Readers of Mr Rudman's column would be very aware that they were being given opinion. It does not matter that some of that opinion was firm and disapproving of the water group's stance. The group clearly disagrees with what Mr Rudman says. But that is not a ground for stopping him – or the *Herald* – from publishing the opinion.

Miss Audrey Young and Messrs Terry Snow and Jim Eagles of Wilson and Horton took no part in the consideration of this complaint.

School ball report raises storm – Case 869

The New Zealand Press Council upheld a complaint made by Westlake Girls High School against a *New Zealand Herald Weekend*'s front page story in August 2001.

The headline announced "No same-sex sambas at this school ball". The introductory paragraph read "Girls at one of New Zealand's largest single-sex secondary schools have been told they cannot take female partners to the school ball unless they declare themselves lesbians." The third paragraph mentioned the requirement of a written note.

The reporter contacted the school principal, Alison Gernhoefer, who was reported as being adamant that neither she nor her staff had issued any such instruction. The school did have a policy of not allowing girls from other schools but Mrs Gernhoefer

explained that the main reason for this was to stop the event being dominated by girls. In her complaint Mrs Gernhoefer explained that the girls from the school were able to come with female partners from their own school and in fact about 60 of the girls did attend as a group from the school.

The newspaper article then went on to record third-party comments from the Human Rights Commission, Women's Affairs Minister and the Westlake Boys High School on the report that girls had to declare themselves lesbians before attendance at the ball with a same-sex partner. Those comments were made on the basis the condition said to have been imposed was correct, which it wasn't.

After the article had appeared Mrs Gernhoefer wrote a letter to the editor, which was published the following week. In it she responded that to suggest that students had to declare their sexual preference by writing a letter was absurd and defied belief. It would also be a clear breach of human rights. She also wrote separately to the editor asking him to print an apology, or retraction, but did not receive a reply.

In response to the complaint the *New Zealand Herald* editor did not accept that the article was inaccurate, unfair or unbalanced. The story said simply that pupils "had been told" they could not bring girls as partners to the ball unless they declared themselves lesbians. It did not say that the principal had said so, or that it was school's policy. The editor claimed that the issue was the barring of school children from inviting same-sex partners to the school ball.

The crux of the principal's complaint was the reported requirement that girls needed to have a letter stating that they were lesbians before they could ask a same-sex partner to the ball. The school rules did not allow girls from other schools to attend as partners. This was not disputed and, as the principal pointed out, other schools on the North Shore have similar rules. She also pointed out that the editor, in his responses to her complaint, had shifted his stance to defending the story on the grounds that it was dealing simply with the issue of students not being allowed to bring girls from outside the school as ball partners, whilst ignoring the sensational impact of a supposed condition, required in writing, of a declaration of sexual orientation.

In a follow up article a week later the *NZ Herald* quoted Education Minister Trevor Mallard's opposition to schools barring same-sex partners from senior balls. The *NZ Herald* stated again that "Westlake Girls High acknowledged that it did not allow 6th and 7th formers to bring other girls as their partners' despite the Principal making it quite clear to the reporter that girls could, and did, bring girl partners from their own school, or attend with a group of girls from the school.

The Press Council upheld the complaint on the grounds that the article published a statement in such a manner that a reader could be lead to reasonably believe that the school itself had told the girls they had to declare themselves lesbians. The *NZ Herald*'s response was that the story said simply that pupils "had been told"... However, in a school environment the phrase, "girls had been told" would naturally lead one to assume that the pupils had been told by someone in authority. The article was phrased in such a way as to give unwarranted weight to the anonymous unsubstantiated com-

ments from unidentified girls at the school.

Miss Audrey Young and Mr Jim Eagles took no part in the consideration of this complaint.

Apology saves newspaper – Case 870

This is a complaint by Robert Brace against an article and headline published by *The Evening Post* on 9 January 2002.

The story was about a young man who made a hoax emergency marine radio call that sparked a large-scale search of Lake Taupo.

Mr Brace's complaint is that the boy's school was mentioned in both the headline and the article itself. Mr Brace complains that the name of the school was irrelevant to the story.

Another reader wrote a letter to the editor with the same complaint. The editor's response was a clear acknowledgement of the paper's error. "*The Post* accepts that the reference to the school in this instance was unnecessary."

The editor of *The Evening Post* gave the school a written apology and issued a directive to staff pointing out that the naming of the school had been uncalled for and setting out guidelines aimed at avoiding a recurrence. Mr Brace and the principal of the school have asked that an apology be published in addition to the written apology.

The Evening Post is to be commended for acknowledging the error of judgment and taking preventive measures. The Press Council concurs with Mr Brace and the editor that mention of the school was irrelevant and unfair to the school.

Whether the editor publishes an apology is a matter for the editor. Thus far in the incident, the newspaper has dealt honourably with its error.

Owing to the steps already taken by *The Evening Post*, the Council does not uphold this complaint.

Ms Suzanne Carty, a staff member of *The Evening Post*, took no part in this Council adjudication.

Rival retail magazine complaint resolved not rejected – Case 871

NZ Retail is the magazine of the Retail Merchants Association of New Zealand.

In-house advertisements published in the magazine were the subject of a complaint to the Advertising Standards Complaints Board (ASCB) by Nicky Cassels.

The way in which the magazine described the complaint in a subsequent issue became the subject of a further complaint by Nicky Cassels, this time to the Press Council, which deals with editorial content.

She is the director of Adjust Media, which publishes a competing retail magazine,

CounterAction. She has previously sold advertising for *NZ Retail*.

Before addressing the Press Council complaint, it is necessary to outline a series of events related to the advertisement complaint:

- On 24 April 2001 the executive officer of the NZ Audit Bureau of Circulation, Hilary Souter, wrote to the managing editor of *NZ Retail*, Martin Craig, taking issue with in-house advertisements on its circulation and distribution that had appeared. She suggested the advertisements be reworded on the way it described itself and in the way it presented circulation figures.
- On 10 May the Advertising Standards Complaints Board advised *NZ Retail* that it was the subject of a complaint by Nicky Cassels over an in-house advertisement (presumed to be one of those also identified by the Audit Bureau of Circulation.)
- On 18 May the chief executive of the Retail Merchants Association, John Albertson, responded to the ASBC saying it had recently realised that the copy in the two advertisements "was not entirely correct" and they had been reworded for the June issue.
- On 25 June the chairman of the Advertising Standards Complaints Board, Laurie Cameron, issued a decision on the Cassels complaint – namely that as the advertisements had been reworded, the matter had been "resolved and could be regarded as settled". "As the principles of self-regulation had been fulfilled it would serve no further purpose to place the matter before the board," his decision said.

The September issue of NZ Retail ran the following brief statement headed "Complaint against *NZ Retail* rejected''.

"The Advertising Standards Complaints Board has rejected a complaint against *New Zealand Retail* by **Nicky Cassels** [their emphasis] of Adjust Media. The complaint was made against the in-house ads published in *NZ Retail* itself. Adjust Media is the publisher of another retail periodical, *Counteraction*."

Nicky Cassels' complaint to the Advertising Standards Authority about this statement was referred to the Press Council. She claimed that the statement did not accurately reflect the finding of the ASCB and that it "deliberately misleads and misinforms readers by omission of facts and published findings."

She also objected to be being named as the complainant and having her name highlighted in bold. She said it portrays her in an unfavourable light and breached her privacy. She complained that in stating Adjust Media published another retail magazine was to imply malicious intent.

She also complained that a table of half-yearly circulation figures of retail publications run on the same page as the statement, with *CounterAction* (correctly) described as "no audit received," was anti-competitive.

NZ Retail managing editor Martin Craig responded by saying he believed that while the actual wording of the ASCB chairman was not quoted in the news brief, he

believed it was "within the spirit of the decision". He said the matter had to be seen in context of the sequence of events, which he outlined as above.

"There was no negotiation between *NZ Retail* and the complainant or the ASBC," he said. "The chairman, in the light of all the circumstances simply declined to put the matter before the board."

The Press Council has no grounds for upholding a complaint about the publication of the circulation figures on the same page as the news brief. It is a perfectly acceptable competitive practice, not an anti-competitive one.

Nor are there any grounds for upholding a complaint on the basis that Nicky Cassels was named and highlighted in bold and that she was connected to a rival magazine. The name of the complainant was a relevant fact. But there are grounds for concern at the statement "Complaint against *NZ Retail* rejected".

The fact is that objections were made about the magazine's in-house ads by a professional body and the advertisements were subsequently corrected. That allowed the ASCB chairman to declare a similar complaint before him settled. To state that the complaint was rejected was wrong in fact and "in spirit".

The magazine acted properly and promptly on the letter it received from the NZ Audit Bureau of Circulation. Yet readers would have been misled into believing there had been no fault in the advertisements. *NZ Retail* misled by omitting the facts and making a statement that was not correct. That part of the complaint is upheld.

Use of unnamed sources OK – Case 872

The Press Council has not upheld a complaint by Ms Maire Leadbeater arising from the use of unnamed sources to back up statements made in two articles about terrorism, published in *Weekend Herald* on 15 September 2001 and *The New Zealand Herald* on 25 September. Ms Leadbeater contended in particular that two statements relating to the discovery of a possible terrorist "cell" in Auckland in the lead-up to the Sydney Olympic Games in 2000 should have been presented as "allegations" rather than "assertions of fact", because the newspapers did not identify their sources and the claims made could accordingly not be verified.

The two articles in question examined issues of global terrorism in the aftermath of the attacks in New York and Washington on 11 September 2001. Ms Leadbeater drew the Press Council's attention to two paragraphs, in lengthy analyses of this weighty and fraught topic, which referred to a supposed presence of terrorist cells in New Zealand. In the first, on 15 September, the *Weekend Herald* commented, "Last year an operation by police and the Security Intelligence Service uncovered evidence in Auckland of a plot to bomb the Lucas Heights nuclear reactor in Sydney during the Olympics." The second, in *The New Zealand Herald* of 25 September, stated, "The *Weekend Herald* revealed in August last year that when police discovered the Mt Albert cell, they found evidence suggesting a conspiracy to attack ... (the reactor)."

Ms Leadbeater contended in her complaint to the editor of *The New Zealand Her-*

ald that the two passages "were never more than a series of unsubstantiated allegations". The key reference is to a major article of 26 August 2000 in the *Weekend Herald,* which drew, it seems, mainly from senior (but unnamed) police sources, to report a possible terrorist plot, based in Auckland, to target the nuclear reactor in Sydney. It says, inter alia, "detectives stumbled on the apparent reactor conspiracy during an investigation into people-smuggling … Agreeing that the evidence had sinister overtones, a senior detective told the *Weekend Herald*, 'It is circumstantial and suspicious. If it were not for the Olympic Games they (the Australian authorities) would not be so tetchy. There is quite a bit of interest there'." The deputy editor of the *Herald* responded to Ms Leadbeater's claim that the allegations were unsubstantiated, "you and other media outlets might not have been able to substantiate the information but this paper has been happy at all stages to stand by its August 26, 2000 lead article. Indeed we have substantiated the information from further sources post publication."

In a further lengthy article, on 28 August 2000 the *Herald* gave coverage to the denial of involvement with terrorism by an Afghan refugee living at the house in Auckland where the police had found what they supposed was evidence of such activity. A named police spokesman, the national crimes manager, was quoted as follows, "What we are saying is we do not believe there is now a threat to Sydney or the Olympics, but at the time, there could have been". The *Weekend Herald* took up the story again on 9 December 2000 with a piece on the annual report of the New Zealand SIS, which stated that the service had monitored contacts between New Zealand residents and overseas terrorists. This article stated "The *Weekend Herald* understands that the SIS helped the police investigate the possible conspiracy to target the Lucas Heights nuclear reactor on Sydney's outskirts. Detectives found evidence suggesting such a conspiracy when they searched a Mt Albert home occupied by refugees."

In the two articles published after the 11 September 200l events an American official was cited, by name, to the effect that New Zealand (among 63 other countries) was being used by terrorist operatives linked to Osama bin Laden. Various other experts were quoted on more general issues to do with global terrorism. In other words, the papers have drawn on a number of sources for their extended examination of the issues surrounding international terrorism, including the possibility that terrorist activists have operated out of New Zealand. There can be no doubting the public interest in such issues. In this light the *Herald* coverage has been important and useful.

Ms Leadbeater's concerns centre on what she believes to be a discrepancy: the 26 August 2000 story made it clear that the information was based on unnamed sources and readers could accordingly conclude that there was an element of doubt attached to the report of a terrorist cell in Mt Albert; yet she thought that the two paragraphs to which she refers in the September 2001 stories left no room for doubt on the matter and did not refer to unnamed sources.

The Press Council notes that the *Herald* believes it has received further substantiation of the original information behind the 26 August 2000 story since publication. It takes the view that interested readers will follow the sequence of stories of this kind

and be able to make up their own minds as they go along, about the reliability or otherwise of the information cited. The Council does not, in any case, read the two paragraphs at issue in the September 2001 articles as being unequivocal, in their context. It notes that, in one of them the evidence is described as "suggesting" a conspiracy. As for the need to be able to verify published information, the Council is of the opinion that the average reader will know that in the field of clandestine operations and investigations there is little that is clear-cut and for the public eye. The Council does not question the use of unnamed sources for information especially in dealing with matters of this kind; reliance on such sources and protection of their identity is, of course, long-established practice and an important principle.

The Press Council does not uphold Ms Leadbeater's complaint.

Miss Audrey Young, Mr Jim Eagles and Sir John Jeffries took no part in this Council adjudication.

Another opinion piece draws fire – Case 873

Masterton District Councillor Dermot Payton and Masterton Residents and Ratepayers' Association president Brian Gawith have charged the *Wairarapa Times-Age* with a "regrettable failure" to investigate and present, "over a number of years, an unbiased and fair coverage on many controversial issues".

It has already been conveyed to Mr Payton and Mr Gawith that such generalised complaints are beyond the scope of the Press Council. But they then make specific complaints about two articles.

In the first of these, a news item of 1 October 2001, it is reported, among other things, that Cr Payton had "joined criticism" of a proposed recreation centre upgrade by attacking his own chief executive officer. The article quotes Mr Payton as claiming errors in the collation of public submissions on the subject, then gives space to a rebuttal by Mayor Bob Francis.

In the second item, an opinion piece under the byline Chief Reporter, dated 6 October, Mr Payton is criticised for, the article says, belatedly joining the anti-upgrade bandwagon shortly before an election. It also claims that Mr Payton had attacked the inclusion of letters from school children within the submissions – and that he had "admitted" not reading all the submissions before the relevant council meeting.

The *Times-Age* subsequently published a lengthy, strong and, at times, personal letter from Mr Payton (9 October) putting his side of the issue. Mr Payton and Mr Gawith, however, say the publication was entirely inadequate in redressing what they believe to be the newspaper's "bias and ignorance".

It should be noted that in their letters to the *Times-Age*'s editor, Andrew Wyatt, the two men praise staff who they perceived as writing favourably. They have kind words for a particular columnist for his contributions which, they say, "have gone a long way toward damage control". "The great pity," they say, "is the absence, over

the past decade or more (one exception aside), of any such sane contributor."

In response Mr Wyatt simply stands by the accuracy of the 1 October news article and defends the 6 October piece as a legitimate opinion column. He also points out that he personally discussed the two men's concerns about alleged bias with them.

He not only rejected the allegations, but allowed Mr Payton the chance in his 9 October letter to answer the opinion piece's criticisms.

For the following reasons, the complaints are not upheld. The published letter states that, in the submissions row, Mr Payton and Mr Gawith had been concerned about the "process, not the numbers". But that point is raised in the article. Both sides of a complicated issue are reported in a small news article.

The 6 October column, as an opinion piece, also escapes censure. It is unfortunate that Mr Wyatt has not defended the two allegations of inaccuracy – statements that Mr Payton had criticised the school children's submissions being included and that he had admitted nor reading the submissions. But nevertheless he did give them ample space in his pages to put their side.

The breadth of the *Times-Age* coverage – and its conclusions – might be deemed inadequate and wrong to parties believing strongly in a contrary stance. But the newspaper has a right to form its own opinions and take a stance. This is especially the case in an opinion column.

The newspaper has subsequently given leeway for the debate to continue – and be clarified. And at least some of its writers have shown agreement with Mr Payton and Mr Gawith.

The complaint is not upheld.

Rest-home closure coverage claimed to be biased – Case 874

The New Zealand Press Council has not upheld a complaint by Mr Brent Procter over *The Southland Times*' coverage of the closure of the Elm Court elderly care unit in Invercargill. Mr Procter's complaint was extensive and wide-ranging but its general thrust was that the paper was fundamentally biased against Elm Court (on the orders, Mr Procter alleged but did not substantiate, of senior management from Independent Newspapers Ltd, owners of The Southland Times).

He also made some specific complaints about the non-publication of a particular Letter to the Editor and of a statement by the Friends of Elm Court, the publication of an editorial attacking the tactics of the Friends and the delay in publishing and abridgement of a letter replying to the editorial.

Mr Procter attached to his complaint copies of a number of articles, letters and editorials from the Times on the subject of Elm Court. This material effectively rebutted his complaint of fundamental bias in the news columns since it contained a wide range of views on the issue. The paper's editorial opinion was certainly in favour of

the closure of Elm Court – as it was entitled to be – but it was clear that this did not prevent the Times giving a considerable airing to alternative views through its news columns and Letters to the Editor.

On the matter of the unpublished letter, the editor said there was no record of it having been received. In any event, the Council has frequently stated that except in exceptional circumstances – which did not exist in this case – the publication of letters must be at the discretion of the editor.

As to the unpublished statement by the Friends, the editor said the paper had been contacted by the organisation's president, in whose name it was made, asking for it not to be used, and before its status was clarified it had been overtaken by events. The council considers that a reasonable explanation in the circumstances and, in any event, the paper's coverage of the issue was balanced in spite of the absence of that particular offering.

The editorial, which seems to be what sparked the complaint, was a vigorous denunciation of a letter sent by Friends of Elm Court – and written by Mr Procter – to the principals and rectors of local schools inviting staff and pupils to join the campaign to save Elm Court.

The editorial was strongly worded, and it is understandable that Mr Procter would find it disturbing, but it did not go beyond the bounds of honest opinion. Mr Procter's own comments, including some of the content of the letter to the schools, were equally strongly worded and likely to disturb those holding different views.

Given the nature of the editorial Mr Procter was certainly entitled to a right of reply and for it to be published promptly. The editor explained that the delay was caused by a huge backlog of letters mostly commenting on the terrorist attacks on the United States that occurred on the very day the editorial on Elm Court appeared. The council accepts that explanation, but does point out to editors that it is important that a right-of-reply be published promptly so as not to undermine its effectiveness.

The editing of the letter did not, in the Council's view, alter its meaning and in any case it was marked as having been abridged.

The complaint was not upheld.

Mr Alan Samson who took no part in this Council adjudication.

Storm over statistics – Case 875

The Press Council has not upheld a complaint against an article in *The New Zealand Herald* on 21 August 2001 dealing with a recently released report by the Land Transport Safety Authority on road safety. The article was headed "Legend of the Westie hoon no urban myth". The City Council claimed that several Press Council principles were breached and that the article was inaccurate, unfair and unbalanced. The article first misrepresented raw data (statistics) and then used the misinformation thus created, to extrapolate an explicit description of Waitakere drivers as prone to getting drunk, roaring off in their cars and wrapping themselves around power poles.

Not only did it, therefore, fail to maintain a distinction between fact and conjecture (in breach of Principle 6) but it actually manipulated the facts to create conjecture. The City Council's statement in rebuttal of the article had not been published by the newspaper, despite repeated requests.

Of particular concern to the City Council was the fact that the *Herald* article used only one of three sets of statistics in the report on Waitakere City, namely those dealing with crashes for every 100 million kilometres travelled (VKT). Nothing was said about the information on crashes for every 10,000 of population, nor was there any clear reference to the information on trends within Waitakere in various categories of accident in the 10 years 1991-2000. The City Council strongly criticised the fact that the Herald article took no account of, and made no reference to, the explanatory note in the Waitakere report that said that estimated traffic flows had contributed to the VKT statistics, and that these figures were therefore not as reliable as the crashes for every 10,000 people measure. The City Council said that analysis of the other two sets of data would have shown Waitakere in much more favourable terms, reflecting the strenuous efforts that had gone into improving road safety in the area. The *Herald*'s article, the City Council claimed, had used selective data to portray Waitakere in a bad light.

The editor, in his responses to the complainant and to the Press Council, stood by the story and the basis on which it was written. " … our story was based entirely on statistical data provided by the Land Transport Safety Authority and used with its blessing". He believed "the terms used in the headline and introduction to the story, while colourful, are borne out by the statistics and accurately reflect conclusions that could be reasonably drawn from that data". The editor supplied the Press Council with a copy of each of the Waitakere and Auckland Region Reports.

The Press Council has set aside, as not germane to the present complaint, a further City Council allegation that this road safety article was the third attack on Waitakere published by the *Herald* in 2001. Nor does the Press Council think it necessary to go at length into the question of whether the newspaper should have covered all three sets of statistics. It has noted that almost all the Waitakere report is devoted to the VKT five-year statistics and to the 10-year and five-year trends. It is legitimate for a daily newspaper to select one aspect of a complex report and present its findings, but the basis of this partial coverage should have been clearly explained.

The reporter's task was a very demanding one. The LTSA report on Waitakere contains 73 figures and 14 tables. There is no narrative analysis or commentary – just statistical information and graphs. There are figures and tables for four types of road: State highway (SH) urban and rural, local authority (LA) urban and rural. It was inevitable that for a brief news story only a small selection from this mass of information could be glanced at.

The editor stated that the complaint appears to have been provoked by the use of terms such as "petrolhead westies", "boozing" and "speeding". He says that "Figures 24, 25 and 26e in the Waitakere City report show Waitakere is above the national average for rural and urban alcohol-related crashes; figure 26 shows speed is a prob-

lem on urban roads. Figures 38 and 39 show Waitakere drivers topped the national average for a raft of accidents, such as hitting parked vehicles, trees and power poles, and driving off cliffs."

The City Council agreed that the city did exceed (not top) the national average for a raft of types of accidents (trees, power poles and driving off cliffs) but it was also well below the national average for hitting fences, buildings and bridges. It said the city is on the national average for all objects struck. The City Council added that, "Alcohol is above the national average for urban crashes but is again well below the average for rural crashes. The main point to note is that alcohol has consistently trended downwards in both environments over the measured period."

This clash of views illustrates how readily isolated aspects of the Road Safety Report can be picked out and highlighted. Although the City Council's unpublished statement in rebuttal contained an element of self-congratulation, it convincingly demonstrated that a much more positive analysis of the Report would show how seriously, and how effectively, Waitakere traffic authorities have tackled major problems in the area.

The Press Council has carefully examined the complaint, and has concluded that there are significant omissions and deficiencies in the newspaper article, but that these do not justify the imposition of the Council's "uphold" decision. There should have been some reference to the basis of selection of the VKT figures – the article would have been more balanced if it had included some detail from the other sets of data, both of which showed important positive aspects of Waitakere road safety. The strongly tabloid character of the article, with its striking headline and boldly colourful language, proves to have been ill-suited to capturing the multi-stranded message of this very detailed report. It is regrettable that the article was not followed up in any way, so that the City Council's counterclaims and more comprehensive analysis could have been put before readers.

However, the Press Council does not think the damage done to the reputation of Waitakere is as severe as the complainant claims. Indeed, the City Council's own detailed submissions to the Press Council make very clear that this robust and determined community has been tackling road safety problems with considerable success, and communicating this in the region. The wider Auckland community surely understands that the stereotype of West Aucklanders that the *Herald* article seeks to perpetuate is just that, a stereotype, a simplistic substitute for thinking about the current scene in a more complex way.

Miss Audrey Young and Mr Jim Eagles took no part in the consideration of this complaint.

Inverted commas bring complaint – Case 876

Richard Welham complained to the New Zealand Press Council about the headline in *The New Zealand Herald* published on 12 November. The headline, "Osama boasts 'We did it' in chilling video" raised two issues for Mr Welham.

First, Mr Welham claims a lack of accuracy and balance saying that Osama bin Laden did not claim "We did it", on the video which was the subject of the associated article. Mr Welham's second complaint flows from the first, such that if "We did it", was not said on the video these words should not have been headlined in inverted commas.

The issue of accuracy and balance rests on the reasonableness of the claim made in the headline. In this regard the *Herald* was in step with most of the Western world's media, which came to the same conclusion as the *Herald*. The editor provided an article from the UK's *Sunday Telegraph*, which reported in the headline: "Bin Laden: Yes, I did it". TV and radio in New Zealand also introduced the video as an admission of guilt by bin Laden.

On the issue of inverted commas, these are clearly inappropriate if they do not indicate what was said, or as this is a translation, a reasonable interpretation of what was said. The *Herald*'s editor claims neither, instead saying that in keeping with common practice, he has used inverted commas in the headlines to indicate a paraphrasing of the material in the article

The New Zealand Press Council does not uphold that part of the complaint based on accuracy and balance, saying that the headline was based upon a reasonable interpretation of the video described in the article. The New Zealand Press Council also does not uphold the second part of the complaint noting that the circumstances surrounding the tape's release were unusual; against this background to censure the *Herald* for an error in basic English seems unnecessary. The whole event of bin Laden's involvement and video is likely to be a most unusual occasion.

Although not upholding the complaint the Council recommends that quotation marks be used to indicate words that can be attributed to a person, book or passage. Alternatively, their use can extend to jargon and to words used in an unusual manner. In the circumstance presented by the Osama bin Laden tape, the use of a colon and no quote marks is the most common industry practice. This was the practice adopted by the UK *Sunday Telegraph* exampled earlier. This approach will remove confusion for readers who expect their English language paper to follow English language rules.

Miss Audrey Young and Mr Jim Eagles took no part in this Council adjudication.

Letters column no place for ad hominem attacks – Case 877

The Press Council has not upheld a complaint by Mike Grigg against the *Wainuiomata News*. The complaint relates to the treatment of three letters to the editor, two of them from the complainant. The editor of the weekly newspaper denied that Mr Grigg had been poorly treated.

A letter from Mike Grigg on 6 December 2001 criticised Councillor Ray Wallace in regard to several Lower Hutt issues, including his proposed co-chairing of a council committee. Mike Grigg said that "if Mr Wallace wants to earn more money be

should get a real job". A reply from Mr Wallace was appended to the complainant's letter, and included the claim that it was his taxes that allowed Mike Grigg to sit home all day writing his letters. The complainant was told to "Get out, get a real job" and to try to "get a life". The editor headed the exchange "Get a life boys!"

Mike Grigg complained that the editor allowed inaccurate and abusive comments from Councillor Wallace to be printed, and that the heading was not an accurate quotation. The material supplied to the Press Council shows a history of debate and highly personal exchanges between Mike Grigg and Ray Wallace in the *Wainuiomata News*. There does not seem to be anything markedly worse in this particular instance. Mike Grigg cites Press Council principles concerning accuracy, fairness and balance, but the obligations of editors in regard to the presentation of news cannot be carried over automatically into the Letters to the Editor section, where scope is given to individual correspondents to express strongly partisan, even prejudiced, views. The heading given to this particular exchange is not unfair or distorted, although it does demonstrate the editor's readiness to make himself a third participant in the verbal contest.

On 13 December a further letter from Mike Grigg replied to Councillor Wallace's "gutless attack" on him and explained why his personal circumstances as a solo parent made that "abuse" so offensive. Again, Councillor Wallace was given a right of reply. He said that the only abuse was in Mike Grigg's mind, and wished all readers a Merry Christmas. The editor headed this exchange "Merry Christmas and abuse in the mind". Mike Grigg saw this heading as abusive and not factually correct. The Press Council does not consider there is any substance to this particular aspect of the complaint, although it thinks the heading's focusing again on the reply rather than on the original letter is unwisely provocative.

A week later there appeared a letter from Jessica Dixon, saying she was sick and tired of the bickering of children, namely Ray Wallace and Mike Grigg. They were boring the rest of the community week in, week out with their attacks on each other in the newspaper. They should both be put in "time out" for a while. The editor used this letter as the springboard for arranging a photo of Ray Wallace and Mike Grigg with Father Christmas, the caption beginning "Have you been good boys?"

Mike Grigg objected to several aspects of this episode. He said the heading put on the letter, "Grigg, Wallace should grow up", was inaccurate, he had been denied a right of reply to Jessica Dixon's criticism, he had been manipulated into having his photo taken with Councillor Wallace, and the caption of the photo misrepresented previous remarks he had made. The Press Council does not think there is anything seriously amiss in the newspaper's treatment. Clearly, the editor's light-hearted bringing together of the two men in a seasonal tableau misfired with Mr Grigg. The heading put on the letter does reflect the substance of what follows, although it might have misled readers into thinking that those actual words had appeared in the letter.

Although the Press Council does not uphold this complaint, it thinks that the editor should reconsider several aspects of his handling of letters, and the standards he requires of contributors. It endorses Jessica Dixon's plea for correspondents to "focus on the issues of the community" not engage in personal attacks. Many editors do not

allow writers of letters and replies to address other correspondents in the second person (you, your). Headings placed on letters ideally should direct readers to what follows, without editorial glosses or comments that may prove inflammatory. Coupling replies on to letters can be overdone and lead readers to believe, as Mr Grigg did, that they should always have a right to reply immediately to anyone who criticises them. Ad hominem attacks on other readers are not tolerated in many newspapers, correspondents being expected to write letters that can stand alone and make their impact through the force and freshness of their ideas.

"Ripped off" causes concern – Case 878

Ted Humphries complained about an article in the *Otago Daily Times* dated 25 January 2002. The article reports a sentencing in Dunedin District Court of the defendant who pleaded guilty to fraudulently cashing 18 cheques belonging to an elderly woman.

Mr Humphries, the husband of the defendant, makes three complaints. First, he complains that the article was in large print alongside other reports entitled Dunedin District Court, and below an article with the headline "Policewoman gives eyewitness account of shooting". Mr Humphries maintains that this positioning shows lack of balance in the reporting of the case, which shows that the reporting was tacky and sensationalist and unbalanced.

Second, Mr Humphries complains that the opening paragraph states that a paid caregiver "ripped off" an elderly woman with Alzheimer's. Mr Humphries maintains that as the words "ripped off" were never used in court, they should not have been used in the report.

Third, Mr Humphries contests the statement that about 30 hours work was covered by the cheques but, because she could not prove the hours, the defendant had arranged to repay the full amount sought by reparation. Mr Humphries maintains that this reporting was biased and unbalanced. He maintains that the reporter should have told both sides of the story.

In response to Mr Humphries' complaint, the editor of the *Otago Daily Times* rejects the first complaint. He maintains the article was presented in a fashion no different from many others published on a daily basis. He rejects the complaint of the reporting being tacky and sensationalist. The second complaint of the use of the phrase "ripped off" describes, maintains the editor, the events that took place.

In response to Mr Humphries' third complaint – that the reporter was only telling one side of the story by referring to the 30 hours' work – the editor states that the source of that the source of that information was the lawyer acting for the defendant. In court the defendant's lawyer acts and speaks for the defendant.

In respect of the second complaint, if the words "ripped off" describe the situation they could be used without the speech marks. The use of speech marks implies a quotation and can cause confusion.

The Council is of the opinion that the article clearly described the Court's proceedings. The District Court was a court session open to any member of the public or media. An application for permanent name suppression was rejected and there is nothing to stop the press reporting a plea of guilty and the sentencing that flowed from that.

The complaint was not upheld.

Inciting racism claim rejected – Case 879

The Press Council has not upheld a complaint by Siobhan Larkin alleging a *New Zealand Herald* headline and article were sensationalist and likely to incite racism.

The article complained of centred on comments by United States congressman Saxby Chambliss that New Zealand was one of 64 countries where terrorist cells linked to identified terrorist Osama bin Laden could be active.

Headlined, "America warns of NZ terror links: the congressman leading an inquiry into the terror attacks on the US says New Zealand is one of the countries that could be harbouring bin Laden supporters", it was written on 25 September 2001, two weeks after the 11 September attacks on New York and Washington.

Ms Larkin has objected to the headline, saying it came "close to inciting" racial prejudice, and to article content reporting that New Zealand was one of the countries named by the congressman. She said the headline seemed to be suggesting that the threat was immediate and immense. Not only was this sensationalist but exposed recently arrived Afghan refugees to possible racist behaviour.

In response, *Herald* deputy editor David Hastings denies any sensationalism, saying it was standard journalistic practice to highlight the local element of a story, in this case the naming of possible New Zealand terrorist links, above other countries also listed.

He rejects an assertion that the actual risks were insignificant, saying it was hard to imagine how anyone could consider them so in the aftermath of 11 September. He also found it hard to understand how the article could incite racism: a group of coincidentally arriving Afghan refugees into New Zealand were well known to be fleeing the brutal regime that had given bin Laden succour.

Ms Larkin's concerns are understandable in the context of many examples of mindless post-11 September racist actions in the United States, and a few in New Zealand. But it is necessary to also be mindful of the extent of the perceived threat around the world in the early days after the attacks.

The headline "America warns of NZ terror links" is mildly ambiguous, able to be read as a warning of actual links, or of the danger of links. But the content of the article is clear and hardly sensationalist in the context of the times. Rightly or wrongly, New Zealand was on the United States' list of places where terrorist cells could be active.

Nor can the article, concentrated on concerns about the possible links, be deemed racist or likely to incite racism. The mindlessness of some reactions in the international community to the month's events was appalling and regrettable. But a newspaper cannot be expected to stop reporting what it sees as important on the off chance its message will be misinterpreted. The complaint is therefore not upheld.

Sir John Jeffries, Miss Audrey Young and Mr Jim Eagles took no part in this Council adjudication.

"Swimming in Sewage" brings complaint – Case 880

Christchurch City Councillor Denis O'Rourke complained about an article headed Pollutants and Politics in *The Press*, Christchurch of 8 September, which looked at Christchurch's environmental problems – air, water and waste disposal.

The Press Council has not upheld the complaint.

Councillor O'Rourke's complaints focused on the sections about the proposed discharge of 500,000 cubic metres of treated waste water a day into the Avon-Heathcote estuary (headed "Swimming in sewage") and the section about the disposal of solid waste (headed "What a waste") and on two related sidebars headed The Estuary and The Landfill.

He complained that the article was wrong in many of the basic facts, grossly unbalanced and used emotive language. Phrases he disputed as inaccurate included that the council had "dumped a zero waste to landfill plan", the reference to the estuary as "a sewage pond" and the sub-heading "Swimming in sewage" and the assertion that were "few signs of a broad consensus" about the new landfill. He objected to statements that "locals say [the new regional landfill] will leave their land and investments ruined", and that Hurunui recycled 46 percent waste but Christchurch only 19 per cent.

By contrast, said Councillor O'Rourke, the council had modified its plan for managing solid waste, but still included as its goal "zero residual waste disposal" while noting that real costs, environmental, social, economic and legal, would impact on achieving the targets.

These targets included a reduction of 65 per cent minimum, 100 per cent maximum, of the waste stream overall by 2020. Originally the goal had been more ambiguous, a reduction "by 100 per cent by the year 2020 or by the time the new regional landfill is filled".

An ordinary reader could be confused by the terms used in this part of the debate – Councillor O'Rourke complains that "the statement in *The Press* that the council had 'dumped a zero waste goal' is totally incorrect" whereas *The Press* article does not mention "goal", the council's ultimate aim, but refers to "plan" and "targets", which have exact council meanings for more specific, shorter-term steps.

Councillor O'Rourke said the word sewage could not properly be applied to the treated waste-water discharge currently released into the ocean via the estuary during

the ebb tide. He wondered who the anonymous locals were who objected to the planned new landfill and disputed the percentages of recycling quoted. Throughout, Councillor O'Rourke said the article presented anti-council points of view and although he was interviewed, his viewpoint and that of the council were not included in the article.

The editor rebutted Councillor O'Rourke's complaint point by point, and the complaint, rejoinder and further comments went into laborious detail over many pages.

The editor quoted earlier articles and Councillor O'Rourke himself ("The original target was very idealistic. I supported it, but what we have to do now is get real") in referring to a change in the zero waste to landfill plan.

The editor justified the reference to "sewage" by quoting supporting opinion from an Environment Canterbury (ECan) report, witnesses from the Department of Conservation in the resource consent hearing for the council's application to discharge and the protests about the discharge (a majority of 2000-plus submissions on the plan were in opposition; the newspaper ran a photo to accompany the article showing protesters at the estuary with the banner "Stop the Poos").

The editor quoted letters and a petition in opposition to the broad consensus about the landfill, from previous stories named locals who saw the landfill affecting their investments and land and defended the recycling percentages as already published. Councillor O'Rourke returned with a lengthy, point-by-point challenge to the editor's rebuttal. Further exchanges between the parties with justifications in detail followed.

From the evidence submitted by both sides, the debate about Christchurch's environment has been long and heated, and will continue. *The Press* has been covering these environmental issues vigorously and the council viewpoint has been well represented over a long period. It is inevitable in matters of contentious local debate that various parties will always be seeking endorsement for their point of view, and as the editor commented at one point, it is wrong to assert that only one point of view is supported by the facts.

In the case of the article Pollutants and Politics, this was clearly a broad-brush approach during a period of active campaigning in the local body elections. It was a challenge to the council and the candidates to face the problems the paper outlined in a colourful way that may have stirred some interest among normally apathetic voters at council election time.

Within the ambit of the article, the ordinary Christchurch resident would have been reminded of various elements of the debate about Christchurch's environment and not necessarily need to be taken chapter and verse through it from the beginning. The City Council is central to this story and its actions and responsibilities are clearly alluded to in the article.

Undiluted advocacy for a particular council point of view should never be expected in the normal course of such a story and that would have been clear to readers of *The Press*.

The complaint was not upheld.

… And another opinion piece complaint – Case 881

The New Zealand Press Council has not upheld a complaint relating to comments on the private prosecution brought against a police constable following the shooting of a man in Waitara.

The complaint involved a column, entitled "As I See It", regularly written by the editor of the *Central Hawke's Bay Mail,* Mr Owen Jones. In his column of 12 February, Mr Jones opened with a comment on the private prosecution.

"I'm amazed," he wrote, "that most of those appearing for the prosecution in the Waitara murder trial appear to have an axe to grind with the police. This may not be true, it's just the way it seems to me. I'm also amazed that even though they weren't at the coalface, facing the constable's dilemma, they say they would have acted differently and lives would have been saved."

Mr Jones then went on to discuss other sources of amazement.

Mr Dennis Pennefather, a former police officer now resident in Takapau, who appeared as a witness for the prosecution in the case, said this was clearly a reference to himself and lodged a complaint.

His complaint was in two parts. First, he said the column was an attempt to undermine the credibility of a witness in a matter that was then still before the court and so was sub judice. Whether or not an article is sub judice is a matter for the judicial system and not something on which the Council can adjudicate.

Second, Mr Pennefather said the column was unbalanced. As well as questioning his motives for giving evidence it was scornful of whether prosecution witnesses such as himself would have handled the situation better than the constable in question. In fact, the reason he was asked to give evidence had nothing to do with his longstanding complaint against the police, but because in the course of his 25-year police career he had on five occasions faced armed offenders and successfully disarmed them without serious injury to anyone.

Mr Jones, in response, said his column was not a dig at Mr Pennefather. "I just asked how anybody who was not in the situation that [the constable] found himself in would know exactly what they would do. Everybody is different and no two situations are exactly the same."

The Council noted that the column by Mr Jones was clearly an opinion piece and it has frequently indicated that except in the most exceptional circumstances editors must be free to comment on matters of interest. In this case the point raised by Mr Jones was not unreasonable.

Newspaper's call on what is published – Case 882

The New Zealand Press Council did not uphold a complaint laid by Nick Rosenberg against *The National Business Review (NBR)*, which featured him in a column written in January of this year.

Mr Rosenberg had contacted the *NBR* to let them know about himself and his business interests as he felt that this could be of interest to *NBR* readers. An appointment was arranged and he met the reporter and a photographer at the *NBR* office where he said that a free-ranging conversation took place. He also provided the reporter with photographs and a fact sheet about himself, how his business got started and a list of clients.

When the story appeared in the *NBR* Mr Rosenberg was upset because the *NBR* had not included his contact details, nor had they mentioned his business company's name or used any of the photos of himself which he had provided. He also claimed that the story contained inaccuracies. Mr Rosenberg said he was characterised in the article as a "documentary producer" but he claimed this was an inaccurate, out-of-date description of him and his present status. He was also upset that the *NBR* had mentioned the names of some of his clients although he himself had provided this information in his fact sheet.

In response to the complaint, the editor-at-large had stated that he was sorry that Mr Rosenberg was unhappy with the story but the *NBR* was not obliged to include contact details nor use photos supplied. The story was largely a publicity story for Mr Rosenberg's business and as such took its chances with its final placement and treatment.

The *NBR* had published a story that had been instigated by Mr Rosenberg. That it had not published full promotional background about Mr Rosenberg and his business interests in the story was the paper's call.

Photo of body causes concern – Case 883

Jenny Ross of Hastings complained about the publication in *The New Zealand Herald* of 28 January 2002 of a photograph of the dead body of a Christchurch man.

Ms Ross contended that the photograph infringed the Press Council's Statement of Principles in that it was an invasion of the dead man's privacy (Principle 3) and showed no regard for considerations of grief (Principle 11). She suggested, moreover, that the decision to publish demonstrated a want of sympathy for the especially lonely circumstances of an immigrant with no family in this country. *The Herald*, she believed had not published photographs of victims of violence before. In a further letter she complained that insufficient care had been taken to ensure that the victim was not identifiable.

The editor-in-chief of *The Herald* responded by suggesting that – practically speaking – the privacy of a dead person cannot be breached and in the absence of known relatives of the man in New Zealand there could not be an intrusion on grief. He would, however, not cite these grounds in defence of publication of the photograph. The decision to publish had arisen from the circumstances of the story – a lone immigrant had been set upon by six assailants and left to die in a city park. "The photograph showed, without subjecting the reader to explicit detail, how his battle had ended." The newspaper took the view that "the public accepts publication of photo-

graphs of dead people so long as facial features are hidden and there are no injuries shown. In other words the content of the photo does not shock."

Ms Ross noted that it was possible to make out the facial features of the victim from the photograph and she reiterated her contention that the newspaper would not have published such a photograph of a person with "family or friends to protect them in death" and asked "are refugees to be fair game?"

Although most readers probably would not have noticed, the facial features (and thus the racial characteristics) of the dead man could be discerned in the photograph. It is no doubt less likely that such a photo would offend readers if the victim was a solitary immigrant with no relations in the country. But on the other hand that very fact underscored the pathos of the story. The photograph very starkly showed a lonely man having come to a lonely end, in a park where his body had lain for several hours before being discovered. The photograph seen in this light was highly relevant to a very sad story. The story – and photograph – were important for that very reason. The Council considered that the editor had demonstrated that he was well aware of the sensitivities associated with the use of photographs in circumstances of this kind and that no precedent had been set. There were sound journalistic reasons for supporting the story with the photograph. The Council's own Principles had not been infringed – given the unusual considerations at issue.

The complaint was not upheld.

Miss Audrey Young and Mr Jim Eagles took no part in this Council adjudication.

Subterfuge alleged – Case 884

An Auckland-based public relations consultant, Sarah Sparks of Markom Ltd, has complained to the New Zealand Press Council about an article in the *East and Bays Courier*.

Ms Sparks, who acts for Landco, a company that has bought a quarry site in Mt Wellington, was upset at what she saw as subterfuge used by a *Courier* journalist to elicit information for an article published in the twice-weekly community newspaper on 5 February. Her complaint was that the reporter rang her using the pretext of verifying the spelling of her name when, in fact, the reporter was gleaning information for an article that was published a few days later.

The complainant accused the *Courier* of deceptive practice and operating under false pretences. She also chided the paper's editor, Teresa O'Connor, for not contacting her over the complaint, saying that Ms O'Connor's having left a message with Ms Sparks's secretary for Ms Sparks to return her call was not sufficient.

Courier editor Teresa O'Connor stoutly defended the newspaper and the reporter. While the paper agreed with Press Council Principles about when publications are permitted to resort to subterfuge, she said, such a tactic had not been used on this occasion.

The editor said that Ms Sparks had been interviewed nearly three weeks earlier

for the article about the closure of the Mt Wellington quarry. However, a conscientious reporter had stewed over whether she had the spelling of Ms Sparks's name correct and had rung to confirm her information.

Ms O'Connor also said that she believed leaving a message with Ms Sparks's secretary when she couldn't reach the PR woman herself was normal practice.

The Press Council said that this complaint was clearly of the "he said, she said" variety, which left it in a position of having to decide which party's claims it preferred. In this case, the Council said, it had opted for the Courier's version of events.

The Council observed that to it, as a neutral third party, the article appeared to be a standard update on a matter of public interest. The comments attributed to Ms Sparks were uncontroversial and she had not disputed their accuracy. She had, on the other hand, objected to being quoted at all, at least in her initial letter to the Council, on the basis that she had been "duped", to use her phrase.

Information provided to the Council by the newspaper showed that this was unlikely.

The complaint was not upheld.

Union complaint and the doctrine of futility and mootness – Case 885

The NZ Amalgamated Engineering Printing & Manufacturing Union (the Union) lodged a complaint with the Press Council alleging unethical journalistic practice on the part of *The New Zealand Herald* newspaper. At that stage the Council accepted it because an actual dispute existed between the parties

For reasons set out hereafter the Council does not issue an adjudication and formally declines jurisdiction.

The Union is the industrial union for journalists and represents their interests in industrial disputes with employers. The legal employer of the journalists who work at *The Herald* is the company W & H Newspapers Limited but the substance of the issue is between the Union and *The Herald* and those titles are used.

Since 6 March 2001 the Union and the newspaper had been bargaining over industrial issues. The bargaining was protracted and involved strike action. The exact events concerned with this complaint occurred on 30 August 2001 when employees held a morning meeting at which it was, apparently, resolved to begin indefinite strike action.

Before continuing to outline facts relevant to this complaint it is appropriate to mention many of the facts are not independently verified but it is also true that there seemingly is no material dispute about facts.

An employee who attended that meeting took personal notes of possible peripheral action to support the strike. It is not known whether the notes represented his personal suggestions, or were a record of what the meeting was discussing. Simply to

convey the general thrust of the notes by the employee, quite determined and commercially disruptive action was proposed in the notes and was interpreted by the employer as "an orchestrated campaign to interfere with the company's business" among other matters.

Apparently the actions proposed were never implemented being, no doubt, overtaken by the events about to be described.

When the meeting ended the notebook containing the information referred to above was inadvertently left in the room where the meeting had taken place and was handed to the employer.

A further two events took place within hours of discovery of the notebook. On the night of 30 August TV3 broadcast a news item about the discovery of the notebook and its contents. The subject was, therefore, in the public arena as a newsworthy item of industrial relationships. Also on that night the editor of *The Herald* deputed a reporter to interview Mr Andrew Little, the Union's national secretary, on the contents of the notebook as they related to possible industrial action.

The next day, 31 August 2001, *The Herald* published a news story revealing that *The Herald* intended to ask the Employment Relations Authority to investigate what it says are plans for "industrial sabotage" by striking members. As part of the same article the results of the reporter's interview with Mr Little were recorded. Mr Little had at the time of the interview not personally perused the contents of the notebook but seemed to make an adequate response to allegations of industrial sabotage pointing out they were simply notes made by one person as his "set of ideas" and, of course, nothing had been implemented.

It is important to record here that the Union makes no complaint whatsoever that the interview was conducted in anything but a professional manner, devoid of deception on the part of the newspaper and its reporter. Although forecast in the article, the actual ERA proceeding had not been filed. Neither does the Union make any complaint about the published article itself or the way Mr Little's responses were used.

On 5 September 2001 the employing company filed an application to the Employment Relations Authority naming the Union and the employee as the first and second respondents, respectively. The thrust of the application was the respondents' lack of good faith bargaining owed to the company and the failure of fidelity to the company. All of these allegations were based on the contents of the notebook. Attached to the application were the two pages from the notebook and the transcript of the interview, which had taken place.

The essence of the Union's complaint is that it is unethical journalism for the newspaper to use the notes of the interview reporter for an ordinary news item article as part of its case against the Union and the employee for alleged misconduct in the bargaining process. *The Herald*'s response was to deny such allegations.

The Union in its submissions on more that one occasion accused the newspaper of using its notes of the interview as an active "sword" in its case against the respondents. The Union conceded on occasions a newspaper might use the notes of a reporter

as a "shield" if the newspaper is being sued, say, in defamation. The issue of the newspaper's case against the respondents was the Union's tactics as revealed by the employee's notes of proposed peripheral action in the strike. The interviewing reporter's notes were attachments (considered to be relevant) and not the case itself. The case was the Union's intent as revealed by the notebook and the interviewer's notes were merely an account of what happened as a result of the newspaper's possession of the notes. The sword/shield metaphor simply has no application to these facts.

At some point after the issue of the ERA's proceedings and the complaint to the Press Council, the case by the newspaper against the Union and the employee was abandoned. The editor-in-chief said in a letter to the Council dated 17 December 2001:

> "I should point out to the Press Council that the company decided not to proceed with that complaint after industrial action ceased and a contractual agreement reached with the union members on our staff. The company believes that this episode is best put behind us and that we concentrate on restoring relationships with staff."

Notwithstanding that the industrial action in the ERA ceased the Union has not withdrawn its complaint to the Press Council.

By any analysis this is an unusual case because it is centrally concerned with conduct in an industrial bargaining situation which at one point was to go before an expert tribunal but was abandoned by the applicant. The ERA will never hear the case for it has been discontinued. Any decision by the Press Council would at best be an opinion and not a decision of the Press Council. Furthermore it could have a possible deleterious influence on other similar but not exact situations in the future.

Ordinary courts decline to give a decision of academic interest only. In the courts it is sometimes argued that a court's opinion (for example on a case that has been settled by the parties) on a certain set of facts might act as a guide for future conduct to the parties and others, but wisely the courts resist that as a potentially dangerous precedent. In law it is known as the doctrine of futility and mootness. When a dispute between parties ceases to exist, for any number of reasons, the proper course is to leave it extinct and not to try to use it for any supposed benefit that might result from an opinion of a complaint resolution body.

For the foregoing reason the Press Council formally declines jurisdiction.

Miss Audrey Young and Mr Jim Eagles took no part in this Council adjudication.

The local body election guide that wasn't – Case 886

The New Zealand Press Council upheld a complaint against the now defunct *Christchurch Mail* made by Yani Johanson, a candidate in the 2001 Local Body Elections. He said they had issued a voting guide supplement in September 2001 without acknowledging that it was a section of the paper that included only candidates who had paid an advertising fee. The 12-page supplement was advertised on the front page of the *Christchurch Mail* under the banner, "Local Body Elections Voting Guide – the

user-friendly guide to candidates" – "Election Guide starts page 15". Pages 15-26 included photos of candidates and their electioneering statements interspersed with editorial comment. On page 24 of the supplement, there was a photo with the heading – "Who will you vote for?" with a smaller sub-heading – "To help you make this decision please use this guide and make your vote count".

Yani Johanson contended that there was a direct negative impact on candidates who did not advertise and that voters were misled about who the candidates were in their wards.

The *Christchurch Mail* was a subsidiary of the Christchurch Press but is no longer in existence having been replaced by four community newspapers *Christchurch Northern, Eastern, Southern* and *Western Mail.*

In the absence of an editor to whom Yani Johanson could direct his complaint, *The Press* editor, Paul Thompson, did respond as he felt a residual obligation to answer Mr Johanson, although the editorial operation of the *Christchurch Mail* had been entirely separate from *The Press*. The Council appreciated this gesture of help. Paul Thompson agreed that the titles invited the assumption that all candidates were included, and that some of the advertisements looked like editorial material. However, he felt that the *Mail*'s faults in presentation would have had minimal impact on the election result as there had been extensive coverage in other media.

In 1999, in case 732 (Glensor v *Wainuiomata News*) it was stated that "to cover local body election only by paid advertisement breaches the traditional ethic of journalism to maintain a separation between the editorial side of a newspaper publication and the business side". In the case of the *Christchurch Mail*, the paid advertisements were alongside editorial comments but with no acknowledgement that only candidates who had paid an advertising fee received editorial coverage. While Paul Thompson believed that the *Mail* publication would have had minimal impact on election results, the *Mail* as a giveaway, had a circulation in excess of 100,000. It had also been distributed the day before voting papers were mailed out.

Mr Johanson's complaint was upheld against the *Christchurch Mail*. The paper had published a voting supplement that was clearly portrayed as a voting guide but did not alert readers to the fact that it included paid advertisement material only, and that not all candidates were represented.

Opinion OK in editorial, factual error not – Case 887

Warren MacLennan wrote, as chief executive officer of the Northland Regional Council, complaining about an editorial in *The Northern Advocate*, which was published on 10 April 2002. The editorial, headlined "Northland Regional Council so inept", discussed the contamination of local oyster beds, assigning much responsibility to the Council.

Mr MacLennan said the article was full of inaccuracies, the paper had subsequently failed to apologise to him and his letter of rebuttal had been abridged omit-

ting points made by him. The rebuttal outlined Mr MacLennan's view that, on the points made in the editorial, the Council was not at fault, had been thwarted by central government or that responsibility lay with other bodies.

The editor, who has since retired, said the editorial was not inaccurate therefore there was no need for a formal apology. The paper had printed Mr MacLennan's rebuttal, which even in abridged form was considerable larger than the original editorial.

The New Zealand Press Council believes that the abridgement of Mr MacLennan's letter was slight and did not materially impact the views expressed. The NZPC recommends that when a letter is abridged this fact be acknowledged. The paper published the letter promptly but did not acknowledge, by footnote or correction, that it had erred.

Central to the editorial was the claim, "The NRC granted consents to the oyster farmers. In doing so it surely took on an obligation to ensure that water would be clean enough and safe enough for the farmers to use those consents." This was a fundamental factual error. The Ministry of Agriculture and Fisheries had actually granted these consents, and ongoing responsibility for monitoring the farms rests with Northland Health. Whilst this was mentioned in Mr MacLennan's published letter, the paper should have acknowledged the error themselves.

The Press Council acknowledges that opinion may be freely expressed in the editorial column but any information given as fact should be accurate.

Accordingly the complaint was upheld.

"Squalor" claims not supported – Case 888

Andrew Cooper of Christchurch complained about a front page, lead story in *The Press* of 12 April 2002, about conditions in his house, where he provides rental accommodation for foreign students.

Under a banner headline "Students in Squalor", *The Press* reported that Mr Cooper had "been accused of exploiting Asian students, by cramming up to eight people on to his property, while he sleeps out in the yard". Conditions in the house and the rules imposed by the landlord were described – apparently on the basis of allegations made by an anonymous complainant and former tenant, since the reporter and a photographer from *The Press* had been denied entry. It was noted that the Tenants' Protection Association Youth Advocate had inspected the house and "found it to be completely unacceptable". The Fire Service was reported as having "investigated the property yesterday and said it had advised the City Council that it was not happy with it". In an adjacent box, *The Press* carried, under the heading "A Few House Rules", selected extracts from a list of "Rules for Staying at 1 Chaucer Street" which Mr Cooper obliged prospective tenants to sign before they took up residence.

The next day, Saturday, 13 April, on an inside local news page, *The Press* carried a good length piece by the same reporter, which gave considerable space to Mr Coop-

er's rebuttal of the criticism of conditions. "Everyone is very happy here. We sit in a group and put our arms around each other." He said tenants had been "terrified" by the Fire Service and Council investigation. The comments of two tenants were reported: one was "happy with the situation in the house" while the other said "she was not 'bothered much' by the Fire Service visit and that she had had no problems so far" with the conditions. The headline insisted: "Seven in house 'happy'," with the subheading "We are a tight family."

Mr Cooper complained to the Press Council on 1 May that the article of 12 April infringed principles of "accuracy, corrections, privacy and photographs." *The Press* had "misrepresented" the situation in the house. The story, in which "My name, address and other details were released", was "unverified", since the reporter had tried to force the door and consequently not been "welcomed inside." The story was also "completely unbalanced", in that it relied on the testimony of one resident of three years, a sufferer from "chronic fatigue", a condition she attributed to the house, who lodged her complaint the week she moved out. Mr Cooper attached statements from other tenants telling of their satisfaction with conditions. The departure of two people had resolved all issues of concern to the Fire Service and City Council (with fewer tenants the house did not have to comply with certain fire regulations). He complained that *The Press* had failed to respond to his original letter to the editor and that photographs used in association with the article had been taken by the former tenant and reflected a "very temporary situation (about a week)" while suggesting they represented "the usual situation". Accordingly, "The facts pertaining to the photos were manipulated." Mr Cooper noted that TV crews following up on the original report had recognised that the photographs published in *The Press* no longer reflected conditions at the property and had found nothing on which to base any story of their own.

The editor of *The Press* responded to the Press Council on 9 May, expressing regret that Mr Cooper's letter had been wrongly filed and had not reached him or senior staff. The reporter who had filed the two stories had assured him that he did not attempt to force Mr Cooper's door. When asked to leave he had done so – knowing that *The Press* would not tolerate employees attempting to force their way into a private dwelling. Balance had been maintained by citing not only the former tenant but the Tenants' Protection Association, the Fire Service and the City Council. Moreover (the Press Council observes) Mr Cooper had been extensively quoted in the follow-up story the next day. As for the use made of the photographs, the editor contended that one had "plainly shown that overcrowding had forced one of the tenants to live in a screened-off area of the lounge. The fact that this was temporary does not affect the main point of the story – that conditions at the residence had resulted in the intervention of safety authorities".

Attention was also focused on the newspaper's interpretation of one of Mr Cooper's "House Rules": "Failure to do specified house cleaning or intentional unfriendliness (ask for details) could result in you being asked to leave." *The Press* put it as follows: "And displaying any 'intentional unfriendliness' is punishable by eviction" – which the Editor claimed "accurately reflect(ed) the consequences stipulated" in

the rules. The Press Council notes that the actual words used by Mr Cooper (as above) were displayed in the adjacent box and that therefore there could be no question of misinterpretation. Mr Cooper also disputed the description of the premises as "dangerous", without qualification, when the Fire Service had used the word more strictly in terms of what could be considered dangerous within the meaning of s. 64 of the Building Act 1961. *The Press*, in fact, did not use the word "dangerous" in either article although the issue of fire danger had of course been behind the concerns of the local authorities and was traversed in subsequent correspondence. The editor contended that the main point was the "danger posed by that particular dwelling. The Chaucer Street house posed a danger to its occupants and had caused the intervention of the authorities. We would have been negligent had we ignored it".

Mr Cooper supplied testimony from a tenant to the effect that *The Press* reporter turned Mr Cooper's door-handle but was barred from entry by a security lock. Mr Cooper also argued that the authorities had not said the house was "overcrowded" – but neither had *The Press*. He thought the newspaper should have reported the evolving positions of the Fire Service and City Council as tenants left the house and numbers came down to levels at which different regulations applied; an apology was due.

The Press Council, however, believes that the key issues are: were the stories of 12 and 13 April unfair or unbalanced and were the facts behind the accompanying photographs – as Mr Cooper claimed – manipulated?

There is widespread community concern about reports of exploitation of foreign students. In this regard the two stories responded to an important issue. A specific case in which a cogent set of complaints had been laid against a landlord was examined against the reaction of the responsible authorities. The complaint also raised an especially sensitive issue – that young Asians may find it hard to question authority in situations of this kind. All points of view were covered. The Press Council could detect nothing in the two articles that was factually incorrect. The differences between Mr Cooper and *The Press* were essentially over matters of interpretation and none of them influenced the argument one way or the other. Mr Cooper's contention that the facts behind the photographs had been manipulated was not borne out by the wording used in the article. He claimed that the use of the photographs implied that an earlier situation – in which he lived for a time in a tent and a blanket was erected in the lounge as a partition to provide privacy for an extra tenant – still pertained. *The Press*, however, had reported accurately: "Landlord Andrew Cooper has been living in a tent. At one stage Mr Cooper partitioned off a lounge". The Press Council does not find evidence of lack of fairness, balance or of manipulation.

Mr Cooper's complaints in this regard are not upheld.

The Press Council also turned its attention to the headline – "Students in Squalor". Mr Cooper wrote that the inference that conditions were squalid was an expression of opinion that was not supported by the views of neighbours, tenants or the City Council. The editor accepted that there was no evidence that the house was dirty. He contended however that "squalor" also signified wretched or unacceptable qualities and cited in this regard having one bathroom for eight people, one kitchen for eight ten-

ants all doing their own cooking, overcrowding, etc. The Press Council believes that the use of the word "squalor" in the headline implied that the students were living in filthy or loathsome conditions. The headline did not reflect the gist of the story; the word was not justified.

The Press Council accordingly upholds Mr Cooper's complaint on this point.

Attempt at humour fails – Case 889 Fast-track complaint

The Press Council at its meeting of 24 June 2002 established a fast-track procedure for dealing with complaints arising out of the general election. A decision of the Press Council weeks after an election is little use to a complainant. The following falls squarely within a complaint that needs to be dealt with on the fast track.

The *Waikato Times* published on 3 July 2002 a front-page panel "On the stump", which is the usual newspaper election-time take on lighter, human interest stories from the campaign, with some attempt at humour. In this issue it referred to postcards distributed by Dianne Yates, the Labour candidate for Hamilton East, that featured her slogan "… working for you, working for Hamilton". The article commented "Nice sentiment but slightly undermined by the accompanying picture of Ms Yates relaxing with a glass of wine". The panel of election snippets in which this was the lead item was headed bluntly "Yates undoes her work when she wines".

Robert Welch, chairman Hamilton East Labour Electorate Committee, has laid a complaint with the Press Council alleging "the headline and text suggests that Dianne Yates … drinks alcohol (specifically wine) to the extent that it affects her work". He says he has known Dianne Yates for several years and that she is extremely careful and considerate in her drinking on social occasions. He states on the occasion represented by the photograph Ms Yates was drinking orange juice. A copy of the postcard was made available to the Press Council, but even on very close examination it is not possible to conclude categorically what is contained in the glass in Ms Yates's hand. Apparently the photograph was taken on the occasion of the *Lord of the Rings* parliamentary reception. On a phone call to the *Waikato Times* by Ms Yates herself by way of complaint she said, according to the editor's letter to the Council " … she almost always drank orange juice". In a statement to the Press Council Ms Yates says that her recall is that it was in fact orange juice. In these circumstances the Council is unable to make a definitive finding of fact as to what liquid the glass contained.

The photograph of the candidate (Ms Yates) standing alongside the leader of her party and current Prime Minister, within the context of the wording on the postcard referred to above is very conventional political advertising. The Council thinks the interpretation placed on the postcard by the article that it undermines the message of hard work for the electorate because Ms Yates is "relaxing with a glass of wine" is unwarranted. Only the clearest evidence that the glass contained wine could carry such an inference and that is not claimed by the editor in response to this complaint.

The editor defended the article and the headline as lighthearted lampooning of

the kind that readers enjoyed at election time.

The article, taken on its own, is unfair for the reason stated above. The headline, "Yates undoes her work when she wines", is much more damaging. It implies that the value of the MP's work is negated by what happens when she drinks wine. This is a much more sweeping allegation than what is said in the article itself, and stands unqualified, and that it was wine is an assumption, not an established fact. Such a potentially damaging allegation cannot be passed off as lighthearted humour in the heightened sensitivity of a political campaign.

The Council upholds the complaint.

Tamil Tigers – Case 890

Sothilingam Sivaskanthan, of Palmerston North, complained, on behalf of the Federation of Tamil Associations in New Zealand (FTANZ), to *The New Zealand Herald* on 27 February 2002 with particular reference to two articles published in the *Weekend Herald* of 12-13 January; Dr Malathy Naguleswaran of Christchurch, also acting for the FTANZ, made a formal complaint to the Press Council on 27 May.

In the wake of the 11 September attacks in the United States, New Zealand, like many other countries, re-visited its anti-terrorism law. Around the time the *Herald* articles were published, draft legislation, under consideration by a parliamentary Select Committee, was attracting a large number of public submissions. It was proposed that "reckless" contributions of money to certain declared terrorist organisations should be made a criminal offence. Other countries, including Australia and the United States, have declared the "Liberation Tigers of Tamil Eelam" (LTTE), known around the world as the Tamil Tigers, to be a terrorist organisation. Leaders of the Tamil community in New Zealand were concerned that their "legitimate" fund-raising activities, could become illegal under new legislation, if New Zealand followed suit and formally named the Tamil Tigers. Many of their number send money back to Sri Lanka to assist the Tamil community there. Direct funding of the Tamil Tigers is denied. But sending money through any organisation could lead to "a misunderstanding"; moreover, many Tamils here would see the Tigers as "freedom fighters" rather than "terrorists".

The Herald has stated that it was against this background that they decided to inquire into the effects of the proposed new legislation. As a matter of public interest it was important to determine whether the Tamil Tigers had connections in New Zealand. The motive was to inform the public, not to slight the independence struggle or undermine the peace process in Sri Lanka. The newspaper's interest in the topic was signalled in an article on page 3 of the *Weekend Herald* of 1-2 December 2001 under the headline, "Tamils fear being swept up in anti-terrorist net".

Two further substantial articles by the same reporter were published on 12-13 January. The first, a double-column piece under the headline "Terrorist Banker's secret NZ visit" was placed prominently on the front page of the *Weekend Herald* with a sub-heading "*Weekend Herald* Investigation" and a reference to the main report,

which was spread over one and a half pages in the "Weekend Review & World" section, and which carried a headline across both pages, "Hunt for Tigers leads to our own backyard". Both pieces raised questions as to whether some Tamil elements in New Zealand may be caught up in worldwide activities in support of the Tamil Tigers' insurgency against the government of Sri Lanka

An editorial, "Terror Intolerable under any Name", which clearly set out the newspaper's forthright opposition to terrorism that targeted civilians, was published in *The New Zealand Herald* of 14 January, and two Letters to the Editor, broadly supportive of the Tamil position on the war in Sri Lanka, were published on 15 January.

Mr Sivaskanthan in his letter of 27 February complained of what he called an "emerging trend in the *Herald*'s coverage of the war on terrorism, to unfairly target the New Zealand Tamil community". "The poor quality of journalism has enraged our community in many ways." He contended that the articles in the *Herald* had "consistently been focusing on the Singhalese point of view" and asked the newspaper to publish, either in the Opinion or the Dialogue section, a letter by Professor Margaret Trawick, of Massey University, who was, "perhaps the best informed academic in New Zealand on the conflict in Sri Lanka".

Mr Sivaskanthan asserted that the *Herald*'s coverage demonstrated both "biased reporting" and "unverified reporting and writing with a view to mislead". FTANZ's subsequent complaint to the Press Council, signed by Dr Naguleswaran, was, however, restricted to the latter two assertions, and was linked to the principle of accuracy.

The FTANZ took particular issue with what it regarded as statements of fact, in the *Weekend Herald* articles, to do with: first, a visit to New Zealand by an individual (the "banker") suspected of being engaged in business – and especially shipping – activities around the world in support of the LTTE; second, claims by a refugee that he had been threatened by Tamil elements in New Zealand; third, a question as to whether some pamphlets circulating in New Zealand were propaganda "planted" by the Sri Lankan government; and fourth, a contention that a Sri Lankan who entered New Zealand on a student visa had been an intelligence officer and tax collector for the LTTE.

The deputy editor of *The New Zealand Herald* responded to Mr Sivaskanthan on 19 March. He first rejected the notion that the articles targeted the Tamil community in New Zealand or were intended as a discussion of the rights and wrongs of the conflict in Sri Lanka. Rather, the intention was to look at the proposed new anti-terrorism legislation in New Zealand and to inquire who, if anyone, might be affected. The deputy editor rejected charges of imbalance and inaccuracy. The FTANZ had claimed, in particular, that the newspaper's coverage of a reported visit to New Zealand of the individual suspected of bankrolling Tamil Tiger campaigns was misleading because it implied the visit was recent, when it was five years ago. On the contrary, the deputy editor commented, there was information that Indian police had come to New Zealand only last year to investigate the possibility that the man had business interests here; thus his earlier visit was germane to the case made by the *Herald*.

The deputy editor also responded to a piece submitted by Professor Trawick who had been nominated by Mr Sivaskanthan to write for the paper's Opinion or Dialogue sections. Professor Trawick had made what the deputy editor described as " a number of forceful allegations" about the tenor of the *Herald*'s reporting and the position of the newspaper on the issues. These were rejected outright. As a consequence the deputy editor concluded that he could not publish the article as submitted. He would, however, be prepared to look at a rewrite that focused on the valid point that the Government should not do anything, in regard to support for the Tamil Tigers, while a current ceasefire held.

The deputy editor responded at length to the Press Council on 13 June concerning what he described as the "extremely serious" allegations made by the FTANZ "about the quality of our reporting and our motives for investigating this matter". The Press Council has studied carefully his responses against the accusations made. It can find no evidence of any deliberate attempt to mislead or of "unverified reporting". The technique employed by the reporter in compiling the articles was to accumulate a series of assertions based on extensive interviews and study of other material, including reports from intelligence sources. The evidence was not presented as "facts". In matters of this kind, where the hard and fast evidence is unlikely to be made available to the public, because it derives from intelligence sources, this approach is legitimate. The Press Council's principles to do with accuracy in reporting were not infringed.

The Press Council has stated elsewhere its firm endorsement of well researched investigative journalism. In this case the *Herald*'s coverage was a service to the wider public, because it cast a light on the potential impact of proposed new anti-terrorism legislation. Views from within the Tamil community were reflected, and indeed given prominence through a photograph of George Arulananthan, president of the Tamil Society, and a caption claiming that the Sri Lankan government is trying to undermine Tamil cultural organisations.

It is, of course, now an accepted rubric, in the context of today's wars of terror, that "one man's terrorist is another man's freedom fighter". There is no way that the Press Council could make determinations on such questions in relation to events in another country. On the other hand there could be few more important matters than the possibility that what a number of other countries have concluded is a terrorist organisation might have links in New Zealand. Investigation of that issue does not reflect any motivation on the part of the newspaper to undermine the Tamil community, which has a respected place in New Zealand life. Rather, the articles represented a useful contribution to an understanding of the far-reaching ramifications of a struggle like that in Sri Lanka.

The Press Council accordingly does not uphold the complaint of the FTANZ against *The New Zealand Herald.*

(The Press Council notes, as an aside, that a Bill and commentary were presented to Parliament in its last session; no further action has been taken at this stage.)

Miss Audrey Young and Mr Jim Eagles took no part in this Council adjudication.

Action group disputes accuracy – Case 891

The Kapiti Environmental Action (KEA) group has complained about a series of articles in the *Kapiti Observer* that the group says were inaccurate and damaging to its reputation.

The group, in its own words a volunteer community group set up 12 years ago to protect and enhance the environment of the Kapiti Coast, has on six occasions appealed decisions by Kapiti Coast District Council to the Environment Court. One of the appeals, involving a resource consent application by landowners named Frandi and the consequences flowing from it, is the subject of the articles in question.

The Press Council has not upheld the complaint.

The sequence of events is that the Frandis became aware after purchase there was a specified building site for the section that did not suit their own plans for building. They applied for a new resource consent, which the council granted after some modifications.

KEA appealed to the Environment Court against this, as they state, and report that it was settled by all parties, the consent order being dated by the Environment Court on 3 April this year and having attached to it agreed conditions for landscaping, planting and appearance of the house. KEA then applied to the Environment Court for a Declaration as to the correct interpretation of section 221 (3) of the Resource Management Act. Under this provision, the district council appeared able to vary conditions attaching to consents for subdivisions without any public notification. The legal issue for KEA was whether the section that allowed the council to act as it did should more correctly be interpreted in the overall context of the Act.

The Environment Court judge decided in favour of KEA; the Frandis joined in the appeal to the High Court where the judge overturned the Environment Court decision. KEA viewed the result "with misgivings" and applied to the Ministry for the Environment for help to appeal to the Court of Appeal, and was granted $10,000 towards legal costs.

The sequence of articles began when the *Kapiti Observer* approached KEA about its lost appeal in the High Court. The story "Dream wrecked by lengthy court battle" on 29 November reported "A couple's retirement dream of a semi-rural home with miniature horses in the back yard has been held up for over two years by court action. And John and Janice Frandi's wait looks likely to continue, despite winning a High Court appeal against the environmental action group which is fighting their building plans, with another appeal lodged against them in the Environment Court." Since the ongoing appeal is to the Court of Appeal, this last reference to the Environment Court threw confusion into the newspaper report. In the follow-up article, this was correctly reported.

KEA had emphasised the complicated nature of the case earlier and tried to separate out its application for a Declaration from the Frandis' case, although the Frandis obviously continued to see that they were indissolubly linked. KEA did not respond

to the article because it said it did not want to upset negotiations on the new resource consent or the Frandis, believed a newspaper was not the place for argument about an unfinished legal case and had no confidence in the newspaper's reporting.

The second article on 2 February this year headed "KEA given $10,000 for house site battle" reported that "Mr and Mrs Frandi have been unable to build on their section for three years as a result of legal action between KEA and the council and themselves."

It also reported KEA chairperson June Rowland saying that they were arguing a point of law, not trying to stop the Frandis from building their house. "These are separate issues, they could still build their house if they agreed to the landscaping plan." The newspaper quoted the Frandis' lawyer, Glen Evans, saying that this was not correct. He said the Frandis' building plans were "completely blocked by legal action".

This difference seems to lie at the heart of the complaint. While the newspaper has taken the human interest angle of the Frandis' plight, KEA has found the articles and their headlines inaccurate and damaging, saying "they portray KEA as a group which is persecuting innocent landowners through a lengthy and expensive Court process".

If the Frandis had decided to go ahead and build while KEA sought rulings on its concern with section 221 (3), there could be difficulties for them. It seems the Frandis, as the applicant for the resource consent, must remain subject to any legal consequences flowing from a decision on a Declaration that might overturn the council's original consent.

KEA is concerned especially about subdivisions on dune land and says its action is in the public interest and unrelated to the Frandis, but the letter applying for funds to the Ministry for the Environment was headed Kapiti Environmental Action v Frandi & Kapiti Coast District Council. KEA's own statement referred to "its effort to obtain through the Courts a remedy for the practice of the Kapiti Coast District Council", which may well have an impact on the Frandis.

On 21 February, an article "Belligerent attitude splits KEA" told of political activist Lowell Manning being asked to resign from KEA after he was critical of KEA's failure to defend itself when attacked on this issue. The newspaper reported him as saying "the moment the Frandis appealed to the High Court the issue had become a point of law. When KEA was attacked in the media all KEA had to do was simply explain the situation … Unfortunately, the Frandis have become the meat in the sandwich". June Rowland was quoted as saying "[Lowell Manning's] belligerent attitude is not in sympathy with KEA's general approach".

The editor defended the accuracy of the articles and the approach taken, the research put into them and the attempts made to get KEA's side of the story. A strongly opinionated column headed "Passionate concern or blinkered extremism?" (17 December) and letters for and against KEA represented validly held opinion on a matter of public interest, she said.

The newspaper offered to publish KEA's Letter to the Editor criticising the articles (it had been headed "Not For Publication") with an abridged reply from the editor, while it was also open to KEA to participate in the ongoing exchange of views that took place in the Letters to the Editor column.

Added to its general complaint, KEA said it was not pleased by the editor's use of the words "fight" and "battle", and had told the reporter the issue was complicated but she continued "to write a story based on a one-sided view and lack of adequate research" and that KEA's excellent reputation had suffered.

The newspaper on the whole has succeeded in a solid attempt to present an environmental issue story with a human face. Lack of accuracy does not always follow because the procession of detail carefully drawn out by interested parties has of necessity been summarised, usually under newspaper pressures of limited space and the need to get to the heart of a story for the general reader. Nor is it the function of newspapers to run stories in terms that interest groups require.

In this case, it was not for the environmental group to say that the Frandis did not have to appeal to the High Court, or to instruct the Frandis to go ahead and build because their site modifications had been resolved by negotiation, while at the same time it pursued legal action, which, in the cautious view of the Frandis' lawyer, had "completely blocked their building plans". This is more a difference of opinion between KEA and the Frandis' lawyer and not necessarily legitimate grounds for grievance against the newspaper for reporting it.

Breach of privacy and insensitivity claimed – Case 892

The Press Council has not upheld a complaint by Barry Williams, of Pakuranga about a front-page photograph and report in the *Howick and Pakuranga Times* on 28 January 2002. They concerned a tapu-lifting ceremony held three days before at the Pakuranga site where a 12-year-old boy tragically fell to his death on 13 January.

Mr Williams claimed that the newspaper breached his family's privacy by reporting the ceremony, by detailing the names of his wife and children, and by referring to him as the deceased boy's stepfather, "a term which is never and has never been used when describing my relationship with my son". He alleged that the Council's principles regarding children and young people, and photographs, had also been infringed. He claimed that he had indicated to the reporter that he and his family wished "to be left alone to deal with our loss" and that she had said " Don't worry, we won't do anything." He also complained that his attempts to contact the editor had been dealt with too casually.

The editor advised the Press Council that the newspaper had carefully considered how to cover the tapu-lifting ceremony. The boy had been playing with a younger cousin on the roof of a Watercare Services pump station and had fallen through a skylight. There was community concern that such a tragedy could occur on a publicly-owned facility, and Pakuranga Community Board had discussed what needed to be done to prevent a recurrence. The newspaper had been advised by a local resident

that the tapu-lifting ceremony was being held. The ceremony was attended by family and friends, and by Watercare Services senior management and staff. The editor took the view that it was a newsworthy event in the community, and defended the professional conduct of his staff. The reporter denied that she had said "Don't worry, we won't do anything." The photographer said that he took considerable care not to be intrusive, the photograph showing a back view of two figures walking away after the ceremony. They were not individually identified.

An earlier report of the boy's death in *The New Zealand Herald* quoted a police source as saying that "the family had not given permission for the boy to be named", and Mr Williams wished that constraint to continue. His desire for total privacy is understandable, and testifies to the depth of his care and concern for his family, but it was unrealistic. Given the circumstances, and the community concern and sympathy that were aroused, it was inevitable that the boy's name would enter the public arena. The reporter had obtained it in a routine way from another police source, and the death notices in *The New Zealand Herald* had given all the other family information used in the report (including the description of the boy as Mr Williams's stepson).

The Press Council considers that the photograph and the brief text below it do not breach its principles. The right to privacy is not an absolute one. It must be weighed against the newspaper's right and responsibility to inform its readers of significant events in the local community. Full consideration appears to have been given to the several cautionary statements in the Press Council's Statement of Principles. The text is respectful and sensitive in tone, and the photograph is dignified and moving. It is unfortunate that Mr Williams was not able to raise his concerns directly with the editor as promptly as he wished, but the Council does not think the newspaper acted in an unfeeling or arrogant way towards him.

Media guidelines for court coverage under scrutiny – Case 893

The New Zealand Press Council has not upheld a complaint made by Mr Craig Lundy concerning the publication of a photograph of him in *The Dominion* on 9 March 2002. The circumstances in which the photograph was taken are not fully revealed on the papers before the Council but it is accepted the photograph was taken outside the courtroom.

Mr Craig Lundy was a witness at the trial for murder of Mark Edward Lundy, which took place at Palmerston North High Court commencing February 2002. Mr Lundy had applied for and had been granted by the trial judge what is conveniently called B6 protection against publication of any material identifying him by way of pictorial or voice means.

After lengthy consultation with all principal interested parties (including media representatives), on behalf of the judiciary Chief Justice Sian Elias published in May 2000 "Guidelines and voluntary code of conduct for expanded media coverage of Court proceedings". This case concerns Rule 2B6(i), that states as follows:

"Any witness who conveys to the Judge prior objection to being identified shall have their identification (whether pictorially or by voice) protected."

Furthermore in the notes headed Voluntary Code of Conduct under 2 is the following:

"There are likely to be some media organisations who decide not to take part in in-court coverage and who will therefore be gathering news material in the conventional way. In that case the Guidelines do not apply to that news organisation."

The central purpose of the Guidelines, as stated in the covering promulgation signed by the Chief Justice, is to provide a consistent framework for in-court media coverage. The B6 protection also extends to witnesses, where applicable, out of the courtroom.

It is central to the decision in this complaint that a procedure exists in which individual members of the media make application to the trial judge to be present inside the courtroom to take television, still photography and voice recordings in that particular trial.

In the trial of Mark Edward Lundy applications were made before trial on 5 February 2002 and the trial judge made appropriate orders permitting certain media representatives to be present in the courtroom, able to take recordings. It is common ground that *The Dominion* made no such application.

When the complainant gave evidence, he asked for and was granted by the trial judge, B6 protection. As already stated the Guidelines are drafted so that only those who apply come within the regime of the Guidelines. One readily understands that a witness from the public who asks for and is granted by the trial judge B6 protection would be of the understanding that all media are thus bound. But not so, as only those who made the application are bound.

In the New Zealand Press Council adjudication No. 755 this very point was made by the Council in upholding a complaint against *The Dominion*. The last sentence of the adjudication states:

"The Council also notes that there are inherent difficulties in the application of rule B6 capable of causing confusion for the public, but that matter is left to the appropriate authorities to address."

That adjudication was published on 2 October 1999 before the final promulgation of the Guidelines in May 2000.

The Council has sympathy for the complainant but in its view the Guidelines are clear in that *The Dominion*, not being an applicant, is not bound by the Guidelines and in particular B6. It chose to retain its general right to publish a photograph taken in a public place.

It is up to the Media in Courts Committee to remedy the anomalous situation that has arisen.

The complaint therefore is not upheld.

Breach of suppression order – Case 894

The New Zealand Press Council has upheld a complaint against *The Evening Post* concerning the publication of the name of the complainant in that newspaper when there had been made a suppression order pursuant to s140 of the Criminal Justice Act 1985 by the trial judge preventing publication of the name of the complainant or any information that might lead to identity. The complainant had been a witness in the trial of Mark Edward Lundy for murder, which trial took place in the High Court at Palmerston North in February 2002.

It is not in question that in the edition of *The Evening Post* of 8 March 2002 in the course of reporting the evidence of another witness the complainant's name was inadvertently mentioned. Neither is it in dispute that there existed the said order for suppression in favour of the complainant.

The response of the editor of *The Evening Post* was that the printing of the suppressed name was an oversight by the newspaper for which he apologised in writing to the trial judge, the complainant, and to the Press Council. The oversight was caused because at the time the order was made the reporter was out of the courtroom and had not been personally aware of the order. That is mitigation of the dereliction, but not a legal excuse.z

The matter of the publication of the name was referred by the trial judge to the Crown Law Office who in turn referred it to the Police, who decided, in the circumstances not to lay any charges arising out of the oversight. The Police letter to the complainant referred to the "technical" nature of the breach.

There is no dispute on the facts as the newspaper admits it was in breach of the suppression order but in the circumstances described. Nevertheless the Council is obliged to uphold the complaint which it does.

Possum throwing and 1080 debate – Case 895

Ted Burrows complained about a photograph published on 15 July in *The Daily News*. The photograph was of a man throwing a dead possum. He said the picture had disgusted the public. As evidence of his claim he pointed to letters published in *The Daily News*, which were critical of the picture. Mr Burrows also complained that the paper had failed to print any mention of the "Dog lovers against 1080 poison" public protest, which occurred on 17 July. The paper had been asked to cover the story but had not done so. Mr Burrows saw this as a failure to inform people about an important issue.

The editor said the paper had not created the event where the possum was thrown; it had simply reported the matter. Readers had responded with a range of views some, like Mr Burrows, did not like the picture, others has wondered what the fuss was about. The editor made the point that the organisers of the possum hunt, which ended with the throwing competition, seemed to have similar aims to the dog lovers against 1080. The hunt had dispatched 530 possums without the use of 1080 poison. This was

an unusual event, which had added to the debate on possum control.

On the matter of the 1080 protest, the editor said the overlooked event had been small and the paper had already committed its resources to covering other events. They had given the 1080 issue considerable coverage in the past and could not include every event. The editor provided 48 published letters and articles expressing a variety of views on 1080 poison (that had been published previously) and the possum picture, to support his stance.

Editors have total responsibility for selecting items for publication. In this, their readers judge them every day. There is no obligation to cover an event because they have been notified.

The Press Council does not uphold either complaint.

Letter to the editor not published – Case 896

Mr Wayne Church has complained to the Press Council about the non-publication of a letter he submitted to *Hawke's Bay Today*. His letter criticised the paper's editorial about a speech by the Governor-General, Dame Silvia Cartwright, commenting on the issue of smacking children.

The Press Council has not upheld the complaint.

Mr Church's grounds for complaint were that in his view the explanation for non-publication was unsatisfactory and other letters were published, that there was a personal and unwarranted attack on the Governor-General and that the editorial exceeded the bounds of fair and balanced journalism and good taste.

The editorial is clearly understood to be a newspaper's opinion on any topic it chooses to editorialise about, and can be strongly worded as in this case, support a particular view, take sides or advocate a certain course. The editorial in question fell clearly within the bounds of that acceptable practice, whatever any reader's opinion of it.

On the non-publication of the letter, once again the Press Council can only reinforce its previous decisions to support the prerogative of editors to include or reject letters, being guided by "fairness, balance and public interest in the correspondents' views" as set out in Principle 12 of the Statement of Principles.

The Press Council's 2001 annual report discussed Letters to the Editor at length, describing the selection process and reasons for rejection and editing, such as legal and space constraints, clarity and topicality, which may be of some help to interested parties.

This is Mr Church's fifth complaint to the Press Council about non-publication of letters, even though he does have letters appear in the paper from time to time. Succeeding editors have been more than patient with Mr Church in their explanations for non-publication, citing variously intemperate language, length, repetitiveness or that the topic has been covered by other correspondents.

While Mr Church raises the issue of censorship and feels treated differently from correspondents whose letters were published, he joins the on-average 60 per cent of correspondents to a newspaper who remain unpublished. And when it comes to readers trying to get letters in the paper, arguments about the Bill of Rights and freedom of expression, or specious reasoning that publication of one letter requires publication of all, will not win the day.

Sound editorial judgment that weighs up, selects, digests and edits the news and opinion for the best result for the community of readers is at the heart of good journalistic publishing. A morass of unselected material would deter readers and kill a newspaper. And in the end, pleas for total freedom for every stated opinion to be printed will run up against that most fundamental of publishing axioms: there isn't enough room.

The complaint is not upheld.

Spoof front page on 1 April offends – Case 897

A Wanganui man, Mr Ian Little, is upset that his local newspaper, the *Wanganui Chronicle*, published a spoof front-page on April Fool's Day, 1 April this year.

He has complained to the New Zealand Press Council that the page was misleading and should not have been published.

The Chronicle's front-page story, part of a four-page wraparound, was headed "Touch Of Blarney Wings Its Way to Ohakea". Page one carried a second article headlined "Oh Boy, Look What's Happening To Our Airport", and on page two, were another three stories in similar vein, one announcing that the city's new velodrome would have a roof after all, made by an international condom company.

Mr Little objected to what he called the "false front page", saying it was "very misleading and should not be published by a reputable newspaper".

Chronicle editor John Maslin said that it was clearly stated along the bottom of the front page of the four-page wraparound on 1 April that articles in the supplement were fictitious, though the advertisements should be treated as genuine. The wraparound, he said, covered a genuine edition of the *Chronicle*.

Copies of the April Fool's Day newspaper provided to the Press Council showed the warning referred to by Mr Maslin along the foot of the fictitious Page 1. It read, "Warning: articles in this supplement are fictitious and are intended for readers who enjoy a good laugh. Advertisements should be treated as genuine."

The paper's real front page followed the familiar style of the Chronicle, and announced the death of the Queen Mother, Queen Elizabeth.

The Press Council declined to uphold Mr Little's complaint. It said that there was nothing unethical in what the *Chronicle* had done, and that the trick it had played on readers was not only well flagged to the newspaper's readership but was also a common practice among some branches of the news media.

It observed that editors indulging in such pranks had always to weigh up the risk of confusing readers as to what, and what was not, genuine, against their publication's preparedness to share a joke. Editors were well aware that their publications relied on public credibility and would make editorial judgments about spoofs against that knowledge, the Council said.

Accordingly, the complaint is not upheld.

Campaign to vilify teachers alleged – Case 898

The Press Council has not upheld a complaint by Patrick McEntee, of Hastings, concerning four *Hawke's Bay Today* editorials in May and June 2002 dealing with the secondary teachers' pay dispute. He saw them as part of "a prolonged campaign by this paper to belittle teachers and to portray them as dishonourable and unworthy of public support". Mr McEntee appeared before the Council in support of his views.

At the core of the complaint is Mr McEntee's strong reaction to the editorials' remarks about teachers' "wildcat strikes", and about their using "old-fashioned union tactics to bully an employer". He considered the paper's dismissing of the teachers' professional reasons for strike action and its assertion that "the strikes are about self-interest" as evidence of its failure to treat the dispute in a fair and balanced way. The Press Council's Principle 1 had thereby been infringed.

The complainant believed the newspaper had been engaged in a malicious campaign to vilify secondary teachers. It had pilloried and persecuted them. Its vehement attack was marked by spitefulness. One of the editorials was the most rabid outpouring of personal prejudice he had ever read.

The editor acknowledged that he had forthrightly criticised the teachers' union and its methods, but rejected the complainant's description of the editorials. He said that the paper's treatment in its news columns of secondary teachers and their industrial dispute had been demonstrably unpartisan. Mr McEntee, in his response to the editor's remarks, stated that he had not questioned the balance of the news reports. In his oral submission Mr McEntee emphasised the damage to teachers' morale that had resulted from the editorials' anti-teacher stance.

The Press Council thinks it important to note that these editorials appeared in the context of one of the most highly publicised and most clearly defined industrial disputes New Zealand has seen for many years. In print and other media the issues were set before the public through the statements by the secondary teachers' union (PPTA), the Minister of Education, and the School Trustees Association, and through coverage of industrial action by teachers, and of demonstrations by students. The professional issues to which the complainant attaches great importance (key shortages of teachers, workload grievances, the demands of the new NCEA, etc) were widely canvassed and debated in the media.

Given the extent of the media coverage of the various viewpoints, including *Hawke's Bay Today*'s own reporting of the issues, it can be assumed that readers were well equipped to assess the worth of the editorials, and to make up their own minds

about the issues. The test of fairness and balance must be applied to a newspaper's whole handling of such a long-running dispute. *Hawke's Bay Today* appears to have met this test satisfactorily in its overall coverage.

Editors are entitled to have strong opinions and to express them vigorously, even if some readers are offended and provoked by what they see as ignorant, wrong-headed or blatantly prejudiced remarks. Many readers might agree with the complainant that the editorials were guilty of "stereotyping teachers and of making unsupported generalisations about them", but the question that has to be asked is this: were the editorials so extreme in substance or tone as to go beyond what is acceptable as opinion?

The Press Council does not think that the complainant's description of the editorials (cited in the third paragraph above) is borne out by close consideration of their content and language. The criticisms of teachers reported or endorsed in the editorials were not couched in abusive or derisive terms, strong opinions did not become invective. Mr McEntee obviously found the editorials deeply offensive, and the Press Council was left in no doubt that the newspaper had alienated some of its readership. However, the Council considers that a robust society that values freedom of expression must allow for aggressive editorial opinion, provided that adequate coverage is given to contrary views, as happened with this dispute.

Alternative medicine debate – Case 899

Tom Reardon laid a complaint with *The New Zealand Herald* concerning an article published in the edition of the paper on 6 May 2002. The article was headlined "Natural remedies linked to dangerous side-effects". There was a sub-heading "Children could be at particular risk, a hospital study shows." The Council did not uphold the complaint.

The article was sourced at its conclusion as one from the AAP that is the news agency of Australia.

The article itself purported to publish extracts of a study by a Melbourne children's hospital that linked the use of herbal remedies and alternative medicines to harmful side-effects in children. Typical of the tenor of the article is the following quote as recorded in the article: "The side-effects range from skin discoloration to malnutrition, says Dr Alissa Lim of the Royal Children's Hospital. She says the use of complementary and alternative medicine is becoming increasingly common among parents who believe they are acting in their children's best interests by giving them 'natural' remedies."

The material resulted from a 12-month study using information gathered by the Australian Paediatric Surveillance Unit that confirmed many of the treatments are far from harmless; so the article stated. There can be no doubt but that the article was critical over-all of the uncontrolled use of alternative natural remedies. The second-to-last paragraph in the article stated: "The important message is that like conventional medication, complementary medicine can have adverse effects."

The complaint began with Mr Reardon writing a strongly worded and critical

letter of complaint to the editor of the newspaper seemingly about the accuracy of the article and he challenged its conclusions. The letter was not published. Mr Reardon then sent the letter again to the newspaper as a letter of formal complaint. Later he brought the complaint to the Press Council

The general complaint of Mr Reardon seems to be that the article was inaccurate in many of the statements made about alternative medicines and/or did not contain balancing material about the frequent failure of traditional medicine. In particular he took exception to the statement that during the course of the study 16 adverse events were reported when the article gave no indication how many children had been included in the survey. He saw this as fear-mongering.

The response of the editor to the complaint was that he stood by the article as accurate. It was in the public interest to publish criticisms of alternative medicine, especially given the professional authorities contained in the article of research, and the findings by responsible bodies justified that course. If there were a complaint about non-publication of the original letter, he said it was within the editor's discretion whether to publish any letter, or not, and that has been confirmed by Council's decisions on many occasions.

The Council's view is that the article did not contravene accuracy and balance principles and was a worthwhile contribution to the debate on alternative medicines. There were contained in the article balancing comments on the need for those families who choose to use alternative medicine for their children to let their doctors know. Also there is the second-to-last paragraph already quoted above. The newspaper was able to decline to publish a Letter to the Editor if it chose that course.

The complaint is not upheld.

Tainui representative takes newspaper to task – Case 900

Maarie Te Toohoura complains on behalf of about 500 (out of 43,000) Tainui registered beneficiaries of the $170 million Raupatu Settlement that a *New Zealand Herald* article on her tribe's affairs is inaccurate and "slanderous". The complaint says that the 15 June article is one of several emanating from the newspaper "where incorrect, inaccurate and inappropriate allegations" have been published.

Maarie Te Toohoura refers to other articles objected to, but submits only one other for consideration, appending it to the main object of complaint: a *Weekend Herald* news special by reporter James Gardiner. Gardiner's piece, published after the sudden resignation of Tainui's chief executive David Gray, reports financial and other difficulties facing the tribe.

Tainui refused to be interviewed for the article, leaving its author access only to a one-page statement that claimed for the tribe a strong financial position. Gardiner comes to a different conclusion, however, after talking to Gray and other former senior executives.

Maarie Te Toohoura takes particular umbrage at a comment reported of former chief financial officer Michael Crawford: "The Kingitanga people [those supporting the Maori monarchy] regard the settlement as for their benefit. Tainui is an autocracy with [Maori Queen] Dame Te Ata [Te Atairangikaahu] at the top and a few families around her and the rest of the tribe are second-class citizens". The reference to "second-class citizens" appears to be the substance of the "slanderous" element of the complaint.

The second article objected to, reported by Gregg Wycherley, contains a similar sentiment from Huntly GP David Gilgen – that Tainui beneficiaries are the "poorest of the poor", unable to challenge decisions made by their tribe's board.

In an email to the *Herald*, Maarie Te Toohoura expresses the belief that the *Herald* had been swayed by a disaffected "minority group" that believed the settlement was to be distributed as a cash bonus to registered beneficiaries, when the tribe's actual policy was to accumulate assets for subsequent generations.

She then said that the newspaper was printing "sensational allegations" rather than facts and, in so doing, was breaching the Treaty of Waitangi because a "bi-cultural nation" required respect be accorded both Pakeha and tangata whenua.

"Because the Maaori way of doing things is different that does not give you permission to create published articles denigrating the way Maaori go about doing things."

In response, *Herald* deputy editor David Hastings says Maarie Te Toohoura has not been specific in identifying the inaccuracies she alleged.

He notes that she "clearly objects" to Crawford's opinion that many in the tribe are treated as second-class citizens, but argues that Crawford is entitled to his opinion.

On the question of balanced reporting, Hastings says any one-sidedness in the account is entirely due to Tainui's refusal to discuss the allegations made by the former senior management figures.

He asserts that the reporting is accurate, saying Maarie Te Toohoura has provided no evidence to suggest otherwise.

It should be noted that the special report is by nature of an analysis following an investigation: after his research Gardiner is entitled to make forceful conclusions.

The newspaper might remain aware of its duty to put both sides in any contentious or strongly debated issue. Regardless of Tainui's unwillingness to front up for an interview, the opposing viewpoint could have been given stronger voice than a paragraph reporting Tainui's claim of a strong financial position,

However, Maarie Te Toohoura has difficulty arguing lack of balance with the tribe having refused to grant an interview.

In contrast, Wycherley's article is a clearly attributed report of the opinions of resigning chief executive officer Mr Gray, given in explanation for his stepping down. Mr Gray's opinion – as is the included comment of the Huntly GP – is topical and relevant.

It is not tenable, on the basis of the attributed quotes, to call either article slanderous. The words complained of are general by nature and are given as personal and sympathetic opinions of the lot of ordinary Tainui.

The complainant cannot argue that calling these people "second-class citizens" is a slur on all 43,000 Tainui beneficiaries. Rather the comment makes a point – in the opinion of the speaker – that there is a level of beneficiary not privy to settlement spoils.

In a democracy, a free press has the right to publish such an opinion.

The comments cannot be considered defamatory and there can be little doubt that, if Tainui had spoken freely, its viewpoints would have been given more coverage.

The further complaint that the reports breach the Treaty of Waitangi is also difficult to accept. The articles highlight perceived differences between the lot of Maori and the question of "respecting two cultures" is hardly an issue. Neither article can be said to be "denigrating the way Maaori go about doing things".

The Press Council does not uphold the complaints.

Miss Audrey Young and Mr Jim Eagles took no part in the consideration of this complaint.

... still another opinion piece complaint – Case 901

Bill Vincent complained about an article in *The Press* on 6 July headed "Battle of Nile Street looms". It concerned a residential property in Nelson, which he jointly owned and which he planned to move and replace with three townhouses.

The author of the article, Nelson correspondent Peter Christian, was identified with a logo within the story comprising his name, photograph and a "Nelson" overline.

Above the article, a photograph of the house in question also appeared. The article said the 102-year-old house had a category II Historic Places Trust rating meaning it is of historical or cultural heritage significance. But it also had a group C rating under the Nelson City Council's district resource management plan, effectively meaning the owners did not need consent to remove or demolish it.

The article said the Historic Places Trust would try to save the house but the building's owners did not want to comment until after the resource consent hearing.

It also referred to the views of three people opposed to its removal and it ended: "... objectors to the development can file submissions until July 19".

Mr Vincent said the writer had not attempted to seek comment from him or his partner, therefore it was incorrect to state, as published "as for the building's owners, neither wanted to comment until after the resource consent hearing".

He also said he would not have commented anyway. He believed the deadline information for "objectors" reflected a strong bias and an intent to unduly influence the matter.

The Press responded to Mr Vincent's complaint by saying the article was a column, not a news story, and as such was an expression of personal opinion. It appeared as one of the regional round-ups that ran each Saturday. It would be impractical to label all columns with the word "opinion", the newspaper said.

The newspaper also insisted that the writer had sought to contact Mr Vincent for comment but had failed to locate him. The newspaper invited Mr Vincent to submit a letter for consideration and said Peter Christian would attempt to interview him for a follow-up on his column. Mr Vincent said he did not want to comment until after the hearings on the matter were over.

The Press Council accepts Mr Vincent's view that the piece, the selective views of others presented and the deadline given for objectors show a strong bias against Mr Vincent's plans. In the Council's statement of principles, No 6, on Comment and Fact reads: "Publications should, as far as possible, make proper distinctions between reporting of facts and conjecture, passing of opinions and comment."

The Council accepts that the article in question falls within the category of opinion piece – and therefore it was not unreasonable to show a bias. The use of the photo byline is a common denoter of opinion or commentary. Had it displayed the word comment or opinion, there could have been absolutely no doubt, but the Council is nonetheless satisfied that the logo flagged it as an opinion piece.

Taking stances on controversial issues in such articles usually courts further controversy. That is the risk and sometimes the intention. It is not necessary to present all sides within the same article. The Council would encourage editors to ensure a balance of views on such issues is presented in some form in the newspaper.

In this case *The Press* has endeavoured to present another view through the letters column.

The complaint is not upheld.

An opinion complaint with a difference – Case 902

The complaint arises from an "Opinion" piece in which, as the heading put it, "*Oamaru Mail* general manager Rod Bidois puts his case for scrapping Meridian Energy's Project Aqua."

In this article Mr Bidois expressed in forceful fashion his opinion that the combined hydro-electric-irrigation project proposed by Meridian on the Waitaki River would have disastrous ecological and economic consequences.

A footnote explained that Meridian chief executive Keith Turner would give his view in a future issue.

When Dr Turner's article reached the paper its opening paragraphs stated: "When the management of a newspaper seizes control of the editorial pen there is clearly something awry. In doing so at such length in his offering on Project Aqua – without disclosing his personal interests in the debate – the general manager of the Oamaru

Mail Rod Bidois placed in question his newspaper's editorial integrity and independence." It then went on to outline the case for Project Aqua.

However, when the article appeared, those opening paragraphs had been removed.

Instead there was a footnote from the editor stating that "*Oamaru Mail* general manager Rod Bidois' wife is the minutes secretary and his brother-in-law is a member of the Waitaki River Users Group."

Dr Turner subsequently complained to the paper and later to the Press Council about the *Mail*'s treatment of the subject.

Among other things he objected that the *Mail* had failed to disclose Mr Bidois' personal interest in the debate when it printed his article. By highlighting instead his position as general manager of the *Mail* it gave the impression that his article represented the paper's opinion, because he was general manager. Mr Bidois' views were given greater space than would be available to an ordinary citizen and while his article was run as supplied the response from Meridian was edited.

In response the editor said Mr Bidois' article was clearly labelled as "Opinion", and the paper did not initially identify his indirect connection with the River Users Group because it was not considered relevant but did so later when Dr Turner made an issue of the matter. His work title was given because that was the paper's usual policy and the opening paragraphs of Meridian's response had been edited because "they covered an issue which was a bone of contention between the paper and Dr Turner and was not a matter for our readers".

If the article complained of had been by someone with no connection with the paper it probably could be seen as acceptable.

It was marked as an opinion piece and its content was an unashamed polemic. While it is preferable for an Opinion writer's affiliations to be identified it would not normally be considered necessary to extend that to the interests of other family members.

But the fact that the article was written by the paper's general manager should have been recognised as a cause for taking greater than usual care.

In the absence of any explanation there was an obvious potential for readers to take the article to be a statement of opinion from the Mail rather than a personal comment from a private individual.

The Council is unable to comment on whether the space and prominence given to Mr Bidois' views was unusual, but in running his views the way it did, the paper was certainly opening itself up to the risk of criticism for giving him special treatment.

It is hardly surprising that supporters of Project Aqua, like Dr Turner, took it to mean that the paper's management had intervened to compromise its independence on the issue.

The complaint was upheld.

RSA rumblings reported – Case 903

Mr C R Yates, President of the Auckland Returned Services Association, complained on 27 June about what he described as "misleading and inaccurate comments" in a Dialogue piece by Brian Rudman in *The New Zealand Herald* on 15 May 2002.

Brian Rudman writes a regular opinion column which, as the deputy editor of the *Herald* says, is "well-known for its robust commentaries on Auckland life." Mr Yates, for his part, has for some time been at the centre of disputes over the conduct of affairs at the Auckland RSA. Rifts within the organisation have been extensively reported in the *Herald* newspapers: a lengthy article in the 4-5 January issue of the *Weekend Herald* was followed by a Dialogue piece in the *Herald* of 9 January by Rudman, three news reports during May, plus the Dialogue article of 15 May, and two Letters to the Editor, including one from Mr Yates.

Mr Yates wrote directly to the Press Council on 22 May claiming that the newspaper had refused to print any replies "from us regarding the mistruth and innuendo" printed about affairs at the Auckland RSA. He was advised to refer his complaint to the *Herald*, which he did on 31 May.

The editor responded, on 19 June, noting that a letter from Mr Yates had been published on 30 May, that he had been interviewed twice, and that he had not replied to questions put to him before publication of the most recent article. Mr Yates referred his complaint to the Press Council on 27 June, forwarding a copy of his letter to the editor of 31 May, in which he asked for an immediate retraction from the newspaper of nine contentions in the Rudman piece of 15 May about the affairs at the Auckland RSA. The deputy editor of the *Herald* answered Mr Yates's contentions, point by point, on 26 July.

The Press Council has examined the Rudman article and the *Herald*'s other coverage of the way the Auckland RSA is conducting its business, as well as the contentions made by Mr Yates and the newspaper's reply.

Mr Yates countered the opinions of Mr Rudman with his own opinions; he also raised matters which, as the deputy editor of the *Herald* has noted, are "factually disputable". The Press Council notes too, the further point made by the deputy editor, that Mr Yates failed to address "the main thrust of the (Rudman) column which is about the scandalous goings-on at the Auckland RSA's annual general meeting".

Investigative journalism is of the very essence of a free press. Opinion pieces like those of Mr Rudman make an important contribution to debate in a democratic society. In this case large issues to do with the management of a considerable sum held for the benefit of old soldiers lie in the background. Transparency and openness in the conduct of business in an organisation with such responsibilities, are essential. A newspaper performs an important service to the public interest when it casts light on proceedings where this may seem not to be the case.

Mr Yates's complaint is not upheld.

Footrot Flats cartoon offends – Case 904

The New Zealand Press Council did not uphold a complaint made by Ken Stuart about a Murray Ball cartoon strip "Footrot Flats" published in *The Southland Times* in July this year.

The cartoon strip featured Dog, the main character, serenading his "girlfriend" Jesse who is upstairs in a two-storey house looking down from the window at Dog.

Ken Stuart believed that the cartoon had human connotations, as Jesse had been shown as being in a house rather than her usual dogbox, and he objected on the grounds that it was repulsive to relate a human love scene to that of an animal mating.

The Footrot Flats strip depicts Dog in a scenario that is consistent with the portrayals of Dog's love life. Humour, like beauty, is in the eye of the beholder. In this instance Ken Stuart has read into the cartoon connotations that require a somewhat unusual logic to arrive at his conclusions that the cartoon was offensive. The complaint was not upheld.

Survey results questioned – Case 905

This is a complaint against the *Wainuiomata News* by Hutt City Council represented by communications manager Kirk MacGibbon.

Mr MacGibbon complains about an article published 15 August and about the manner in which the council's response on 12 September was treated.

On 18 July a front page article questioned whether Hutt City Council's Annual Plan gave the Wainuiomata ward (one of six) its fair share of available funding. A survey was printed and readers invited to complete it and send it back to the paper.

On 25 July, before the results of the survey, an article was printed reporting Wainuiomata Community Board members Reg Moore's views that Hutt City Council was unwise to spend ratepayer funds on museums, in particular the Dowse and Settlers Museums.

On 15 August the results of the survey were published, under the headline, "Survey bags HCC spending".

It reported strong comments from those surveyed, many of which indicated Wainuiomata residents paid more money in rates than they got benefits from the council.

On 12 September a letter from Mr MacGibbon was printed challenging the results of the survey and the comments of those surveyed. The headline above the letter was "Council slags survey results". Alongside the Hutt City Council letter was a reply by the editor.

On 19 September four letters to the editor were published supporting *Wainuiomata News*'s handling of the Hutt City Council issue.

It is the articles on 15 August and 12 September that are the subject of this complaint.

Mr MacGibbon asserts that the reporting of the survey on 15 August was negative and that little attempt was made to report the issues with accuracy, fairness and balance.

His issues of concern are

a) Hutt City Council was not given an opportunity to comment on the article.

b) The headline "Survey bags HCC spending" did not accurately convey the content of the article.

c) It was misleading, after a quote from a completed survey, to note that it was written by "an ex-council worker".

d) The quote "We are just a source of money for those scumbags" is unfair to council workers.

e) There were no positive comments.

f) It was naive and mischievous to suggest local body funding should be on a strict pro rata basis.

g) The survey had limited validity because only 36 "motivated" readers completed it and should not have been seen as representing the view of all people.

Mr MacGibbon also complains that he wrote to the paper asking for an apology and his letter was published without further acknowledgment. Alongside his letter, the reply from the editor had some substantial flaws in it.

The *Wainuiomata News* responded to these criticisms by saying the *News* coverage and the Annual Plan have created more interest than usual thereby facilitating the democratic process. In response to Mr MacGibbon's particular issues the paper replied:

a) That the articles should be viewed in context, namely the last in a series of four. Both sides had been covered in earlier editions.

b) The headlines accurately conveyed the thrust of the stories, often borrowing from the introduction.

c) The "ex-council worker" included those words in his comment on the survey form. They were part of the quote, not an addition by the paper.

d) In his reply on 12 September the editor maintained the reference to "scumbags" referred to the Council rather than its employees.

e) The paper asserts that no positive comments were printed because there were none.

f) The *Wainuiomata News* is a local paper – there for the interests of Wainuiomata residents.

g) The paper maintains the results were transparent and that the actual numbers were not overstated or obfuscated

The Press Council finds as follows:

a) While not given an opportunity to respond immediately, the Hutt City Council's letter was published in full on 12 September. This should have satisfied

the Hutt City Council's need to respond to criticism of it.

b) The headlines accurately reflect the content of the articles.

c) The Press Council finds no difficulty with a survey contributor identifying themselves as "an ex-council worker". From the punctuation in the original article it was clearly part of the quote, rather than information added by the newspaper.

The quote reflects the attitude perhaps to councils in general and does not necessarily give rise to the assumption that the writer used to work for Hutt City Council.

d) The "scumbags" quote is strong language and designed to offend. The paper could have chosen to edit it out but did not. As the quote was not at odds with the other, largely negative, quotes it was a matter of judgment for the paper to choose to show the strength of feelings on this subject.

e) There is no obligation on the paper to find positive quotes when there were none.

f) A local paper focuses on local issues. If that focus becomes parochialism the paper will hear from its readers when enough is enough. That is a matter of judgment for an editor.

g) There was no suggestion that more than 36 people returned the survey. The paper could have included a warning about limited statistical validity but it is unlikely many people were misled. After all, the score was 36-0, it seems.

This complaint is about vigorous, interactive cover of issues of local interest. It seems to have sparked robust debate.

The Press Council did not uphold this complaint.

Can Volupta increase breast size? – Case 906

Walker Associates, Barristers and Solicitors of Auckland, acting for Imex Healthcare Ltd and its managing director, Marceline Jordan, complained, on instructions, that an article in the *Sunday Star-Times* of 22 September 2002, contained "misleading, false and inaccurate material, which defames our client and its product."

The article, a half-column piece under the by-line of Pravin Char, carried the headline, "Breast pill claims 'rubbish'." It reported that "the first over-the-counter pill for women concerned about their breast size has been attacked by health professionals". Introduced this month ("amid the fanfare of a TV advertising campaign") the dietary supplement claims to "maintain firm and full breasts". It is available at chemists at a cost of $99 for a month's supply. Ms Jordan was quoted as saying that Imex cannot advertise that Volupta enlarges breasts. A "leading breast physician" was quoted as describing the pills as "a complete waste of time. They will not increase breast size and will not firm up breasts – breasts sag because of gravity."

Walker Associates argued:

- it is claimed that Volupta had been "attacked by health professionals". None

of the responsible agencies – the Ministry of Health, the New Zealand Food Safety Authority, or the Public Health Unit – to which health professionals would direct complaints about such a product, had contacted Imex.

- it is a "patently inaccurate" claim that the comment of one health professional is an "attack by health professionals";
- the article states as a fact that this "supplement could not be advertised as enlarging breasts. This is not correct and thus is an inaccurate statement". The product had not been registered as "a medicine" and accordingly no therapeutic qualities (whether true or not) are able, by law, to be ascribed to it;
- the headline was stated as a fact, not an opinion; the health professional cited by the newspaper was moreover expressing an opinion on claims "which are not made by our client".

The editor of the *Sunday Star-Times* responded: single inverted quote marks had been adopted as the newspaper's style in headlines, in conformity with practice around the world; 'rubbish' was put in single inverted commas because it was an opinion; another health professional had been consulted in preparation of the story – a chemist had also told the newspaper that the pills were "a load of rubbish" – although her statement had not been used; the health professional whose views had been published had made further comments (again not used) – "These Volupta pills are not going to do what they purport to do, they aren't going to make breasts firmer and fuller. These pills will not increase breast size and will not firm up breasts"; the story had noted that Volupta could not be advertised as enlarging breasts because any product claiming to make such changes to the body has to meet the medical criteria under the Medicines Act.

There were also exchanges between the parties to this complaint about verbal undertakings to consult before publication and about the behaviour of the two principals in the case – the reporter and the director of Imex. The Press Council cannot adjudicate on such matters, especially as the argument on behalf of Ms Jordan is made at one remove by Walker Associates.

On the face of it, the article rests on an expression of doubt by a single specialist about the efficacy of Volupta. The editor of the *Sunday Star-Times* commented that a chemist was also consulted, but her comments were not used. It is lax journalistic practice to publish the comments of only one authority as the basis for statements made in the plural form – as in "attacked by health professionals" and "doctors insist any claims to breast enhancement are rubbish".

The more important issues are whether the article is inaccurate, unfair or not newsworthy.

The story was obviously a matter of public interest. Different points of view about the product are reflected. The claim made by the distributors that Volupta will "maintain firm and full breasts" was reported. So too was Ms Jordan's assertion, when first interviewed, that the pills "worked to enhance breast size", along with her personal testimony "Anyway it does work – my breasts are getting bigger, my husband told

me." Ms Jordan does not challenge the accuracy of those reported comments. It was duly noted that she later contacted the *Sunday Star-Times* to say that she could not make claims that the supplement boosted breast size but that all claims made about Volupta complied with the law.

On the other side of the argument stand the assertions that "Doctors insist any claims to breast-enhancement are rubbish" and the comment by a named "leading breast physician" that the pills are "a complete waste of time. They will not increase breast size and will not firm up breasts".

The story is accordingly balanced and not unfair. It is stretching a point to claim that it is inaccurate to report that the product cannot be advertised as enlarging breasts, since it had not been registered as a medicine and accordingly no claims (whether true or not) may be made about its therapeutic qualities. As for the headline, the Press Council accepts that the usage of inverted single commas around the word 'rubbish' is in line with usual practice in a headline and that there was no intention to convey the impression that it was a factual statement. The Press Council interpreted this usage of 'rubbish' as an opinion.

The Press Council does not uphold the complaint.

Reports of death claimed to be insensitive – Case 907

Paraparaumu Beach woman Kaye Molony complains about two articles in the *Kapiti Observer* – dated 15 July and 18 July 2002 – regarding the sudden death of her son.

The first article announces the police and pathologist investigations into two unexplained and unrelated deaths being looked into by Kapiti police. The second reports the "not suspicious" findings from both autopsies.

The 15 July article briefly refers to injuries sustained by Mrs Molony's son; the final article is almost entirely about a post-mortem finding that the other reported death is not suspicious, tagging on the same finding for Mrs Molony's son only in the concluding paragraph.

Kaye Molony complains that some of the reported information is inaccurate, but does not say what or how, and that the articles contravene police assurances that no information regarding the death would be given to the news. She adds that the reporting was insensitive for its repetition in the two articles.

In response, *Kapiti Observer* editor Diane Joyce offers her sincere condolences to the Molony family but says the articles were factual according to the details given by the police. The final paragraph in the last piece, she says, was simply to advise the public that it had been officially confirmed that the death was not suspicious.

It is understandable that the parent of a person deceased in such circumstances would be upset at reading an account in the local newspaper.

The *Kapiti Observer* perhaps slightly exceeded tasteful boundaries when it re-

peated injury details in the second of the pieces. Nor did not aid its case with a somewhat confusing juxtaposition of the two – unrelated – deaths.

But Kaye Molony errs in arguing that reporters are bound by police assurances given to her and in her belief that the paper's coverage sensationalised and trivialised her son's death.

Our condolences go out to Kaye Molony and her family for their loss. But the articles complained of can in no way be described as sensationalist and the fact that two bodies were found and stretched police resources at the same time would have been of interest to a small community.

The complaint is not upheld.

College article falls foul – Case 908

The New Zealand Herald publishes a regular supplement for college students who want to see their work in print. A piece written by a Year 10 student at Epsom Girls Grammar and published on 14 September is disputed by the Poultry Association of New Zealand.

The piece was headed "Putting those Chickens and their Eggs First" and was given the weekly Editor's Choice award by the *Herald*.

Taken from a classroom exercise in writing rhetoric – a fact that became evident from correspondence that attended the Press Council's complaint process – the author's piece canvassed what she saw as the dangers to humans as well as to hens by feeding the latter hormones to hasten their growth.

The article referred to research that the 14-year-old had undertaken to support her arguments, which included references to a chicken raised on modified feed that grew three legs and one wing, birds being force-fed and others raised to have no beaks, feet and feathers. That research, however, was neither cited in the article nor initially offered to the *Herald* in the article's support.

Mr Michael Brooks, executive director of the Poultry Industry Association, emailed a letter to the editor of the Herald on the same day that the article appeared. In it he said the student's piece gave no proof of its sources or the truth of statements made.

He said he was astonished that it was published without first being referred to the industry attacked – the poultry industry; that it was in breach of the *Herald*'s own rules for work appearing in the *College Herald*; and that it had been endorsed by being given the Editor's Choice award. Mr Brooks sought an apology.

He wrote separately to the editor a day later, reinforcing his earlier points and elaborating further. He complained about the wording of the *Herald*'s sub-heading on the student's article, the caption under the photograph, that the article was not marked "Opinion" and that it left the impression that hormone-fed and genetically modified hens were common in New Zealand when they were not.

Mr Brooks also repeated his concern that the newspaper had contravened its own

rules, as he understood them to exist, for acceptance of articles for publication from students.

Here, the association's executive director was referring to inquiries he had made that found that those rules included the provision of the sources for statements made. Mr Brooks said that these had been breached on this occasion according to the *Herald*'s own staff.

Herald deputy editor David Hastings defended to the Press Council the newspaper's practices and the article. He cited a number of sources that the student had used in compiling her school essay, though conceded that she had fallen victim to an urban myth circulating on the Internet about chickens being force-fed via tubes in the United States.

This had alerted the *Herald*, Mr Hastings wrote, to the dangers of secondary school writers uncritically gathering material from the World Wide Web. "As a result we intend to run in the next issue of *College Herald* a warning to budding authors about the perils of accepting at face value what they read on the Internet," the deputy editor told the Press Council.

Publish the warning the newspaper did.

Mr Brooks was not placated and correspondence continued between him and the *Herald* about the article, the Herald's response to it and its accuracy.

It acknowledged that the newspaper acted swiftly to remind student writers of *Manchester Guardian* C P Scott's famous dictum that comment is free, but facts are sacred. Its admonition to junior writers said: Remember to Check your Facts. It went on: Everyone writing for a newspaper, whether it is page one of *The New Zealand Herald* or a contribution to the *College Herald*, should follow the dictum by checking the facts.

The Press Council wholeheartedly agrees.

It believes that the admonition to students applied equally to the *Herald* itself. In the end, the newspaper had failed to apply good journalistic practice to submitted material from a non-staff member.

There was not only a danger in people accepting uncritically information posted on the Internet but also for the *Herald* in publishing material from school children, the veracity of which had not been checked, the Council found.

It believes that newspapers publishing the work of young writers have an extra obligation to check that their articles disseminated in a medium that editors want readers to trust, is accurate or at least can be verified as coming from a reputable source. While encouraging young writers is a worthy act by newspapers, the Council said, editors must bear in mind the vulnerability to which they expose themselves and their readers if articles of any provenance cannot withstand scrutiny.

The Council also believes that if the *Herald* sets down rules for the acceptance of student articles it does neither itself nor the student any favours when it fails to observe them.

However the Council appreciated that the 14-year-old schoolgirl was expressing an evidently sincerely held opinion, but it should be based on fact.

The Press Council upheld the complaint.

Miss Audrey Young and Mr Jim Eagles took no part in the consideration of this complaint.

Decisions 2002

Complaint name	*Newspaper*	*Adjudication*	*Publication*	*Case No*
P Corwin	*The Press*	Not Upheld	18.02.02	861
R Dyson	*The Dominion*	Not Upheld with dissent	28.02.02	862
Fish & Game NZ, Bryce Johnson	*Rural News*	Not Upheld	18.02.02	863
P Harris	*Otago Daily Times*	Upheld	18.02.02	864
I Little	*Wanganui Chronicle*	Not Upheld	18.02.02	865
F Walls	*The Nelson Mail*	Not Upheld	27.02.02	866
E von Dadelszen	*Hawke's Bay Today*	Not Upheld	20.02.02	867
Water Pressure Group	*New Zealand Herald*	Not Upheld	18.02.02	868
Westlake Girls High School	*New Zealand Herald*	Upheld	18.02.02	869
R Brace	*The Evening Post*	Not Upheld	02.04.02	870
N Cassels	*New Zealand Retail*	Part Upheld	02.04.02	871
M Leadbeater	*New Zealand Herald*	Not Upheld	02.04.02	872
D Payton & B Gawith	*Wairarapa Times-Age*	Not Upheld	12.04.02	873
B Procter	*The Southland Times*	Not Upheld	02.04.02	874
Waitakere City Council	*New Zealand Herald*	Not Upheld	08.04.02	875
R Welham	*New Zealand Herald*	Not Upheld	02.04.02	876
M Grigg	*Wainuiomata News*	Not Upheld	13.05.02	877
T Humphries	*Otago Daily Times*	Not Upheld	14.05.02	878
S Larkin	*New Zealand Herald*	Not Upheld	13.05.02	879
D O'Rourke	*The Press*	Not Upheld	13.05.02	880
D Pennefather	*C H B Mail*	Not Upheld	13.05.02	881
N Rosenberg	*N B R*	Not Upheld	13.05.02	882
J Ross	*New Zealand Herald*	Not Upheld	13.05.02	883
S Sparks	*East & Bays Courier*	Not Upheld	13.05.02	884
A Little & NZEPMU	*New Zealand Herald*	Declined	15.05.02	885
Y Johanson	*Christchurch Mail*	Upheld	02.07.02	886
Northland Regional Council	*Northern Advocate*	Upheld	02.07.02	887
A Cooper	*The Press*	Part Upheld	02.07.02	888
R Welch	*Waikato Times*	Upheld	22.07.02	889
FTANZ	*New Zealand Herald*	Not Upheld	15.08.02	890
Kapiti Environmental Action	*Kapiti Observer*	Not Upheld	12.08.02	891
B Williams	*Howick & Pakuranga*	Not Upheld	12.08.02	892
C Lundy	*The Dominion*	Not Upheld	12.08.02	893
X	*The Evening Pos*t	Upheld	12.08.02	894
Ted Burrows	*The Daily News*	Not Upheld	25.09.02	895
Wayne Church	*Hawke's Bay Today*	Not Upheld	25.09.02	896
Ian Little	*Wanganui Chronicle*	Not Upheld	25.09.02	897
Patrick McEntee	*Hawke's Bay Today*	Not Upheld	25.09.02	898
Tom Reardon	*New Zealand Herald*	Not Upheld	25.09.02	899
Maarie Te Toohoura	*New Zealand Herald*	Not Upheld	25.09.02	900
Bill Vincent	*The Press*	Not Upheld	25.09.02	901
Meridian Energy	*Oamaru Mail*	Upheld	11.11.02	902
C R Yates	*New Zealand Herald*	Not Upheld	11.11.02	903
Ken Stuart	*Southland Times*	Not Upheld	11.11.02	904
Hutt City Council	*Wainuiomata News*	Not Upheld	19.12.02	905
Imex Healthcare/Marceline Jordan	*Sunday Star-Times*	Not Upheld	19.12.02	906
Kaye Molony	*Kapiti Observer*	Not Upheld	19.12.02	907
Poultry Industry Assoc of NZ	*New Zealand Herald*	Upheld	19.12.02	908

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 cor-

rection fair prominence. In some circumstances it will be appropriate to offer an apology and a right of reply to an affected person or persons.

3. Privacy

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

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

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

4. Confidentiality

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

5. Children and Young People

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

6. Comment and Fact

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

7. Advocacy

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

8. Discrimination

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

9. Subterfuge

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

10. Headlines and Captions

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

11. Photographs

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

12. Letters

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

13. Council Adjudications

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

Complaints Procedure

1. If you have a complaint against a publication you must complain in writing to the editor first, within 3 months of the date of publication of the material in issue. Similarly complaints about non-publication must be made within the same period starting from the date it ought to have been published. This will acquaint the editor with the nature of the complaint and give an opportunity for the complaint to be resolved between you and the editor without recourse to the Press Council.
2. If you are not satisfied with the response from the editor (or, having allowed a reasonable interval, have received no reply) you should write promptly to the Secretary of the Press Council at PO Box 10-879, The Terrace, Wellington. Your letter should:

   (a) specify the nature of your complaint, giving precise details of the publication, (date and page) containing the material complained against. It will be of great assistance to the Council if you nominate the particular principle(s), from the 13 listed in the next section of this brochure, that you consider contravened by the material; and

   (b) enclose the following:

   - copies of all correspondence with the editor;
   - a clearly legible copy of the material complained against;
   - any other relevant evidence in support of the complaint.

3. The Press Council copies the complaint to the editor, who is given 14 days to respond. A copy of that response is sent to you.
4. You then have 14 days in which to comment to the Council on the editor's response. There is no requirement for you to do so if you are satisfied that your initial complaint has adequately made your case.
5. If you do make such further comment, it is sent to the editor, who is given 14 days in which to make a final response to the Council. Full use of this procedure allows each party two opportunities to make a statement to the Council.
6. The Council's mission is to provide a full service to the public in regard to newspapers, magazines or periodicals published in New Zealand (including their websites) regardless of whether the publisher belongs to an organisation affiliated with the Council. If the publication challenges the jurisdiction of the Council to handle the complaint, or for any other reason does not cooperate, the Council will nevertheless proceed to make a decision as best it is able in the circumstances.
7. Members of the Press Council are each supplied prior to a Council meeting with a full copy of the complaint file, and make an adjudication after discussion at a meeting of the Council. Meetings are held about every six weeks.

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

9. There is no appeal from a Council adjudication. However, the Council is prepared to re-examine a decision if a party could show that a decision was based on a material error of fact, or new material had become available that had not been placed before the Council.

10. In circumstances where a legally actionable issue may be involved, you will be required to provide a written undertaking that, having referred the matter to the Press Council, you will not take or continue proceedings against the publication or journalist concerned. This is to avoid the possibility of the Press Council adjudication being used as a "trial run" for litigation.

11. The Council in its case records will retain all documents submitted in presentation of a case and your submission of documents will be regarded as evidence that you accept this rule.

12. The foregoing points all relate to complaints against newspapers, magazines and other publications. Complaints about conduct of persons and organisations towards the press should be initiated by way of a letter to the Secretary of the New Zealand Press Council.

13 The Press Council will consider a third-party complaint (i.e. from a person who is not personally aggrieved) relating to a published item, but if the circumstances appear to the Council to require the consent of an individual involved in the complaint it reserves the right to require from such an individual his or her consent in writing to the Council adjudicating on the issue of the complaint.

Statement of Financial Performance

As at 31 December 2002 (Audited)

INCOME

2001		*2002*
1,200	Union	1,950
140,000	NPA Contribution	155,000
5,000	NZ Community Newspapers	5,000
7,750	Magazine Contribution	8,500
731	Interest Received	666
-	Loss on Sale of Asset	(15)
154,681	**Total Income**	**171,101**

EXPENDITURE

864	ACC Levy	516
578	Accounting Fees	533
351	Advertising and Promotion	-
450	Auditor	550
71	Bank Charges	24
334	Cleaning	476
450	Computer Expenses	902
3,400	Depreciation	2,730
2,258	General Expenses	1,879
1,300	Insurance	1,500
961	Internet Expenses	1,030
1,384	Postage and Couriers	1,584
1,421	Power and Telephone	1,546
10,757	Printing and Stationery	4,229
6,229	Reception	6,229
15,665	Rent and Rates	15,565
89,499	Salaries – Board fees	90,675
-	Secretary's allowance	-
100	Subscriptions	125
17,467	Travel and Accommodation	16,023
1,258	Interest – Term Loan	437
154,797	**Total Expenses**	**146,553**

(116)	Income over Expenditure	24,548
6,407	Plus equity at beginning of year	6,291
6,291	**Equity as at end of year**	**30,839**

Auditor's report

CORNISH
& ASSOCIATES LTD

Accountants & Business Advisers

18 March 2003

To Whom It May Concern

The New Zealand Press Council

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

In our opinion:-

- Proper accounting records have been kept by the organisation as far as appears from our examination of those records, and the organisation's 2002 Financial Statements.
- The accounts comply with the generally accepted accounting practice, and give a true and fair view of the financial position as at 31 December 2001 and financial performance and cashflows for the year ended on this date of the organisation.

Our review was completed on 18th March 2003 and our unqualified opinion is expressed at this date

CORNISH AND ASSOCIATES LTD.

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