NEW ZEALAND PRESS COUNCIL

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OFFICERS FOR 2010

Barry Paterson (CNZM, OBE, QC)	Independent Chairman, Retired High Court Judge
Mary Major	Executive Director

Representing the public:

Pip Bruce Ferguson	Independent Researcher, Hamilton
Ruth Buddicom	Barrister, Christchurch (until July)
Chris Darlow	Lawyer, Auckland (from October)
Sandy Gill	Consultant and mother, Lower Hutt
Keith Lees	Retired Teacher, Christchurch
Lynn Scott	Company Director, Wellington

Representing the Newspaper Publishers Association (NPA)

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

Representing Magazine Publishers

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

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

Penny Harding	Journalist, Wellington
Stephen Stewart	Journalist, Wellington

NEW ZEALAND PRESS COUNCIL

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Chairman's Foreword

Sixty-five complaints were adjudicated by the Council during 2010. This is a marked increase on the number of adjudications issued in previous years. An additional ten complaints were mediated / resolved informally.

Twenty of the complaints adjudicated were upheld in full; three were upheld by the majority with dissenting views expressed; two were partly upheld; one was partly upheld with a dissenting vote; and one was not upheld with some members dissenting. Thirty-eight of the complaints were not upheld.

Thirty-four complaints were against daily newspapers, 13 against Sunday newspapers, eight against community newspapers, seven against magazines, one against a student magazine, one against a newspaper's website and one against the National Business Review.

There were 21 occasions where a member declared an interest in the matter complained of and left the meeting room and took no part in the consideration. On one other occasion a member abstained from voting. The practice of the Council is that where a member does have what is considered a material conflict, that member declares it and takes no part in the discussion and leaves the meeting room. A material conflict of interest may arise because the member has some link with the media organisation involved in the complaint or may have some other interest in the complaint which could be perceived as being a conflict of interest situation.

As noted above there were cases determined where a dissenting opinion was expressed (see cases 2104, 2113, 2114, 2117 and 2130). There is often constructive and vigorous debate on a complaint, even at times when all the members support the same result. Members are encouraged to, and often request, that the adjudication record the

New Zealand Press Council 2010: *From Left Stephen Stewart (Wellington), Chris Darlow (Auckland), Pip Bruce Ferguson (Hamilton), Barry Paterson Chairman (Auckland), Kate Coughlan (front, Auckland), Lynn Scott (Wellington), Keith Lees (Christchurch), Mary Major (Executive Director), Sandy Gill (Lower Hutt), Penny Harding (front, Wellington) John Roughan (Auckland).*

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

reasons for dissent. These debates assist members in coming to their decisions. The diverse view of members, not necessarily on an independent versus industry split, is fundamental to the Council's decision-making.

As details of the adjudications appear in this report, it is not proposed to comment on all of them. Some do have particular interest however.

A complaint by an accountant who had been convicted of fraud was partly upheld, by a majority, on the grounds that the newspaper suggested that he had stolen $20 million whereas he was sentenced on the basis that he stole approximately $3.2 million. The dissent in this case was on the grounds that although he only stole $3.2 million from his clients, his actions did result in losses of approximately $20 million to 220 people. The article was attempting to show the impact of his actions on those who had lost savings as a result of his actions. (Case 2104)

In another case, where the complaint was upheld, a well-known member of the Right objected to being called a neo-Nazi Satanist and a member of the White Power Movement. The White Power Movement infers racism. (Case 2105)

The Council did not find racist an article in a magazine which was critical of Australian fishermen. The article took a particular stance on the issue of the impact of tourism, mainly Australian visitors, on the fishing resources in New Zealand rivers, particularly those in the lower South Island. While the article expressed a strong line on the action of some Australian fishermen, the article itself was not found to be racist. (Cases 2106 and 2116)

During the year the Council had more than one case relating to children and privacy. In one case a newspaper decided to follow up a Court case in which a child had been assaulted and in respect of which there were suppression orders. The reporter phoned the child's grandparents who had no knowledge of the incident. Although the reporter did not give details of the events to the grandparents, it would have been obvious to the grandparents that something had happened to the child. This action undermined the parental right to deal with the situation in a manner of the parents' choice and was a breach of the child's right to privacy. (Case 2111) In another case a newspaper published an article referring to proceedings in the Family Court and although names are not published, it was the Council's view that the report included several pieces of information that collectively in the Council's view could have enabled some readers to identify the child. The Council's view, in upholding the complaint, was that the newspaper had not taken sufficient care to protect the child's privacy. One member dissented. (Case 2113)

The Council received many complaints against a Sunday newspaper which published the photograph of a 5 year old child whose mother had been killed, allegedly murdered. The Council held that there was no public interest in publishing the photograph of the boy and that the photograph was not relevant to the unfolding case. The photograph showed the small boy on his way to school and the Council held that the publication of it was gratuitous. (Cases 2150-2157)

In another article a newspaper's headline referred to cyber bullying at a private school. The headline and a caption gave the clear impression that pupils at the school were participants in the bullying. The Council held this to be inaccurate and misleading and by a majority decision upheld the complaint. (Case 2114)

There were complaints based on scientific articles. The Council welcomes scientific articles and believes that newspapers provide a public service when they publish scientific articles in terms that can be understood. However, it is important that scientific terms are used in their correct sense and a complaint was upheld when this was not the case. (Case 2108) Another complaint about an article which referred to global warming was not upheld. The complainant alleged that the magazine should have included sceptics about anthropogenic global warming. While articles most often require balance, it was considered that it was not necessary in this case because an alternative view on one aspect of the topic was not directly related to the general thrust or essence of the article. (Case2109)

The Council did not uphold a complaint against an article which, published at the time of the launch of a book by social historian Linda Bryder, reassessed the findings of the 1988 Cartwright Inquiry into the treatment of cervical abnormalities at Auckland's National Women's Hospital. The article clearly advocated a different result from that arising from the Cartwright Report. The Council concluded that readers were presented with a reappraisal of an important public inquiry that has had a powerful impact on New Zealand's medical ethics governing research and patient information and consent. The position taken by the magazine was countered by articles in other publications and the magazine itself gave opposing views fair treatment in its columns.(Case 2110)

The Council's view is that if a newspaper makes a mistake and corrects it promptly, this will in most circumstances not lead to a subsequent complaint being upheld. However, on occasions the Council will uphold a complaint notwithstanding the correction. It did so in a complaint by Airways New Zealand against articles relating to the safety of Queenstown's airport. In its correcting article the newspaper reiterated some views from its earlier article but had not put these allegations to the interested parties. The Council took the view that the correcting article did not go far enough. In some respects it reinforced the lack of balance and while it accepted some errors it clearly restated views on which it had not sought balance. (Case 2122)

In another two cases complaints were upheld even though the information complained of had been provided to the newspapers by authoritative sources. The newspapers had published in good faith. However, on being advised of the inaccuracies in the reports, neither took action. If the misinformation had been corrected appropriately the complaints would not have been upheld. (Cases 2125 and 2126)

The Council does not generally accept complaints against student newspapers, but some years ago Critic Te-Arohi asked to come within the Press Council jurisdiction, and one such complaint was upheld. The Council noted that student newspapers as a genre have a long history of provocation and even offensiveness, and that is to be expected in fiery crucibles such as universities. It makes

allowances for such articles as long as essential principles are maintained. The article in respect of which the complaint was upheld contained an invented character with whom a mock interview was undertaken. The article as written annoyed the local mental health community and others. The editor acknowledged that he had completely misjudged the position. As the Council said in its decision, "making up an interview and including it in a larger article is a ridiculous concept, particularly when there is no explanation to readers that this has taken place". (Case 2144)

There were complaints arising from material on candidates published prior to the local government elections. One of these, relating to an anonymous letter, was upheld. (Cases 2147, 2162, 2163, 2164) The Council's fast-track procedure was not used this year; all complaints were received late in the election process and no benefit would have been gained from fast-tracking the complaints.

There have been one or two instances during the year of newspapers publishing comments intended to undermine the Council's adjudication. This matter is noted separately in this report.

An issue of concern is where a publication, subject to a complaint, advocates its position in its columns while the complaint is being considered by the Council. A newspaper did this during the year. It advised its readers of the complaint and its view of this. The complaint was then withdrawn. The Council will investigate the actions of a publication if there is a suggestion that it has taken this course to "frighten off" a complainant.

Sir Peter Gluckman, the Prime Minister's Science adviser, and Peter Griffin, manager of the Science Media Centre both lunched with the Press Council this year.

During the year Ruth Buddicom left the Council. Ruth was a highly-regarded, long serving member of the Council who made very valued contributions to it. She is thanked for her services. She has been replaced by Chris Darlow an Auckland lawyer.

Once again, the Council has been admirably served by its executive director Mary Major. She has cheerfully shouldered the increased workload brought about by the number of complaints and also does valuable work in settling some of the complaints which never reach the Council. She is thanked for her services.

Finally, I record my thanks and appreciation to the members of the Council for their support and contribution.

When Private Can Become Public

Social media have become massively popular around the world. As the Press Council noted in one decision during the year (Case No 2166), if members of Facebook represented a country, it would be the third largest in the world.

Social media websites and links such as Twitter offer various levels of access security but open access to specific websites where people can offer condolences or messages of hope has seen the development of a powerful, even valuable communication tool at times of tragedy such as the Pike River disaster.

Similarly, the open pages of people who become involved in newsworthy items become news in themselves, as was most recently demonstrated with the website of the man accused of shooting US Congresswoman Gabrielle Giffords and others in Arizona.

Social media websites and links with open access become, in effect, public places, accessible to anyone with the curiosity to go to them, and they can pass that information on. And if information or photographs within them are already available to hundreds of millions, doesn't it follow automatically that journalists should also be able to use such information and pictures in publications or other websites?

The essence of Genevieve O'Halloran's complaint against the *New Zealand Herald* was that it should not have used a picture of murder victim Carmen Thomas cuddling her son that had been posted on a Facebook page being supported by friends and family. Although the photograph was old, she said the newspaper breached his privacy and did not follow the Council's principles in that it did not reach the "exceptional public interest" required in dealing with children.

The Council did not uphold the complaint. The child would not have been recognisable given the age of the photograph. But among the council's other reasons was the belief that the "public place" nature of social media websites makes it difficult to argue a breach of privacy if a newspaper re-publishes material already available on Facebook. It's arguable that publication on Facebook would have much greater impact or influence.

But there are limitations, apart from the obvious ones, such as copyright. Republishing a picture or statement without permission or acknowledgement runs the risk of breaching the rights of a copyright-holder. Other factors that need to be considered are newsworthiness and relevance, and normal journalistic and ethical principles will always apply.

A publication or website must show that republishing such material is justified on the grounds that it is newsworthy and in the public interest. In the case of a child, under Principle 3, that would be extended to "exceptional public interest." The material would also have to be directly relevant to the matter of public interest. It could not be a peripheral matter that might be interesting but not necessarily in the public interest – for example, general or personal comments on the website of a friend or relative of the person involved in the newsworthy event.

There was a notable example of such a complaint in the year under review. Britain's Press Complaints Commission strongly criticised *The Scottish Sunday Express* for intruding into the private lives of teenagers who survived the 1996 Dunblane massacre, during which 16 primary school children and one adult were killed by a man before he killed himself.

In March 2010, based on pictures and other information obtained from social networking websites, the newspaper reported some survivors had become "foul-mouthed" youths who "boast about sex, brawls and drink-fuelled antics". The article was headlined "Anniversary shame of Dunblane survivors" and said the behaviour of some survivors who were turning 18 "shamed" the memory of those who died.

Parents of two named in the article said it was intrusive of the newspaper to have identified their children as Dunblane survivors and to have published information about their private lives, including pictures. In its adjudication, the PCC agreed and said publication represented a serious error of judgement that not even the newspaper's subsequent apology could undo.

The Commission believed it could be acceptable in some circumstances for the press to publish information taken from social media websites, even if the material was originally intended for a small group of acquaintances rather than a mass audience.

"This is normally, however, when the individual concerned has come to public attention as a result of their own actions, or are otherwise relevant to an incident currently in the news when they may expect to be the subject of some media scrutiny. Additionally, if the images used are freely available (rather than hidden behind strict privacy settings), innocuous and used simply to illustrate what someone looks like it is less likely that publication will amount to a privacy intrusion. Circumventing privacy settings to obtain information will require a public interest justification."

But while the boys' identities might have been made public in 1996, they had since been brought up away from the media spotlight – as the article conceded. No photographs of any of the children had been seen in more than a decade. They were not public figures in any meaningful sense and had done nothing to warrant media scrutiny since being caught up in a newsworthy event 13 years before. Further, the images appeared to have been taken out of context and presented in a way to humiliate or embarrass them.

The Commission said that what amounted to a serious intrusion could not be justified just because the identities of the survivors had been published previously and that the information had been obtained from publicly-accessible websites. There was no particular reason for the boys to be in the news and publication represented a fundamental failure to respect their private lives.

The New Zealand Press Council expects such complaints to continue as more and more information is shared on social media websites or other mechanisms such as Twitter where news is often broken. Most social media interaction is far from newsworthy but, as events are showing, it can become so. The measurement for journalists using the new methods of information-gathering is to ensure that what they do always meets the same journalistic and ethical principles that served them in the past.

Pictures of Children in Traumatic Situations

When is a publication or website justified in publishing a picture of a child unwittingly caught in tragedy, trauma or other circumstance beyond their control? That vexed question and issues of privacy and children again caused debate and some anguish with the Press Council in the year under review.

The tensions, if not conflict, inherent in such considerations are apparent even in the Council's own principles. Principle 2 acknowledges the right to privacy and how "these rights should be respected by publications. Nevertheless the right of privacy should not interfere with publication of significant matters of public record or public interest." Principle 3, however, says that in "cases involving children and young people editors must demonstrate an exceptional public interest to override the interests of the child or young person."

Principle 2 speaks of both public interest and public record. The Press Council has defined public interest as "involving a matter capable of affecting the people at large so that they might be legitimately interested in, or concerned about, what is going on, or what may happen to them or to others." That too is helpful only to a degree. Definitions of "exceptional public interest" are likely to be subjective.

When the *Herald on Sunday* decided to publish a picture of the identifiable five-year-old son of a slain Auckland woman, Carmen Thomas, with the pregnant fiancee of his father who had been accused of the mother's murder, no fewer than eight people, including Children's Commissioner Dr John Angus, complained to the Council that publication breached both principles. The Council agreed.

The picture appeared to have been taken while the boy was on his way to or from school. Unlike in previous deliberations in 2009 (Cases 2089 and 2090) , both of which involved the same photograph of a young boy arriving at a hospital after being wounded in the arm by a man who fatally shot his father, this time the Council agreed unanimously there was no exceptional public interest in the photograph. In fact, there was no public interest at all. It had no relevance to the killing of his mother, or the continuing story the event inevitably became. Publication was gratuitous. In the 2009 cases, the Council voted 6-4 not to uphold, a majority believing the "exceptional" threshold had been reached.

One of the complainants about the *Herald on Sunday* claimed the *New Zealand Herald* had also breached both grounds by publishing an older picture of the mother cuddling her baby son. Given the time that had passed, the child was not identifiable in the picture, which had been already published on a FaceBook page organised by family members and supporters of the slain woman. The Council did not uphold that complaint. In the circumstances, it was difficult to see further harm resulting from publication when the child could not be identified and the picture had already been widely circulated.

What circumstances might justify publication of pictures of a child or children in tragic or difficult circumstances? The Press Council believes the threshold to justify publication must be high. For a start, the children must have a direct and highly significant involvement in the event being reported – the Wahine and other disasters have provided good examples of where published photographs of children showed graphic and powerful images of the unimaginable.

It also follows that such pictures should have a news value in themselves and add to a reader's knowledge or understanding of the event. Sensitivity to the child's predicament and even appearance is paramount. Publishing a photograph that would cause a child embarrassment would be a huge risk for any editor – and the child.

As all four cases showed, there are third parties ready to take up the cudgels on behalf of a child in such publications. The fact that no family members complained directly is worth noting. But the reactions point to an important litmus test for editors. How will the everyday reader react? Risking readers' ire is part of an editor's lot – they are not paid to be popular – and some people are quick to take offence. After considering all factors, editor should still be prepared to take risks.

But there is a difference between illustrating realities that add significantly to comprehension of the enormity of an event and acting gratuitously to publish a photograph that has nothing to do with the reality of what happened to the five-year-old's parents. As the editor of the *Herald on Sunday* acknowledged, the paper has learned from the experience.

Questioning the Council's Adjudications

A footnote to the Council's Statement of Principles states:

> Editors are obliged to publish with due prominence the substance of Council adjudications that uphold a complaint.

Publication of an "uphold" adjudication is the only sanction the Council can impose. Some commentators suggest that the Council should have greater powers to sanction but in most democratic countries equivalent press councils do not have such additional powers. The review of the Council undertaken in 2007 by Sir Ian Barker and Lewis Evans (the Review) noted that a recent report of the House of Commons Committee in the United Kingdom found little evidence that the industry would support financial penalties and that the power to fine would need statutory backing. The Review did not recommend financial sanctions.

Further, the commentators who suggest financial sanctions underestimate the effect on a publication and an editor of being required to publish "with due prominence the substance of Council adjudications".

Perhaps because of the effect of being required to publish the substance of an adjudication some editors, fortunately only a few, have sought to modify or weaken the effect of the adjudication by critically commenting on it. There is nothing in the Council's Statement of Principles which prevents such comment.

The issue is whether it is appropriate to do so. The industry has agreed to the Press Council's self-regulatory role. The Statement of Principles has not only been negotiated with the industry but has been accepted by it. Notwithstanding the absence of a prohibition on commenting critically on adjudications, editors should reflect on the wisdom of doing so.

The pros and cons of self-regulation are well debated and were considered in the Review. The greatest risk to self-regulation is that if it is not seen as being effective, it will be replaced by a statutory regime similar to that which applies in the broadcasting industry. While a statutory regime has some advantages, including funding from the Government, the greatest danger to an industry, particularly the media, is that the Government's coercive powers can be used to excess and to influence the direction of industry beyond that implied by regulation (p 11 of the Review). Most democratic countries favour self-regulation of the media for this reason.

For self-regulation to be effective, it is necessary that the regulation and the principles underlying it should be adhered to. The Editors' Code of Practice of the Press Complaints Commission (UK) contains:

> It is essential that an agreed code be honoured not only to the letter but in the full spirit.
>
> It has been said that a code of practice similar to the Council's Statement of Principles works best in practice when the principles are agreed and upheld on a voluntary basis.

An important element of whether or not self-regulation is effective is the public perception of it. The purpose of requiring an uphold adjudication to be published is not only a sanction on the newspaper but is also to alert the public to the fact that the press can be, and is, judged. Success depends in a large part on the public perception of there being an appropriate complaints procedure. That public perception is likely to be undermined if an editor attempts to explain his publication's actions or to suggest that the Council has got it wrong.

The Council, like all decision-making bodies, may not always get it right. However, if it does err, it is the Council's view that this is a consequence which editors should take on the chin if they want to retain confidence in self-regulation.

The Council does not have power to apply further sanctions when editors seek to undermine an adjudication, but editors should think seriously before doing so. Noting as a footnote to the publication of the decision that the editor does not agree with the Council, or that part of the adjudication is considered incorrect is not likely to enhance public perception of self-regulation. Even if the Council does not have power to impose a sanction, it will in appropriate cases strongly take the matter up with the editor who adopts such a practise.

The Press Council Year – Other Activities

The Council's website, letterhead and pamphlet were given a new look in 2010. The pamphlet incorporated the changes to the Statement of Principles and Complaints Procedure, that had come about as a consequence of the Press Council review. It was determined that where online articles are found against by the Press Council, the article should be flagged as having been subject to a ruling by the Council, and a link to the decision at www.presscouncil.org.nz is to be provided.

The Press Council provided the Law Commission with a submission on their Review of the Privacy Act. The Council affirmed its support for a continuation of the exclusion from the Act of news media in relation to their news gathering activities. The Council also discussed issues relating to the definitions of "news media" and "news activity."

Barry Paterson attended the Community Newspaper Association conference in Queenstown in March. He addressed the attendees on the work of the Press Council and, particularly, issues that had presented over the last year.

Mary Major attended a dialogue with the Muslim community event in March where the topic was Muslims and the media. She spoke on freedom of the press and freedom of speech and also the Press Council's complaints process.

In May Mary Major addressed another Office of Ethnic Affairs seminar; this one aimed at getting various ethnic voices into the media.

In July Keith Lees visited The Messenger, a Chinese language newspaper in Christchurch, to introduce them to the work of Press Council.

Mary Major attended an ethics seminar for Fairfax reporters, and spoke on the Council's Principles of ethical journalism. She also gave examples of recent complaints and how these may have been avoided.

In December the Council was visited by a group of Shanghai writers and publishers. We were grateful to have on hand Charles Mabbett, media advisor for the Asia New Zealand Foundation, who assisted with the visit.

Mary Major attended the annual conference of the Alliance of Independent Press Councils of Europe in Amsterdam in November. The conference had a particular focus on online issues – jurisdiction, readers' posted comments, digital archives and social networks and the use of material taken from them. Attendees, from 36 countries, found much in common. The Netherlands Press Council provided wonderful hospitality, combining the hosting of the conference with celebrations marking their 50th anniversary.

Mary also visited the Press Complaints Commission in London.

The Press Council records its gratitude to Warren Page for ably taking over the reins of the Council while Mary was away.

Decisions 2010

Complaint name	*Publication*	*Adjudication*	*Date*	*Case No*
Warren Pickett	*The Dominion Post*	Part Upheld with Dissent	February	2104
Kerry Bolton	*The Press*	Upheld	March	2105
Felix Borenstein	*Fish & Game NZ*	Not Upheld	March	2106
Kiwis for Balanced Reporting On the MidEast	*The Press*	Not Upheld	March	2107
Robin Grieve	*New Zealand Herald*	Upheld	March	2108
Ted Mason	*New Zealand Listener*	Not Upheld	March	2109
Charlotte Paul	*New Zealand Listener*	Not Upheld	March	2110
Complainant	*The Daily Post*	Upheld	March	2111
C G Duff	*The Dominion Post*	Upheld	May	2112
Complainant	*Sunday News*	Upheld with Dissent	May	2113
Hereworth School	*Hawke's Bay Today*	Upheld with Dissent	May	2114
Kiwis for Balanced Reporting On the MidEast	*New Zealand Herald*	Not Upheld	May	2115
Christopher Robertson	*Fish & Game NZ*	Not Upheld	May	2116
Donald Bethune	*New Zealand Herald*	Not Upheld with Dissent	June	2117
Tony Holman	*The Aucklander*	Not Upheld	June	2118
Kiwis for Balanced Reporting On the MidEast	*Stuff*	Not Upheld	June	2119
Maria Lempriere	*Taranaki Daily News*	Not Upheld	June	2120
Jo Millis	*Wanaka Sun*	Not Upheld	June	2121
Airways New Zealand	*Mountain Scene*	Upheld	August	2122
Church of Scientology	*Woman's Day*	Part Upheld	August	2123
Andrew Geddis	*Sunday Star-Times*	Upheld	August	2124
Bryan Harrison	*Bay of Plenty Times*	Upheld	August	2125
Shelley Holdsworth	*Hawke's Bay Today*	Upheld	August	2126
In Kyung Lee	*The Press*	Not Upheld	August	2127
Fiona Moore	*Next*	Not Upheld	August	2128
Ken Orr	*The Press*	Not Upheld	August	2129
Peace Movement Aotearoa	*NZ Herald*	Upheld with Dissent	August	2130
Jay Reid	*The Dominion Post*	Not Upheld	August	2131
Brian Steel	*NZ Herald*	Not Upheld	August	2132
Trinette Tawse	*Sunday News*	Not Upheld	August	2133
Trinette Tawse	*Manawatu Standard*	Not Upheld	August	2134
Neil Way	*Taranaki Daily News*	Not Upheld	August	2135
Dawn Dunjey	*The Oamaru Mail*	Upheld	September	2136
Lisa Forster McNicholl	*The Press*	Not Upheld	September	2137
Karen Knight	*New Zealand Herald*	Not Upheld	September	2138
Pierre Le Noel & Executive Recruiters International	*New Zealand Herald*	Upheld	September	2139
D A Marsh	*Waitomo News*	Not Upheld	September	2140
Right to Life NZ Inc	*The Press*	Not Upheld	September	2141
New Plymouth RSA	*The Daily News*	Not Upheld	October	2142
NZ Seafood Industry Council	*North & South*	Not Upheld	October	2143
Otago Mental Health Trust	*Critic Te-Arohi*	Part Upheld	October	2144
Elizabeth Overton	*NZ Herald*	Not Upheld	October	2145
Darroch Todd	*The Dominion Post*	Not Upheld	October	2146
Mark Williams	*CHB Mail*	Upheld	October	2147
Warren Wilson	*NBR*	Not Upheld	October	2148
Peter Windsor	*The Dominion Post*	Not Upheld	October	2149
John Angus, Children's Commissioner	*Herald on Sunday*	Upheld	December	2150

Margot Donaldson	*Herald on Sunday*	Upheld	December	2151
Lewis Mills	*Herald on Sunday*	Upheld	December	2152
Gen O'Halloran	*Herald on Sunday*	Upheld	December	2153
Katie Satherley	*Herald on Sunday*	Upheld	December	2154
Will & Cate Slater	*Herald on Sunday*	Upheld	December	2155
Assoc. Prof. Rosemary Tobin	*Herald on Sunday*	Upheld	December	2156
Richard Wells	*Herald on Sunday*	Upheld	December	2157
Paul Fleming	*The Press*	Not Upheld	December	2158
Michael Gibson	*The Dominion Post*	Not Upheld	December	2159
Robin Grieve	*New Zealand Herald*	Not Upheld	December	2160
Hon. Murray McCully	*Herald on Sunday*	Upheld	December	2161
Dal Minogue	*Hauraki Herald*	Not Upheld	December	2162
Dal Minogue	*The Informer*	Not Upheld	December	2163
Ada McCallum	*The Informer*	Not Upheld	December	2164
NZ Teachers Council	*Sunday Star-Times*	Not Upheld	December	2165
Genevieve O'Halloran	*New Zealand Herald*	Not Upheld	December	2166
Complaint	*Bay of Plenty Times*	Not Upheld	December	2167
Waikato District Health Board	*Waikato Times*	Not Upheld	December	2168

An Analysis

Of the 65 complaints that went to adjudication in 2010 20 were upheld in full; three were upheld with dissent; two were part upheld; one was part upheld with dissent; one was not upheld with dissent; and 38 were not upheld.

Thirty four complaints were against daily newspapers; seven were against magazines and one against a student magazine; 13 against Sunday newspapers; eight against community newspapers; one against a website; one against *National Business Review*.

Most complaints going to adjudication are considered by the full Council. However, on occasions, there may be a complaint against a publication for which a member works or has some link. On these occasions the member leaves the meeting and takes no part in the consideration of the complaint. Likewise, occasionally a Council member declares a personal interest in a complaint and leaves the meeting while that complaint is under consideration. In 2010 there were 21 occasions where a member declared an interest and left the room while the complaint was considered, and there was one occasion where a member abstained from voting

Debate on some complaints can be quite vigorous and while the majority of Council decisions are unanimous, occasionally one or more member might ask that a dissent be simply recorded or written up as a dissenting opinion (Cases 2104, 2113, 2114, 2117 and 2130).

The Statistics

Year ending 31 December		2007		2008		2009		2010
Decisions issued		**40**		**43**		**44**		**65**
Upheld	8		11		7		20	
Upheld with dissent	1				1		3	
Part upheld	2		2		3		2	
Part upheld with dissent	1						1	
Not upheld with dissent	3		1		2		1	
Not upheld with dissent on casting vote of Chairman			1					
Not upheld	25		28		31		38	
Not adjudicated		**38**		**31**		**33**		**84**
Mediated/resolved	1		3		7		10	
Withdrawn	2		4		3		9	
Withdrawn at late stage	2		1				2	
Not followed through	13		3		9		26	
Out of time	3		3		1		2	
Not accepted	4		8		3		14	
Outside jurisdiction	4				1		6	
In action at end of year	9		9		9		15	
Total complaints		**78**		**74**		**77**		**149**

Adjudications 2010

CASE NO:2104 – WARREN PICKETT AGAINST THE DOMINION POST

Warren Pickett complained to the Press Council about two articles "The Pillar of the community who was ripping off a town" and "Friend and a fraudster" published in *The Dominion Post* on May 30, 2009 after Mr Pickett's sentencing in the District Court at Napier.
The complaint is upheld in part, with dissent.

Background

On May 29, 2009 Mr Pickett was sentenced to 5 years imprisonment following his convictions for two charges of theft by a person required to account, one charge of theft by a person in a special relationship, three charges of making a false statement and two charges of having breached a provision of the Securities Act.

The story was of particular interest to the community because Mr Pickett had practised as an accountant in Waipawa for about thirty years and had also served his community in civic and sporting roles. The newspaper recorded that he was well liked, respected and trusted in the small Hawke's Bay town.

However in mid 2008 Mr Pickett handed himself into the Serious Fraud Office (SFO) and admitted to misappropriating funds invested in two companies which he controlled in an attempt to cover losses in other failed business ventures he had embarked upon. He also admitted that some of the misappropriated funds had been applied to his personal benefit and expenditure.

The quantum of these thefts amounted to approximately $3.3m. The thefts had occurred over a period of some 25 years.

Shortly after Mr Pickett handed himself in, the two investment companies from which the funds had been misappropriated were placed into liquidation. The liquidator estimated that together Waipawa Holdings Ltd and Waipawa Finance Company Ltd owed close to $20m to some 220 investors. The expected returns were negligible and at the time of sentencing the liquidator had estimated that investors might receive a return of 19.4 cents per $1.00 from their Waipawa Finance Company Ltd investments and 9.2 cents per $1.00 from their Waipawa Holdings Ltd investments.

It was clear that Mr Pickett's misappropriation of funds from each of these companies was a factor in the resulting failure of the companies.

The Complaint

Mr Pickett initially complained to the newspaper editor under a number of heads. However, when his complaint was made to the Council, he confined his complaint to alleged breaches of Principle 1.

It was his contention that the articles published by the newspaper were inaccurate in the following four respects:-

i) that Mr Pickett stole nearly $20m from the community which had trusted him;
ii) that "he took millions of dollars from the companies to cover losses in failed business ventures but also admitted taking more than $3.2 m to benefit himself and his family";
iii) that in reporting about the distress caused to community members and the fact that the community views hardened to be mostly averse to Mr Pickett, the newspaper allegedly reported inaccurately that Mr Pickett taken millions for his own use and this, Mr Pickett asserted, was again a claim he had taken millions in addition to the failed investments; and
iv) that the report that he had used funds to 'purchase' properties was inaccurate because the funds had been applied to deposits on those properties.

He also complained that these factual errors contributed to the two articles, when viewed together, being unfair and lacking balance.

Mr Pickett advised that the newspaper had a reporter in the Court, and that the reporter could access the SFO summary of facts. The reporter had the opportunity to hear the submissions of counsel and the Judge's sentencing comments. On these bases he maintained that the reporter should have been able to report the facts accurately and in a fair and balanced way.

The Newspaper's Response

The newspaper responded that the first statement complained of had been based on information contained in the SFO summary of facts. Specifically, the editor relied on the following paragraph:-

"On 7 August 2008 the finance companies were placed into liquidation. At the time the finance companies owed close to $20m to 220 investors. This total included accumulated interest. The liquidator estimates a return of 19.4 cents per $1 for Waipawa Finance investors and 9.2 cents per $1 for Waipawa Holdings investors."

In relation to the second statement complained of, the editor relied on the following paragraph from the SFO summary of facts,

"The defendant has stated that he began to take money from the finance companies to cover losses in business ventures that ultimately failed many years ago. He also admitted taking money to fund personal expenditure. An analysis of the defendant's personal bank accounts (including the Farm Partnership account) records that funds which were dishonestly obtained were used for the benefit of the defendant and his family. Payments included the deposit for the purchase of two properties, home renovations, repayment of loans, purchase of vehicles, life insurance premiums and general living expenses."

In relation to the own use aspect of the complaint, the editor said that as a sole director of the two finance companies Mr Pickett was able to make decisions about how to use the investors' money and that he had benefited personally as the schedules of the SFO summary revealed.

The editor said that he had used the money he had stolen to purchase houses but the report did not claim that this was the full cost of either house.

She maintained that the articles were fair and balanced and that the submissions of Mr Pickett's counsel had been referred to, particularly in relation to the assertion that the bulk of the investors' money had been used to shore-up businesses Mr Pickett had invested in.

Discussion and Decision

The front page article was, in essence, a report about the sentencing of Mr Pickett. The "Friend and a fraudster" article was a feature about Mr Pickett's life in Waipawa, his fall from grace and the impact of his actions on his investors, the community and his own family.

It is crucial in any report of court proceedings that the report is factually accurate. The sentencing was solely in relation to the theft of $3.3m. While the SFO summary of facts traversed other matters, including the expected losses of the two finance companies, these were essentially 'background' matters presumably included to enable the context of the offending to which Mr Pickett had pleaded guilty to be better understood.

The wider losses of the companies were not matters upon which Mr Pickett was being sentenced. It cannot properly be said that he stole nearly $20m. To the extent that the report claims this, it is inaccurate.

The newspaper's claim that Mr Pickett had taken more than $3.2m to benefit himself and his family might usefully have been set beside the sentencing Judge's comment that of the approximately $3.3m stolen by Mr Pickett, most was applied to trying to recoup the losses in other business ventures and not in funding an extravagant or sumptuous lifestyle. Arguably if Mr Pickett was successful in any degree to recouping losses in his other business ventures, then there would be benefit to him personally. On the limited information available, there is insufficient to uphold on this head of complaint for inaccuracy.

The third comment complained about by Mr Pickett referred, in fact, to the community having initially fallen into two separate camps with one group feeling seriously aggrieved by the actions of Mr Pickett and the other group trying to maintain that he could not possibly have behaved as alleged. The reference refers to most of these initially two disparate groups ultimately coming to a common sense of having been betrayed by Mr Pickett. There can be no factual argument regarding the loss of millions for the thefts did result in a loss of about $3.3m. The complaint as to inaccuracy is not upheld in relation to this comment.

Nor is the complaint upheld in relation to the purchase of the properties. While care could have been taken to refer only to 'deposits' on those purchases, the Council is of the view that common parlance does permit the description used by the reporter and the threshold for inaccuracy is therefore not met.

In relation to Mr Pickett's complaint about fairness, insofar as one of the alleged inaccuracies has been upheld, the complaint about fairness must also be upheld but only to that limited extent.

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

Dissent:

Lynn Scott and Penny Harding dissented from the uphold decision noting:

While the court found Mr Pickett guilty of stealing $3.2 million, he did owe nearly $20 million to 220 people and he persisted in gathering investments from his community in order to shore up failing companies. He courted these investments by raising interest rates and assuring investors that all was well when it wasn't. *The Dominion Post*'s article is an attempt to show the impact of his actions on those who have lost their savngs. For that reason we would not uphold his complaint

CASE NO:2105 – KERRY BOLTON AGAINST THE PRESS

Kerry Bolton complains that an article published in *The Press* on December 5, 2009 entitled "A Right muddle" was inaccurate and biased.

The complaint is upheld.

The Article

The thrust of the article is given in the standfirst which states:

> New Zealand lacks a tradition of Fascist causes and ethnic tensions, so the public image that guarantees the National Front wide attention guarantees its failure as well.

The activities of the Far Right alternative groups in New Zealand are considered, some of their activities and rallies are commented on and quotes are given from three prominent persons, including Dr Bolton. The article poses the question, "Can the National Front, or some similar far Right alternative, ever gain ground in New Zealand?" The answer given later, after a reference to the several splinter groups which make up the National Front, is:

> And there, ironically, is the difficulty, as 'National Front' has become shorthand for 'race-hate, skinhead thugs'. The political ideas are never heard. The party keeps attracting precisely the hotheads that make it unelectable. The image that guarantees the National Front attention guarantees its failure as well.

The Complaint

The Press, on receiving Dr Bolton's complaint, conceded that one and possibly two of the factual allegations were incorrect and offered to print a correction. The proposed correction has not been published because on receipt of *The Press*'s email advice, Dr Bolton that day complained to this Council.

The two matters which *The Press* offered to correct were a statement that Dr Bolton was at the National Front's Wellington rally in 2009 and a statement that he founded the New Zealand Right.

The alleged factual inaccuracies complained of are extensive and include:

a. That Dr Bolton had been a member of the Nationalist Alliance.

b. That Dr Bolton was a "neo-Nazi Satanist".
c. The identification of Dr Bolton as an adherent to a nebulous "white power movement", and the failure to draw a distinction between such a group and the Right, and a loose citing of Dr Bolton when the article states that the white power movement has always been deeply divided; for some it is just about the political theory; for others, it is the ill-focused expression of poor white resentments; and for still others it is an excuse to get into fights.
d. That Dr Bolton opined that the National Front will not succeed because New Zealand does not have a "fascist tradition" to tap into. He denies he so opined or that he suggested fascism and national socialism are synonymous. Further, Dr Bolton denies he said, as claimed in the article, that he joined the National Front because he believed in its fascist principles.
e. An inference that Dr Bolton has pseudo-fascist views.
f. Dr Bolton described himself as "mostly posturing".

Dr Bolton also alleges that there were other inaccuracies in the article which did not relate to him. It is not proposed to consider these allegations as the persons involved have not complained to the Council.

The Response

The Press confirmed it would have published a correction on the two matters referred to if Dr Bolton had not immediately lodged a complaint with this Council. It says that it may have been possible for it to have established that Dr Bolton was the founder of the New Right but would have corrected the matter, nevertheless.

Its response to the matters raised above are:

a. The initial source for its statement that Dr Bolton was a member of the Nationalist Alliance was a document from April 2008 *The ANZAC Declaration: Australia First Party and New Zealand National Alliance: Declaration of Common Interest and Future Relations*, signed by Dr Bolton. In response to Dr Bolton's claim that he was not a signatory to the declaration, nor did he have any input into it, *The Press* says that the document when originally sourced on the "slackbastard.anachobase" website showed Dr Bolton as a signatory but a later document on another website does not show him as a signatory. *The Press*'s position is that the original page from Way Back Internet Archive shows Dr Bolton's name as an active signatory on July 19, 2008 and it cannot speculate as to why the declaration has subsequently been altered or by whom. It stands by its statement that Dr Bolton was a member of the National Alliance.
b. *The Press* did not respond to each of the other individual complaints but says:

> "… that in the context of the article – which was an attempt to give a realistic picture to an often emotively treated subject, that being New Zealand's white power and skinhead politics – the writer managed to present both an accurate portrayal about what was being said and about the far right and its leaders (such as allegations that Dr Bolton was a 'neo-Nazi Satanist' with the use of quotation marks being a normal writing technique to paraphrase the claims made against the subject, and never intended to be a statement of fact by this newspaper), and a balanced assessment of what their real feelings and practical ideas might be. …This was sometimes difficult because, as Dr Bolton admitted to the writer, he has at one time or another supported quite a wide variety of belief systems."

Discussion

The failure of *The Press* to respond specifically to most of the complaints is of concern. The article depicts Dr Bolton as having philosophies which he says he does not have and states that he made statements to the reporter which he denies. The Council would have been assisted by receiving a direct response to these claims by Dr Bolton. Consequently, it does not have any evidence to refute Dr Bolton's specific complaints.

If the only material inaccuracies were the two matters which *The Press* was prepared to correct, then its offer to correct those factual errors would have been an adequate and proper response. Notwithstanding the alacrity of Dr Bolton's complaint to the Council, *The Press* would have been wise to publish a correction when it realized its errors.

The Press stands by its claim that Dr Bolton has been a member of the National Alliance. The evidence which it has provided is the ANZAC Declaration referred to above.

Dr Bolton's position is that using the "slack bastard. anachobase" website as a reliable source is laughable. On the other hand, he does not offer any explanation as to how he became to be shown as a signatory to the declaration on that website. There is a disputed factual issue at the heart of this issue and as such the Council cannot uphold it. However, the Council observes that *The Press* may have been unwise to rely on this particular website.

The article refers to Dr Bolton as "neo-Nazi Satanist". Later in the article it is explained how Dr Bolton obtained the Satanist tag. However, the article also states that Dr Bolton stated "he was never an Aryan racist". Aryan racism is a fundamental plank of Nazism and there is thus an inconsistency in the article. *The Press*'s position is that the use of quotation marks around the term shows that it was a quotation. The Council considers that many readers would not appreciate that this was a quotation and if such a strong and pejorative term as "neo-Nazi Satanist" is to be used, there should be attribution to the source of the term. This part of the complaint is upheld.

There are other statements which reflect on Dr Bolton if they are not correct. Dr Bolton does not deny that he is a member of the Right, but denies that he is a member of the White Power Movement (which infers racism). If he is not a racist, the article is in these respects inaccurate and unfair to him. In view of *The Press*'s failure to reply to these particular complaints, the Council upholds these aspects of the complaint.

These errors are such that the Council upholds the complaint.

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

CASE NO: 2106 – FELIX BORENSTEIN AGAINST FISH & GAME NEW ZEALAND

Felix Borenstein complained to the Press Council about an article, "A Fair Australian Advance?" published in *Fish & Game New Zealand* in its November 2009 edition. The complaint is not upheld.

Background

The feature article, written in an opinionated tone, describes what the writer perceives as the pressures on New Zealand rivers, particularly in the lower South Island including Southland, as more and more overseas fishermen come to fish New Zealand rivers.

The writer states that while tourism officials and marketers are delighted with increasing numbers of Australian visitors (more than 1 million in the year to 2009), "they seemingly remain oblivious to the pressure being exerted on New Zealand's natural capital by this increasing burden of visitors."

In particular, he cites the Australians (the largest group of registered overseas fishermen) as creating the greatest problems, particularly in Southland, and gives examples of how groups of Australians and individuals are viewed as "ripping off the system" and taking advantage of cheap licences and lack of controls.

The writer urges the authorities to take action before it is too late and New Zealand rivers are overrun with fishing guides and tourists from overseas. He points out that guides from overseas do not have to pay for the right to bring groups here, and that profits from Australian guided fishing go back across the Tasman. The writer believes special licences should be issued for back-country fishing by tourists. He maintains that other controls are needed to avoid exploitation of the fresh water fishing resource and to ensure fair use of back- country huts.

As a sidebar to the article are statistics surveyed by a NIWA research scientist from licences issued, which give country of origin for licensees and the most popular New Zealand fishing destinations for people from different regions of the world.

In concluding, the writer states: "It would be a gross exaggeration to suggest all Aussies are ripping off the system and behaving badly; that's not the case and something all those who spoke to *Fish & Game Magazine* were quick to point out. In fact, most don't even blame them for the issues raised because they stem from our lax laws".

The Complaint

In his complaint to the editor of *Fish & Game* Mr Borenstein stated that as an Australian, he found the article "offensive, racist, poorly written, factually incorrect and statistically flawed". He said a condensed version of the article would read "Stupid Aussie bastards, go home. We hate you. You are not welcome in NZ".

He complained that as *Fish & Game* is produced in association with the statutory authority that manages NZ's trout fishery and is read by every licence holder in NZ as well as many international visitors, the article was an "act of mass vandalism to the 'Pure NZ' brand and undermines the work that you, Tourism New Zealand, the TIA and tourist operators do."

Mr Borenstein, who owns and operates a South Island fishing lodge, stated that he believes that the article is statistically flawed because the statistics used are based on whole season licences, while the licences his lodge issues are almost always for 1 – 4 days.

The Editor's Response

In responding to the initial complaint, the editor said the article was well sourced, well written, factually correct, and in no way racist or statistically flawed. He believes the conclusions were balanced and fair to the majority of Australian fishermen.

The editor conceded that some "of our Australian brethren" will still feel incensed by the Kiwi sentiment that has been raised, but that "they need to understand that the resource belongs to us, not them". He defended the forthright tone of the article and maintained that the article, while subjective, did concede that many of the problems raised were because of lax regulations and the pressures of increasing numbers of tourists.

He invited Mr Borenstein to write a letter to the editor, setting out his concerns.

The editor also provided the Press Council with a letter from a long-standing executive member of the NZ Professional Fishing Guides Association, verifying the issues raised in the article and stating that if anything, the article understated the issues raised.

Decision

The article raises issues about the impact of tourism on New Zealand's natural resources. It focuses on the largest group coming to New Zealand specifically to fish and highlights the rifts that are emerging between Australians and New Zealanders who fish the rivers and who make a living as guides.

The article is written in a strong tone, takes a particular stance on the issues, and has clearly aroused strong reactions.

The Press Council does not find the article racist; though it does express a strong line on the actions of some Australian fishermen and guides who are said to be overstepping the mark of fishing etiquette and accepted standards of back-country behaviour.

The Press Council finds the article has provided an outlet for the concerns, real or perceived, of a considerable number of people.

The complaint is not upheld.

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

CASE NO: 2107 – KIWIS FOR BALANCED REPORTING ON THE MID EAST AGAINST THE PRESS

Introduction

The Press Council has not upheld a complaint by Rodney Brooks, on behalf of Kiwis for Balanced Reporting on the Mid East against *The Press* about letters to the editor which were claimed to contain false and defamatory charges against Israel.

The Complaint

Mr Brooks and the organization known as Kiwis for Balanced Reporting on the Mideast (KBRM) argued that a newspaper is obliged to rebut defamatory or false charges even when such charges are in a published letter to the editor or a cartoon.

Mr Brooks and KBRM required *The Press* be instructed by the Press Council to allow for rebuttals if readers felt letters contained false and defamatory charges.

Mr Brooks and KBRM using an illustrative selection of four letters to the editor published between April and October 2009, claimed that false and defamatory attacks were made against Israel and KBRM. One letter was published outside the Press Council's three month time limit for complaint and was therefore included as background rather than part of the complaint.

Similarly, a cartoon drawn by Moreu and published on May 21, which was the subject of considerable correspondence, was provided in evidence as illustrative rather than central to the complaint, as it too had been published outside the time limit.

Mr Brooks and KBRM argue *The Press* should publish corrections when published information is materially incorrect even in letters and, in the process of selecting letters for publication, it should be guided by fairness, balance and public interest.

The substance of the alleged inaccuracies and defamatory passages includes:

a) The inaccurate description of the Iranian president's desire to bring "Death to Israel" as "tragic, baseless, caricaturing propaganda"
b) An inaccurate statement that Israel's claim to land came "only from the Bible"
c) The inaccurate claim that Israelis wish to drive Palestinians from their homes
d) The false accusation that that Israel's behaviour in the Gaza strip equated to that of the Nazis in Germany
e) An egregious libel in charging Israel with genocide

Mr Brooks and KBRM argue *The Press* refused to allow rebuttals to false charges yet published two letters from a correspondent who made further false charges against Israel: that Israel had destroyed a neighbouring country and that KBRM was producing "Orwellian propaganda".

The Response

The newspaper agreed that a principle of fairness did exist. It required a newspaper to correct errors in its own factual reporting and that where contestable statements of fact were made by writers of letters to the editor, a fair opportunity should be given to those with opposing views.

Considerable space on the letters page had been devoted to the issue of the Middle East in 2009 with 111 letters published with approximately equal representation of pro and anti Israel factions including eight from Mr Brooks.

The newspaper argued this demonstrated that over time readers' views were fairly reflected in the selection of letters for publication.

The newspaper argued that statements of fact cited by Mr Brooks and KBRM were not plain statements of fact with the exception of one – relating to access of journalists to enter the West Bank.

The Press wanted a letters page with a vibrant and diverse range of opinions and endeavoured to be fair and reasonable however it does not fact-check every letter. The editor argued that disputes over fact can be at the very heart of an effective letters page and cited, as an example, the strongly opposing range of views published about the David Bain case.

Discussion

Letters to the editor are selected and edited for publication at the prerogative of the editor, normally through a letters' editor.

The range of views expressed and information contained in the letters, sometimes purporting to be fact, does not represent an official newspaper view but is something of a snapshot of what readers are thinking about an issue of the day.

The reader views may not always withstand rigorous intellectual assessment but that is, of itself, interesting in identifying where public opinion lies.

A newspaper serves its readers when published letters illustrate a wide range of opinion, when it does not allow its letters page to become a mouth-piece for one side of an argument and when it does not allow one group to intimidate, even by constant complaint, the views of others.

The Press has maintained this standard and has engaged in regular discussion with Mr Brooks and KBRM. During the course of this complaint, further letters from Mr Brooks were published.

Decision

The complaint is not upheld.

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

CASE NO: 2108 – ROBIN GRIEVE AGAINST THE NEW ZEALAND HERALD

Robin Grieve complained about inaccuracies in one story in a four-page climate change feature published in the *New Zealand Herald* on December 5, 2009 and also published online, on the same date. The complaint is upheld.

The Complaint

Robin Grieve, Chairman, Pastoral Farming Climate Research, was not objecting to the overall tenor of the reports themselves; rather he was upset about one part of the secondary report under the main heading "In search of low-carbon nirvana".

His complaint focused on its references to the impact of agriculture on New Zealand's greenhouse gas emissions. The report said: "In 2007 agriculture produced 36.4 million tonnes of greenhouse gases - 48 per cent of New Zealand's total emissions".

It also said about two-thirds of the emissions were from methane produced by sheep and cattle, with the remaining third from nitrous oxide, mainly from animal waste.

It said that "worse still, in terms of climate change, these gases are far more detrimental than carbon dioxide". It went on to say that methane is deemed to be 25 times more damaging than a tonne of carbon dioxide.

Mr Grieve said the claim about 36.4 million tonnes of greenhouse gases was factually incorrect and grossly overstated agriculture's greenhouse gas contribution. He said the figure of 36.4 million tonnes probably referred to a figure in the Ministry for the Environment's Greenhouse Gas Inventory 1990-2007. It referred to 36.4 megatonnes of carbon dioxide EQUIVALENTS.

In correspondence with the *NZ Herald* he said carbon dioxide equivalents were not a greenhouse gas, "they are a figure in a piece of paper".

He said six greenhouse gases were measured; the two associated with agriculture were methane and nitrous oxide. Methane production was 1,139,000 tonnes and nitrous oxide 40,990 tonnes.

"Stating that agriculture produces 36.4 million tonnes of greenhouse gases, and then stating that two-thirds of the emissions were methane which is 'worse still' 25 times more damaging than carbon dioxide, draws the reader to an incorrect conclusion that two-thirds of the 36.4 million tonnes produced are methane which is 25 times worse than carbon dioxide."

In his letter to the *NZ Herald*, Mr Grieve said he would prefer to deal with the inaccuracies by way of a reasoned response to the newspaper. However, despite *Herald* deputy editor David Hastings suggesting he write a letter, Mr Grieve's letters had not been published.

The Newspaper's Response

Mr Hastings denied that writer had got his facts wrong. He cited the Greenhouse Gas Inventory, saying New Zealand's agriculture greenhouse gas emissions were 36.4 million tonnes.

Mr Hastings also referred to a large graphic published on the first page of the *Herald*'s four-page climate change spread. It used the word "equivalents".

He suggested Mr Grieve's concern was "with the science, not the reporting". He considered Mr Grieve's views unsubstantiated.

He said the term greenhouse gases in the *Herald* feature was "shorthand" for "greenhouse gas emissions calculated as carbon dioxide equivalents".

He said the Press Council should bear in mind that such "elliptical usage" was not uncommon among scientists discussing global warming questions.

Further comment from the Complainant

Mr Grieve objected to the "shorthand" claim, citing the context of its usage in the *Herald* feature.

"It is far more credible that he [the writer] was talking about the greenhouse gases methane and nitrous oxide which are far more detrimental than carbon dioxide. If that is the case the figure he should have used was closer to one million tonnes, not the 36.4 million tonnes he did use."

He said the *Herald* graphic did not negate the inaccuracies in the text.

He disputed Mr Hastings' reference to "elliptical usage" by scientists and said that, even if true, it did not excuse the *Herald* from presenting misinformation.

"Official documents do not contain such usage, research material and information does not either and I think it has been put forward to excuse a lowering of standards to allow misrepresentation, either intentional or unintentional. In any case, what terminology scientists use is quite irrelevant here because the article was written by [a reporter], not a scientist, and it was written to be read by non scientists. It needed to be accurate.

"Readers are entitled to truthful, accurate information from their newspapers, they should not have to be wary that what is said in the newspaper could actually mean something else altogether."

Discussion and Decision

The Press Council commends the *New Zealand Herald* on its comprehensive look at Climate Change, and the effects it may have on New Zealand.

This is relatively new information for many readers and the newspaper provided a service in bringing such information to the public in terms they can understand.

However, it is important that terms that have particular meaning are used in the correct sense. Greenhouse gases and carbon dioxide equivalents are not synonymous. Carbon dioxide equivalents, as a measure, have been developed to take into account the emissions from various greenhouse gases based on their global warming potential (GWP) or degree of detriment to the atmosphere. Relative to carbon dioxide at 1, methane has a GWP of 21 and nitrous oxide 310, as noted in the Inventory. Carbon dioxide equivalents are therefore somewhat analogous to stock units in the farming sector.

While tempting to say this complaint is an argument over science - not the reporting - and semantics, the report's loose wording was inaccurate. The graphic, published three pages earlier than the disputed phrases, made only one mention of the words "Carbon Dioxide equivalents".

The statement "In 2007 agriculture produced 36.4 million tonnes of greenhouse gases" was incorrect (though the contribution made by agriculture does represent 48 per cent of New Zealand's emissions.)

The figure of 36.4 million tonnes relates to carbon dioxide equivalents, as noted in figure 8 of the Inventory graphic, which was quoted as the source. Without the reference to carbon dioxide equivalents readers would not know that every tonne of methane had been counted 21 times and every tonne of nitrous oxide had been counted 310 times, based on their GWP.

To then go on and say "*worse still* these gases … are far more detrimental than carbon dioxide", while true in itself, again does not indicate that in the figure given in this article this additional impact has already been factored in. This is misleading.

The complaint is upheld.

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

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

CASE NO:2109 – TED MASON AGAINST NEW ZEALAND LISTENER

The New Zealand Press Council has not upheld a complaint by Ted Mason against the *New Zealand Listener* that a series of articles about anthropogenic global warming (AGW) in its issue of November 28-December 4, 2009, provided no opposing view that AGW was false and based on faulty science.

Mr Mason complained that without such a viewpoint, the articles were unbalanced and unfair. But in the Press Council's view there was no need to provide such a balance because of the context of the articles and the background.

The Articles

Under the cover headings "Global warming: The science & solutions: Last chance to save humanity," the *Listener* published a series of articles giving various views about global warming a few weeks ahead of the climate change conference called by the United Nations' International Panel on Climate Change in Copenhagen, Denmark.

Against a background of the impending conference, the articles reported on the history of warnings about and evidence supporting the belief that global warming was occurring; various political viewpoints and scientific information; what might happen if climate change was not taken seriously and the earth continued to warm; and comments from various parties speculating on the conference, its outcomes and what might happen in the future.

In all, the magazine published four articles over 10 pages, along with photographs and informative graphics supporting the text.

The Complaint

Mr Mason complained to the editor saying, among other things, that no consideration had been given to the possibility that AGW might be a myth based on incomplete and faulty research and computer modelling which, by its very nature, relied on unfounded assumptions.

This approach was unjustified because it ignored several credible and persuasive recent attempts to publicise the case against AGW, including books and a documentary.

Mr Mason said that if responsible governments believed AGW was occurring, they would have taken "real and concerted" action already. The lack of action suggested responsible governments were not convinced of the scientific case in favour of AGW.

Mr Mason updated his emailed letter later that day to say more than 31,000 scientists in the United States opposed on scientific grounds the idea of AGW.

Mr Mason then made a formal complaint about unbalanced journalism, and repeated a request made in his initial email that the *Listener* publish "a critique of AGW from a well-known and credible critic" such as Ian Wishart, Ian Plimmer, Lord Monckton or Professor Richard Lindsen. Alternatively, Mr Mason offered to develop themes in his letter into a publishable article.

Correspondence Between the Magazine and Complainant

The editor of the *Listener*, Pamela Stirling, responded that the magazine had previously printed articles containing the viewpoints of critics of AGW, and had printed a letter referring to petitions, including one signed by scientists who did not accept AGW. The magazine had declined to print Mr Mason's letter because it covered the same points as those earlier publications.

Mr Mason then again asked that the magazine publish an article critical of AGW.

The editor said it was a well-established principle of the Press Council that balance on an issue might be achieved over time. She believed sufficient space had been given in the *Listener* to critics of AGW and the magazine did not plan to publish further articles in the near future unless new data emerged.

The Magazine's Response

In her response to the Council, Ms Stirling said while the *Listener* had published two letters by Mr Mason on topics where his experience as a clinical psychologist had direct relevance, he had no such expertise in the area of global warming and his letter of November 29 was weighed against others in the same vein.

He covered the same salient points as a letter from Dr D C Edmeades, agricultural spokesman for the New Zealand Climate Science Coalition, who had criticised the magazine for printing "propaganda on behalf of those who believe in the theory of human-induced global warming." The magazine had also published another letter critical of the *Listener* for lack of balance.

Therefore, the magazine had exercised its right not to print his letter either as a letter or article. Space and publication deadlines in December and over the Christmas period when the magazine was still published meant there

were pressures but the *Listener* had not sought to suppress debate.

Discussion

The Copenhagen conference and global warming were highly topical late last year, and it is not surprising that the *Listener* devoted considerable space to it. The essence of Mr Mason's complaint was that the viewpoints of sceptics about anthropogenic global warming should have been included.

In its principles, the Council says publications "should be guided at all times by accuracy, fairness and balance, and should not deliberately mislead or misinform readers by commission, or omission."

Balance is often demonstrably required – for example, where the absence of an alternative or opposing view on a subject could lead to distortion or even inaccuracy and therefore mislead readers. But journalists should not be required to seek balance when an alternative view on some aspect of a topic is not directly related to the general thrust or essence of an article planned.

Seeking comment from those who believe that AGW is a myth would fall into that category in this instance.

The *Listener* articles directly discussed AGW and the upcoming Copenhagen conference, a conference called to discuss what the world should do about AGW. While comments from those who disagree with AGW might have been interesting, they were certainly not necessary in the context of the articles published, nor were they directly relevant to discussion about the conference itself.

The *Listener's* publication of letters critical of November coverage plus other sceptical pieces is evidence that the magazine was not trying to shut down debate which, of course, is continuing.

Decision

The complaint is not upheld.

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

CASE NO:2110 – PROFESSOR CHARLOTTE PAUL AGAINST NEW ZEALAND LISTENER

The Press Council has ruled that the *New Zealand Listener* was entitled to take a position on one side of an important public issue as prescribed in Principle 7, Advocacy, of its Statement of Principles.

In her complaint to the Press Council Professor Charlotte Paul asserted that to meet standards of accuracy, fairness and balance the publication must first consult informed people of an opposite view and should change its position if necessary in the light of consequent debate.

The complaint was not upheld. The Press Council did not agree that advocacy should be constrained in the ways suggested.

Background

The *New Zealand Listener*'s edition for the week beginning August 15, 2009, featured a reassessment of the findings of the well-known 1988 Cartwright inquiry into the treatment of cervical abnormalities at Auckland's National Women's Hospital.

"Cancer Scandal" the magazine announced on its cover, "The truth about the 'Unfortunate Experiment' – How Sandra Coney, Phillida Bunkle and the Cartwright Inquiry into a doctor's methods got it wrong."

The article inside declared that University of Auckland historian, Professor Linda Bryder, had discovered the Cartwright inquiry had erred in its fundamental conclusion, namely that the doctor, Herbert Green, experimented with the health of his patients by withholding the usual treatment for their condition.

Professor Bryder had written a book, about to be published, that would show Dr Green was "not myopic, misguided or chauvinistic, as he has been painted. She argues he made rational and acceptable clinical judgments aimed at protecting his patients from unnecessary surgery when possible...."

The item re-opened an old but still fierce debate between supporters and critics of Dr Green that had a re-run in the *Listener*'s correspondence columns for several weeks.

Two medical advisers to the Cartwright Inquiry, Professors Charlotte Paul (the complainant) and Linda Holloway, jointly demanded a right of reply which was published in the issue of September 12.

Their vigorous criticism of Professor Bryder's research and conclusions was echoed in feature articles in the *New Zealand Herald* and *Metro* magazine.

On October 7 Professor Paul wrote to the editor of the *Listener* asking for an editorial to be published withdrawing the magazine's endorsement of the Bryder book and admitting that its conclusions could not be sustained.

The editor, Pamela Stirling, declined the request, reaffirmed her confidence in Professor Bryder's research and findings and cited the Press Council's principle 7 which upholds the right of a publication to "adopt a forthright stance and advocate a position on any issue."

Professor Paul then complained to the Press Council.

The Complaint

Professor Paul submitted that advocacy must be subject to the demands of accuracy, fairness and balance (Principle 1) and the responsibility to distinguish between comment and fact (Principle 6). The *Listener*'s treatment of the issue, she argued, failed on both counts.

It had "made no attempt to contact anyone knowledgeable about the inquiry or to check Bryder's assertions against the report of the inquiry." It had taken a position that Bryder's views were 'the truth' and having taken a position on a matter of medical science, Professor Paul argued, "it also has taken on itself the responsibility of adjudicating the relative merits of different positions."

By failing to adjudicate the issues in an unbiased way the *Listener* had shown a lack of balance and fairness, she said.

The failure may have been "because the journalist lacks expertise in these matters, but the *Listener* cannot have it

both ways. Either they are simply reporting a variety of views which they are not competent to adjudicate among (in which case they must be fair to all parties) or they prefer one view as the truth and take a position to support it, in which case they must adjudicate."

She made a number of specific complaints about the treatment of the right of reply given to her and Professor Holloway. They had been required to shorten their response and it appeared three issues after the original article.

Furthermore, Professor Bryder was given a right of reply to their reply, an opportunity not given to them.

She also complained that letters to the *Listener* critical of Professor Bryder's position were referred to Professor Bryder for a rebuttal.

The Editor's Response

Refusing the request for an editorial back-down, Pamela Stirling bluntly stated the *Listener*'s position. "Plainly, by describing Bryder's conclusions as 'the truth', the *Listener* has accepted that we prefer her analysis....to that of the Cartwright inquiry. That is our call and we are entitled to make it," she said.

In her submission to the Press Council the editor said it was the *Listener*'s "considered opinion" that Professor Bryder's research was impeccably thorough and her findings credible and persuasive.

She stressed that the *Listener* was not a newspaper. It did not simply report news but was a forum for expression of opinion and informed commentary.

The Cartwright Inquiry was a subject well known to readers. Questions of fairness and balance had to be considered in the context of what was already well known. "Any reader would know that others may hold views which differed from those adopted by the *Listener* and may disagree strongly with the conclusions and opinions expressed by Professor Bryder in her book."

The editor pointed out the *Listener* could not approach people for contrary views before the book was published and afterwards offered Sandra Coney and Phillida Bunkle a right of reply. Ms Coney declined; Ms Bunkle gave an interview that appeared in the August 22 issue.

Numerous and lengthy letters were published from Professor Paul and others. An 1800-word response from Professors Paul and Holloway was put on the *Listener*'s website on August 31 and printed in the magazine that went on sale on September 6.

In response to the suggestion that advocacy carries a duty to adjudicate the consequent debate, the editor said, "The *Listener* is willing to revisit issues and reconsider them in the light of fresh information and analysis" and accused the complainant of "an unwillingness to contemplate contrary views or to permit even debate, let alone advocacy."

The Decision

The complaint argues that when publications take a strong position of advocacy on an important public issue it is particularly important that they are factually accurate, fair and balanced in their treatment of the issue. The Council agrees.

There is no doubt in this case the *Listener* presented its material as fact, not opinion. The cover announced it had the 'truth' on the subject. The headline on the article was "Finally, the truth." Subsequently, in response to the complaint, the editor described this as the *Listener*'s "considered opinion." While the Council believes the magazine was unwise to present its material categorically as the truth, it would be apparent to readers that it was the magazine's opinion. Readers were told that new research had discovered serious errors in the work of the Cartwright Inquiry that undermined its conclusions. The article began by correcting a common misconception that Dr Green had put his patients into two groups for experimental purposes. Nonetheless, it noted that the Cartwright Inquiry had found Dr Green's withholding of treatment to be deliberately and improperly experimental

The crucial factual issue is whether Dr Green was acting within the bounds of medical knowledge at the time. The Cartwright Inquiry and the complainant say he was not. Professor Bryder and the *Listener* say he was.

Both sides have read some of the same medical papers and draw different conclusions. Professor Paul, an epidemiologist, questions an historian's ability to understand the material. The Press Council is not qualified to judge the accuracy of the interpretation preferred by the *Listener*.

The Council can only rule on the specific issues of fairness and balance. It does not agree the *Listener* ought to have checked Professor Bryder's findings against the report of the Cartwright inquiry and consulted those knowledgeable about it before proceeding to publish. It was reasonable to report the conclusions of a credentialed historian at face value.

It does not find it unfair of the editor to have insisted that Professors Paul and Holloway's 3000-word reply be reduced to 1800 words, which ran over three pages of the magazine and gave the complainant ample space to make telling points. The response was printed and placed on the magazine's website as soon as possible. The Council also finds it reasonable for the editor to have given Professor Bryder a right of reply to their article and to critical letters. This is common practice. Readers are naturally interested in what the criticised person has to say. It does not follow that critics need to be given a further opportunity. The last word is not necessarily decisive.

The Council is obliged to uphold the freedom of publications to take a position, and hold to it if they choose, against the weight of informed opinion. No publication operates in a vacuum. All are vulnerable to criticism of their material in other media and all can suffer if their conduct costs them credibility.

In this case readers were presented with a reappraisal of an important public inquiry that has had a powerful impact on New Zealand's medical ethics governing research and patients' information and consent.

The position taken by the *Listener* was countered by articles in other publications and the magazine gave opposing views fair treatment in its columns.

The complaint is not upheld.

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

CASE NO:2111 – COMPLAINT AGAINST THE DAILY POST

Introduction

A complaint by the parents of a four-year-old girl, alleging breaches of the New Zealand Press Council's Principle 3 (Privacy) Principle 5 (Children and Young People) by *The Daily Post,* has been upheld by the Council.

Background

Late last year, a man appeared in court in Rotorua on a charge of sexually assaulting the four-year-old in a public library.

The newspaper decided to follow up the case by trying to contact the victim's parents. According to the complainants, this was done through "unsolicited contact" with the girl's grandmother and later the parents, via a message left on their telephone.

The parents said they tried to contact the reporter twice, leaving messages, but there was no further response from anyone at the newspaper. The parents said they did not believe the matter was of public interest.

Subsequently, on November 12, 2009, *The Daily Post* published an article, headed "Sentenced for assault on toddler," about the sentencing of the man. No names of the victim or family were included. The family had been in touch with the police by this stage who asked the newspaper not to approach the parents at the sentencing, to which the newspaper agreed.

The complainants wrote to *The Daily Post* on November 19, 2009 and received a reply on December 1, 2009 which they said was "hand delivered". They believed the answer was not timely and also saw the hand delivery as violating their privacy.

The complainants said they had made a decision to "keep the matter close to our immediate family unit" and had not told the grandparents. The phone call from the reporter has caused panic, alarm and distress to the grandparents.

Response from *The Daily Post*

The then editor of *The Daily Post*, Scott Inglis, responded on December 01, 2009. Mr Inglis said that the attack had occurred in a public place "– a place where everyone should feel safe – we believed it was a news event of significant public interest."

The reporter learned of the case from press copies of the charge sheets and then attempted to establish if a spokesperson for the family would be willing to talk to the reporter for a follow-up article.

The reporter obtained the telephone number for the grandparents from the telephone book and left a message for the parents to contact the reporter, giving contact details.

The reporter had said that "at no time did she divulge to the grandmother the nature of the case" and that she had no records of any phone messages from the complainants following the conversation with the grandmother.

The Daily Post did not believe that it has contravened either Principle 3 or 5 of the New Zealand Press Council.

The editor said: "It is not unusual for the media to make phone calls and other enquiries in an effort to get hold of the right people to seek information from. We stress again that in this case the newspaper and its staff have never identified your daughter as a sex attack victim".

The paper accepted it had inadvertently described the victim as a toddler and would discuss a correction with the family if they wish.

Discussion and Conclusion

The relevant principles under which the complaint is made are Principle 3 (Privacy) and Principle 5 (Children and Young People).

Although the reporter did not give any details of the event to the grandparents, she would have had to use the name of the child in the course of the conversation with the grandparents. She therefore did breach the privacy of the child in speaking to the grandparents, who were completely unaware that anything untoward had happened because the parents had made the decision to "keep the matter close to our immediate family unit."

The reporter's action in contacting the grandparents undermined the parental right to deal with the situation in a manner of their choice and was a breach of the child's right to privacy.

It is common practice for journalists to make enquiries in an effort to obtain factual information, but journalists also need to ensure they use extra care and discretion where children and young people are involved.

In this case, the Press Council believes the newspaper should not have made what appears to have been a random phone call to the grandparents, who were unaware of any event that might have attracted the attention of a newspaper. More care and reporting diligence were required on this sensitive matter, particularly when it was clear only the parents would have been in a position to comment.

The newspaper breached the child's privacy. It was entitled to approach the parents for further comment but it needed to do so extremely carefully. It failed to do that and the Press Council believes both principles were broken.

It was not a breach of privacy for the editor to hand-deliver the letter.

Decision

The complaint is upheld.

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

CASE NO:2112 – C G DUFF AGAINST THE DOMINION POST

CG Duff complained about the publication of his first name (Cecil) as the signatory to a letter to the editor which he had submitted as CG Duff. The complaint is upheld.

The Complaint

On December 8, 2009 CG Duff submitted a letter to the editor of *The Dominion Post*. The letter was published but the signature was changed from "CG Duff" to "Cecil Duff".

Mr Duff believes his privacy has been intruded upon by the use of his first name. In his first communication with *The Dominion Post* editor he argued that the newspaper had no right to broadcast his private name against his wishes.

In further email correspondence Mr Duff said after deep and lengthy consideration he felt the practice of using first names was preposterous, an invasion of privacy and Big Brother in action.

Mr Duff argues that in 40 years of corresponding with the Wellington newspapers he has hardly ever used his Christian name as he had been assiduous in cultivating his image as "CG" Duff.

Responses and further comment

Responding for *The Dominion Post*, the letters' editor said the newspaper's practice was to use first names wherever possible so that letter-writers could be aware of whether they were responding to a man or a woman and cast their response accordingly.

Mr Duff did not accept this, noting some names can be either male or female. He requested that correspondents be allowed to use initials despite the English language lacking a neutral pronoun.

The assistant editor repeated the newspaper's position that in every possible instance full names of letter writers were used, and they were identified by their suburb. He explained a two-fold reasoning for this: firstly to avoid potential confusion over the identity of letter writers and secondly to assist the newspaper in ascertaining the veracity of the letters.

Discussion

The Press Council rarely accepts complaints regarding letters to the editor as newspapers are free to chose or reject letters submitted for publication. The issue here is about the manner in which the newspaper identified a letter writer.

Mr Duff says he has assiduously cultivated his image over 40 years as "CG" Duff and infers that he has been the author of previous letters signed in this manner. He submits no examples to illustrate inconsistency towards him in *The Dominion Post's* policy.

The Dominion Post has advanced three separate arguments for using "Cecil" instead of "CG" Duff; firstly so readers would know the gender of the letter-writer and craft their response accordingly, secondly so that people of the same name in the same suburb could not be mistakenly identified as the letter writer and finally to be able to identify people signing fictitious names to letters for publication.

Decision

Newspapers have domain over their letters page. However, it is useful for the rules of engagement to be clearly stated and fairly applied. Current rules require a full name, address and phone number but do not state that full names will be published. In two recent columns, including the day this complaint was considered, the Council noted letter writers identified by initials.

The argument that letter writers must be identifiable by their gender does not find traction with the Council. The argument that use of a first name identifies accurately a letter writer and avoids confusion has some substance. However, after 40 years of using the identifying signature of "CG" the use of "Cecil" is confusing. Many people are known only by their initials (JR Tolkein, JK Rowling, BB King, CS Lewis).

In this instance, *The Dominion Post* appears to have treated Mr Duff unfairly by imposing a rule which is neither publicized nor implemented consistently. The arguments advanced by the newspaper do not amount to a compelling case.

The complaint is upheld.

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

CASE NO:2113 – COMPLAINT AGAINST SUNDAY NEWS

The complainant, who will not be named to protect her daughter, complained that a *Sunday News* story involving her daughter was inaccurate on three alleged facts and that it contained material that breached the child's privacy. The article referred to proceedings in the Family Court. The privacy complaint is upheld, with one Council member dissenting.

Sunday News conceded two of the inaccuracies but not the third, a disputed quotation. The managing editor said the errors were not, in his opinion, "materially inaccurate in the context of the story". He did not believe the article breached any statutory prohibitions on the publication of Family Court proceedings.

The Council is not the arbiter of alleged breaches of prohibitions on publication of Family Court proceedings. However, its own code of principles, agreed with the industry, requires publications to take particular care when reporting about children and young people.

Sunday News did not publish the names of any of the people involved in this story. However, the report included several pieces of information that collectively, in the Council's view, could have enabled some readers to identify the child.

For that reason the Council found the newspaper had not taken sufficient care to protect the child's privacy and on that ground the complaint was upheld.

The Council found none of the inaccuracies significant to the accuracy of the report overall. The complaint of inaccuracy was not upheld.

Penny Harding dissented from the majority decision. Ms Harding thought that the newspaper had taken reasonable care to ensure the article did not identify the child to anyone who did not already have some knowledge of the incident.

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

CASE NO:2114 – HEREWORTH SCHOOL AGAINST HAWKE'S BAY TODAY

The Press Council has upheld a complaint by the headmaster of Hereworth School against *Hawke's Bay Today* under the Principle of headlines and captions. Two members dissented from the decision.

Background

On March 9, 2010 the regional newspaper, *Hawke's Bay Today*, published a front page article captioned "Cyber bullying at top Bay private school". A photo accompanying the article was captioned "Warning: Hereworth students enticed others to join abusive websites".

The gist of the article was that two "offensive and abusive" pages had been formed on the Facebook social networking site "by students and ex-students of Hereworth School, a private boys' school in Havelock North."

The pages were deemed to be cyber-bullying, targeting "another ex-student". They were reported to Facebook, who closed them down.

The article further mentioned a YouTube video that, while starting "harmlessly enough," took "a dark turn to target ex-students." It is unclear from the article who was the creator of this YouTube video.

The remainder of the article discussed Hereworth School's response to cyber-bullying, citing the headmaster Ross Scrymgeour on the issue. The article concluded with NetSafe's development manager praising the school for raising the issue with "the school community".

A sidebar to the article gave pointers on how interested parties might prevent cyber-bullying.

Mr Scrymgeour contacted the paper the next day, concerned about the paper's choice of headline and picture caption. In a phone conversation, the paper had accepted his request to submit "a follow up piece" the next morning.

While the headmaster had requested this to be "given similar prominence to the inaccurate item that ran in yesterday's paper" the paper did not agree to this aspect of the submission.

Hawke's Bay Today ran a follow-up article, constructed from the one supplied by the school, on page two of the next day's paper. The school's supplied headline, 'Headmaster furious", had been changed to "School upset with headline" and there were some other minor changes to the material supplied by the school. However, this is not part of the complaint laid to the Press Council.

The Complaint

The headmaster was dissatisfied with the paper's response, while acknowledging that they had responded promptly. He continued to maintain that current Hereworth students were *not* involved in the Facebook site.

He complained to the Press Council that "the headline was outrageously sensational and bore no relationship to what actually happened" as the children "are no longer Hereworth pupils (and were not when this site was created").

He believed that the article was poorly written, had confused people, and that consequently the headline had influenced them more than might normally have been the case.

He claimed that the school's good practice was being punished by the paper, and that this article would be likely to encourage others to keep a low profile on such issues rather than to risk being on the front page "in such a sensationalised fashion".

His complaint to the Council cited Principles 1 and 5, namely accuracy, and headlines and captions.

The Newspaper's Response

In his response, editor Antony Phillips argued that cyber bullying is an acknowledged issue in Hawke's Bay and "the story accurately reports that current students of Hereworth School were targets of cyber bulling and that current students at Hereworth School were involved in a social media site targeting other boys."

He stated that front page lead headlines are always the most prominent typography on the page, and therefore the sensationalism claimed by the school was not intended to be such.

He further stated that neither Mr Scrymgeour nor the school had ever disputed the involvement of current students, either as targets of bullying or as being involved in the construction of the social media site.

While agreeing to run the story outlining Mr Scrymgeour's concerns the next day, the paper had never offered nor agreed that this would be run verbatim, nor that it would be a front page lead story.

The paper had attempted to further address the school's concern by printing a letter from the teacher who had exposed the problem site, in which she commended the paper for its efforts to inform and educate the school community, but also maintained that the choice of headline and byline [caption] "did not reflect the intelligent approach one would expect from *HB Today* after making the decision to print much of Hereworth's parent newsletter article on the front page…"

On receipt of the paper's response to the complaint, Mr Scrymgeour responded to the Press Council, reiterating his concerns although stating that "the issue is not with the content of the article or the way the paper has responded in time or manner."

Rather, he maintained that the headline was completely inaccurate in that there was no cyber bullying at the school, and had damaged its reputation.

He reiterated his initial claim, denied by the editor Mr Phillips in his response, that Hereworth current students were not involved, challenging the photo caption's statement that Hereworth students had enticed others to join abusive websites.

Discussion

There is obviously no agreement between Mr Phillips and Mr Scrymgeour about whether current Hereworth students were part of the cyber-bullying that occurred in the social networking site. The reference in the school's newsletter was equivocal, although it appears to imply that students were merely recipients of requests to participate, not active 'bullies'.

There *was* agreement between the two, acknowledged by Mr Phillips, that the photo caption had "overstated [Hereworth's] degree of involvement".

The paper is commended for its sidebar advertising how parents can help to prevent cyber abuse.

Decision

The Council accepts the paper's right to publish headlines on its front page that may seem sensational to those who are the subject of the lead story. However in this case, taken together with the caption, the headline gives the clear impression that pupils at the school are participants in the bullying. This is inaccurate and misleading.

Mr Phillips agreed that the warning under the photo caption had overstated the school's degree of involvement.

Accordingly, the complaint is upheld on the grounds of inaccuracy of the headline and the caption.

Dissent

Penny Harding and Sandy Gill dissented from the headline decision. They would not uphold the complaint by Hereworth School against the headline for two reasons: Firstly, the letter from the school's teacher expressing concern about a Facebook site and a YouTube video clearly identified online activities by "current and ex-students" and referred to "cyberbullying". The letter went to parents of current pupils at Hereworth School and it was reprinted in the school's online newsletter by the headmaster who said it was "vitally important to all families". For that reason, it was reasonable for the newspaper to take the view in the headline that there was cyber bullying at the school because of the fact that present pupils had become involved.

Secondly, the school complained about the headline, and the newspaper agreed to publish a further article reporting that concern. In that article the headmaster was quoted as saying that the current students had been enticed to join in.

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

CASE NO:2115 – KIWIS FOR BALANCED REPORTING ON THE MID EAST AGAINST THE NEW ZEALAND HERALD

Kiwis for Balanced Reporting on the Middle East (KBRM) via its Auckland representative, Chris Morey, complained that an article in the *New Zealand Herald* contained sufficient errors and omissions of fact to have breached Press Council Principles in respect of accuracy, balance and fairness.

KBRM also complained that the article was printed as news although it was primarily an opinion piece and thus the newspaper had breached Principle 6, which demands a distinction between the reporting of facts and the passing of opinion or comment.

The two complaints are not upheld.

Background

The report was published in the news section of the *NZ Herald* on December 30, 2009.

It was headlined "Student on a mission in West Bank" and introduced by "An Auckland woman tells Glen Johnson of her experiences in the troubled territories".

"Majdoleen" (a pseudonym) outlined her impressions gathered during a month in the West Bank, working as a volunteer for the International Women's Peace Service.

The reporter provided details which made clear Majdoleen's personal point of view, such as her Muslim background and that the IWPS is pro-Palestinian.

The interview consisted mainly of Majdoleen's general comments about the Israeli-Palestinian conflict but one section focused on a visit made to a mosque damaged by residents from a nearby Jewish settlement.

The Complaint

KBRM first wrote to the *Herald* in general terms complaining about the lack of balance in "an uncritical and sympathetic interview with an activist for a pro-Palestinian organisation". An article of similar length and prominence showing Palestine in a more positive light was requested in recognition of "the need for true balance".

When the newspaper declined this request, Mr Morey wrote a further letter detailing the errors, omissions and misrepresentations he found in the report.

He submitted a list of fourteen items.

It is not necessary to specify all of these here, but it includes errors in the spelling of place names and various omissions such as failing to note the official Israeli condemnation of the desecration of the mosque. He also questioned Majdoleen's description of the extent of the vandalism and graffiti, disputing, for example, that the building itself had been set "ablaze" as she had claimed,

and, finally, challenged her "loaded language", such as calling Israel's position "colonial and imperial", "unjust" and "inhumane".

He also strongly disputed the use of "illegal under international law" which was used by the journalist to describe Jewish settlements in the area and the use of "occupation" used by the interviewee to describe Israel's control of the West Bank.

KBRM argue that the legal situation is confused and that "illegality" and "occupation" should not be published as "unchallenged fact in the *Herald*'s pages".

This list of "errors and omissions" was also submitted in the subsequent formal complaint to the Press Council.

The Newspaper's Response

The *Herald*'s deputy editor, David Hastings, rejected the various points made by KBRM.

He suggested that the variations in spelling of place names (Yousof/Yasuf and Haris/Hares) of the villages was a trivial matter.

He stressed that Majdoleen's recall about the damage to the mosque was in line with an earlier AP report of the incident which had appeared in the *Herald* on December 16. Further, and later, Mr Hastings pointed out that coverage of the fire by Haaretz and Ynet, an Israeli news service, used "set ablaze" and "arson" to describe the intent and extent of the fire. Again this fitted with what Majdoleen reported from her visit to the site one day later.

He explained that while the Majdoleen interview did not mention Israeli condemnation of the vandalism, the December 16 story had focused on that very issue – it was headlined "Chief rabbi blasts mosque attack".

A letter to the editor, published on January 5, had also stressed the Israeli authorities' denunciation.

Words such as "inhumane", "unjust" and "colonial" had indeed been used to describe the Israel position, but these were the words of the interviewee and she was entitled to express her opinion.

He defended the use of both "illegal" and "occupation" for the Jewish settlements on the West Bank by quoting from the International Court of Justice. " . . . Israeli settlements in the Occupied Palestinan Territory . . . have been established in breach of international law." And further, ". . .these territories remain occupied territories and Israel has continued to have the status of occupying Power." (both 2004)

Finally, in summary, the deputy editor accepted the need for balance. For example, the Johnson interview of Majdoleen (December 30) was itself a balancing extension of the AP report (December 16) and the subsequent letter to the Editor (January 5) provided yet another perspective or balancing element.

However, the overall aim of the *NZ Herald* was to achieve balance over time, not by immediately countering one story with another giving the other side's perspective.

Discussion and Decision

First, it is noted that KBRM eventually withdrew its complaint against the description of the fire and graffiti damage to the mosque, because the newspaper made "a plausible response" to its criticisms.

The Press Council found the *Herald*'s responses convincing rather than merely "plausible".

KBRM also withdrew, in similar vein, complaints against mis-spellings of place names. Mr Hastings had pointed out that there are frequent variations in English transcriptions of Arabic words.

The complaint about failing to mention in the interview that the Israeli authorities had also denounced the attack on the mosque is clearly countered by the December 16 account of the incident, which focused on the condemnation by the Chief Rabbi. In addition the letter to the editor of January 5, stressed that other rabbis and politicians had expressed "outrage and disgust over the horrific act of vandalism".

KBRM complained that Majdoleen had used "subjective" terms in her commentary of the situation in the West Bank but the interviewee was asked to express her opinion and she was perfectly entitled to her own words.

The Council also notes that her opinions and words are clearly indicated by the use of quotation marks.

The Council further notes that the journalist included enough background so the reader would understand her perspective – she had a Muslim background and was working for a group with a pro-Palestine leaning.

In any case, the newspaper was clearly justified in reporting her general experiences and what she saw the day after the attack on the mosque. She was a young woman from the newspaper's catchment area who had lived and worked as a volunteer in the West Bank. Moreover, and importantly, she had visited the mosque the day after the attack. This had been given considerable media coverage, including the story in the *Herald* only two weeks earlier.

KBRM took particular exception to the words "illegal" and "occupation", despite the citing by the deputy editor of the conclusions of the International Court of Justice. KBRM acknowledge that international law on the subject is "confused" and "unclear" but argue that the ICJ is not empowered to make or enforce international law.

Certainly the legal issues surrounding Israel's position are complex and confusing and date back many decades. However, given the unequivocal statements from the ICJ the Council takes the view that the newspaper is entitled to use this terminology.

The Press Council also notes that "Occupied Territories" is a term frequently used by international media to describe the Jewish settlements on the West Bank.

Finally, the complainant argues that this report should have been published as an opinion piece rather than published in the news section, precisely because it featured so much from Majdoleen's subjective point of view. Thus, according to KBRM, it transgressed the Principle that "publications should, as far as possible, make a proper distinction between the reporting of facts and the passing of opinion".

However, within the piece the facts (about Majdoleen and the IWPS) and the opinions (her feelings about the Israeli-Palestine conflict) are clearly and carefully demarcated.

Further, interviewing an observer or participant to ask for their views about an event or situation is obviously routine newspaper practice. That such views might cause argument or even offence to those who hold different views

is inevitable but it is also the essence of press freedom.

Despite the many grievances listed in support, the Press Council finds nothing to substantiate these complaints and they are not upheld.

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

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

CASE NO: 2116 – CHRISTOPHER ROBERTSON AGAINST FISH & GAME NEW ZEALAND

Chris Robertson complained from Australia about a feature article "A Fair Australian Advance?" published in *Fish & Game New Zealand* in Issue 66. His complaint was the second received by the Council in respect of this article (see also Case No: 2106)

The complaint is not upheld.

Background

The feature article is about what the writer perceives to be problematic pressure being placed on New Zealand rivers as a result of increasing numbers of international anglers coming here to fish.

It is evident from the tenor of the article that the writer is adopting a provocative stance and that the accompanying sidebar to the article is similarly inclined.

The underlying claim of the writer is that "New Zealand's natural capital" is under pressure as a consequence of increasing numbers of visitors, and that the concerns about the effect of this burden have not yet been adequately addressed by way of regulatory controls. He makes particular mention of Australians being the largest group of registered overseas anglers and contends that there is a perception in some parts that they are somehow "ripping off the system" by taking advantage of cheap licences and New Zealand's lack of controls to protect the fishing resource. He makes explicit his criticism of the relevant New Zealand authorities.

In taking a position as the 'devil's advocate', the writer urges the authorities to consider the perceived problem and he gives illustrations of some of the factors which he asserts have contributed to that problem. He mentions, for example, that guides from overseas do not have to pay to bring groups here. He makes suggestions as to how some of the difficulties could be ameliorated or eliminated. He proposes, for example, that special licenses could be issued for back-country fishing by tourists.

As a series of sidebars to the article, a NIWA scientist provides data drawn from a survey of fishing licences which have been issued and the scientist provides 'comment' in relation to that data. It appears from his comment that the data is meant to support the claims being made by the writer of the feature article.

Notwithstanding the provocative tenor of the article and accompanying sidebar, the writer concludes by stating: "It would be a gross exaggeration to suggest all Aussies are ripping off the system and behaving badly, that's not the case and something all of those who spoke to *Fish & Game* were quick to point out. In fact, most don't even blame them for the issues raised because they stem from our lax laws."

The Complaint

Mr Robertson complains that he found the article racist and capable of inciting racism; that it was blatantly anti-Australian and/or biased and that there had been misuse and/or selective use of statistics to justify the writer's stance.

Implicit in his complaint are assertions that the article breached the Principles of the Press Council pertaining to accuracy, discrimination and subterfuge.

The Editor's Response

The editor maintained that the article was well researched, factually accurate, and not misleading by commission or omission. He believes that the conclusions reached were balanced and fair to the majority of Australian fishermen. He stands by the use of the statistics published. He rejects the contentions that the article was racist, biased, blatantly anti-Australian or that it incited racism.

The editor conceded that "[U]navoidably, some of our Australian brethren will still feel incensed by the Kiwi sentiment that's been raised but……they need to understand that the resource belongs to us, not them and its future is in our hands, not theirs". He defended the tone of the article and maintained that the writer of the article stressed that many of the problems were attributable to the lax regulatory frameworks in New Zealand.

The editor also advised that Kiwis and Australians have subsequently used the magazine's Letters to the Editor pages to express their views about the issues raised in the article. He noted that Mr Robertson had also availed himself of that avenue and that he had been informed that his letter would be published in Issue 68.

Decision

The article raises issues about the impact of tourism on New Zealand's natural resources in a deliberately provocative manner. It focuses on Australians as the largest group coming to fish in New Zealand waters.

The article has demonstrably aroused some strong reactions. The editor advised that he had received (at April 7, 2010) ten letters to the editor regarding the article. He said that all of those letters have been or will be published. The Council notes that in Issue 68, seven letters directly referring to the article were published (as well as another letter in relation to an editorial in Issue 67 which dealt with the same issues).

The Council is of the view that this shows the apparent usefulness in the airing of the issues for debate / discussion in a specialist magazine. There has been, and is, ensuing dialogue about the issues raised.

It is also clear from the letters published that there have been some correspondents (including Mr Robertson) who objected to the tone of the article, as well as other

correspondents who did not object to the tone. To some extent, that is an expected outcome where a devil's advocate stance has been adopted by a writer. It may also be a corollary of the free expression of views – particularly where there is an element of admitted subjectivity involved.

The Press Council has a number of competing factors to take account of in a complaint such as this. It must have proper regard to these inherent tensions. The Council notes that the major criticism in the article is reserved for the New Zealand authorities. It also notes that the writer uses a particular 'stance' to reach that end. The Council recognises that at least some readers have found this 'stance' offensive.

Any editor must remain cognisant of his readers' views. It is pleasing to see here that the editor has ensured that the letters column airs some competing views.

There is pattern of a 'robust' character to Australasian dialogue and it would be wrong for this Council not to also have regard to that reality. Mr Robertson identified particular phrases which he found particularly objectionable but in the context of an article which is demonstrably trying to provoke comment (including argument) and response, we do not uphold his claims. Indeed the correspondence between Mr Robertson and the editor in relation to this complaint itself reflects the mutually robust character of such Australasian argument.

The Council agrees that the article adopts a forthright tone when addressing questions such as fishing etiquette or accepted standards of back-country behaviour. The need for attention to such matters also appears to be implicitly acknowledged by Mr Robertson who, helpfully, advocates some practices which could be adopted in New Zealand to reduce some of the problems identified. The strong line adopted by the writer has resulted in useful reader participation in an important dialogue. Mr Robertson is also contributing to that important dialogue.

For the reasons set out above, the Council does not uphold the complaint under the principles of accuracy or discrimination.

In relation to the alleged misleading use of the statistics (principle relating to subterfuge), the Council notes that these statistics were taken from data obtained in the 2007-2008 National Angler Survey which was undertaken by a third party. While the statistics did not appear to the Council to be particularly relevant to the matters being traversed in the article, the Council does not find sufficiency in his complaint that they were misleading. The Council therefore also does not uphold Mr Robertson's objection to the use of the statistics.

The Council makes one final observation. While neither of the complaints about this article has been upheld, each complainant raised important matters for the Council's consideration. Any editor will know that care needs to be applied when adopting a tone which might be humorous to some but at the same time perhaps offensive to others. There are not simple or hard and fast rules which can be applied either by this Council or by an editor. Necessarily wider issues sometimes also have to be taken into account.

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

CASE NO: 2117 – DONALD BETHUNE AGAINST NEW ZEALAND HERALD

The New Zealand Press Council has not upheld a complaint by Donald Bethune against the *New Zealand Herald* which published a column critical of his son, Peter, who was arrested after boarding a Japanese whaler in the southern ocean. Two Council members dissented from this decision.

The Column

The weekly column by John Roughan was published on April 10, 2010, under the heading, "Little sympathy for middle-age angst", and a sub-heading "Ageing activist Peter Bethune should cut the antics and enjoy a much improved world."

In the column, Roughan noted the recent history of Peter Bethune, which included a world circumnavigation attempt aboard his motor trimaran that ended with an incident with a skiff off Guatemala during which a fisherman died.

Subsequently, on January 6, 2010, the trimaran, renamed Ady Gil, was rammed by a Japanese whaler in the Southern Ocean.

The columnist said he had not watched the ramming incident on video closely. Six weeks later, Peter Bethune jet-skied to the same whaler, boarding it with the intention of making a citizen's arrest of the captain for sinking his boat.

"Predictably," Roughan wrote, the captain arrested Bethune and turned him over to Japanese police when the vessel returned to Tokyo where he was charged with assault, illegal possession of a knife, destruction of property and obstruction of business.

In his comments on the chain of events, Roughan said he found it "difficult to care" that Bethune had been locked in a Japanese jail.

"If someone wants to hurtle around a working ship with the expressed intention of getting in the way of its operations I don't have much difficulty deciding where fault lies. If he had been deliberately rammed, it had obviously been done in a way that ensured there need be no loss of life."

Roughan surmised that "Bethune is probably content to stay where he is for a while, drawing continuing attention for his cause."

Later in the column, he wrote: "Immature acts of protest were once confined to the young. Bethune is 44. Like the saboteurs of the Waihopai spy base, he is simply too old for sympathy.

"The protest movement is coming into its dotage and a few of its members have gained nothing from the passage of time. Possibly, they are feeling the march of mortality and can see too little improvement in the world. If so, they're in a different world from mine."

Roughan said most species of whales have been saved from threat of extinction by International Whaling

Commission convenants "disgracefully defied by Japan, Norway and very few others. To risk life or resort to vandalism in protest that progress is less than perfect, is neither admirable nor defensible. Bethune deserves to experience the gentle, ego-challenging influences of Japan for a good while yet."

The Complaint

In his complaint Don Bethune said there were many inaccuracies in the column, some on matters of fact but most on "denigrating innuendos."

It was wrong for the headline to say Peter Bethune deserved no sympathy because he was driven by old age and angst, which was a "neurotic anxiety." Most responsible people could empathise with a commitment to a moral cause that justified risks to your own well-being.

He believed the headline encouraged readers to believe Peter did not deserve sympathy or respect and that he was past his best, which was the opposite of the truth.

Mr Bethune was critical of Roughan saying he had not watched the ramming incident closely on television. It was the columnist's obligation to keep himself informed.

Roughan was also wrong when he said the whaler had no intention of ramming the Ady Gil. Video showed water cannon blasting the Ady Gil's deck with crew standing on it, and had there been any crew inside the vessel as the whaler sliced through it, they would have been killed instantly. To write of "ensuring safety" was inaccurate.

The reference to the protest movement "coming into its dotage" and another reference to time passing encouraged readers to think his son was "old, middle-aged and dumb" which was an underhand way to denigrate an astute and dedicated Kiwi.

Mr Bethune listed his son's achievements with technology, biofuels, shipping design and gaining the world circumnavigation record after the earlier fatal incident with the unlit skiff off Guatemala had led to the first attempt being abandoned.

References to vandalism and Bethune deserving the "ego-challenging influences" of Japan were part of a litany of negative innuendos and inaccuracies reflecting Roughan's ignorance of what he was writing about, or an intention to denigrate regardless of accuracy.

The column had hurt him deeply.

The Newspaper's Response

In his response initially to Mr Bethune, deputy editor David Hastings said that the *Herald* understood that Peter's predicament must be distressing to family and friends.

Responding to the Council, the deputy editor said the complainant was deeply upset by the criticism of his son and "understandably would prefer to see Pete Bethune hailed as a hero rather than criticised in such strong terms.

"Unfortunately, he does not seem prepared to grasp the point that someone who courts controversy through their public actions cannot expect they will be immune from scrutiny and criticism."

Further, Mr Bethune did not see the difference between fact and opinion. All the points complained of were not inaccuracies but different interpretations of the facts.

Though hard-hitting, the column was well within the bounds of acceptable public discussion.

Discussion

The Press Council accepts that the column would have been upsetting for Mr Bethune, particularly since his son was incarcerated in Japan and facing an uncertain future.

The columnist's opinions are strongly expressed, and he makes assumptions that Mr Bethune has challenged.

But in the case of an opinion column, a higher threshold for complaint applies. The Council has said repeatedly that columnists are entitled to express opinions strongly, as long as their opinions are based on fact.

While Mr Bethune disputes what was written in some instances, and criticises what he calls innuendo, where differences arise between the columnist and the complainant, they are based on interpretation of facts.

Comments on interpretations of facts may be unfair, based on a lack of awareness or appreciation of the full story or even appear to some readers to be ignorant, but that does not make the comments incorrect or unworthy of being expressed.

All newsworthy events are interpreted according to the beliefs and understandings of readers or viewers. Nobody in the public eye, as Peter Bethune undoubtedly is, should be surprised when people regard their actions differently to their own beliefs.

The column clearly hurt Mr Bethune but that does not make it wrong.

Decision

The complaint is not upheld by a majority of seven members to two.

Pip Bruce Ferguson and Stephen Stewart dissented on the grounds of accuracy. They acknowledged that the column was an opinion piece. However, they argued that, as the columnist had admitted he "didn't watch [the video of the collision] closely" he could not then claim that the collision "had obviously been done in a way that ensured there need be no loss of life."

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

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

CASE NO: 2118 – TONY HOLMAN AGAINST THE AUCKLANDER

Introduction

North Shore Councillor, Tony Holman, lodged a complaint under Principle 5 of the Press Council Statement of Principles, Headlines and Captions.

Mr Holman included several other areas of complaint in his letter but the Council deemed these third party

complaints and that Mr Holman was not the appropriate person to make them. Mr Holman declined to obtain the consent of the party involved.

The complaint is not upheld.

Background and Complaint

Mr Holman objected to the headline of an article published in *The Aucklander* on March 11, 2010.

The headline of the article was "Name Shame" and, immediately below, the subheading stated "Valerie Schuler discovers a Birkenhead park has been renamed. It's news to locals too, who say the council should have run the name change past them first." The article related to the naming of parks in Birkenhead, and how such names are chosen.

Mr Holman said that the headline was a "gross misuse of editorial power". He believed that the headline was entirely improper, grossly misleading, insulting and demeaning of the person after whom the park had been named.

Mr Holman believed that the headline was inaccurate and did not relate to the process as to how names are chosen for parks, but rather to the person the park was named for.

Response from the Newspaper

The editor of *The Aucklander*, Ewan McDonald, stated that "this is a case where the headline must be considered with the contents of the article because the headline itself does not convey any of the meanings contended for by the complainant".

He went on to say that "The text of the article makes clear that the "shame" reference, with the intended meaning of regret or disappointment as expressed by Mr Platt [a local resident] in the story, is in relation to the process by which the park became named".

The editor stated "*The Aucklander* submits that the headline was clearly a pointer to the article underneath, was not misleading and when read together with the article did not convey any of the meanings alleged by the complainant".

Discussion and Conclusion

Principle 5 states that "Headlines, sub-headings, and captions should accurately and fairly convey the substance or a key element of the report they are designed to cover."

Immediately under the headline, the subheading clearly states that the process of how the park was named is the subject in question. The article uses information given by local residents to outline the fact that they [residents] believe that there should be consultation when considering any possible name.

The article also includes information gained following interviews with council staff to show that there is no formal policy or process in place for the naming of parks.

Where a specific park is named in the article, there are only positive comments in regard to the person that the park is named after, and that person was not insulted or demeaned.

It is clear from the content of the article that the heading relates purely to how names are chosen for local parks and is not denigrating to any person a park is named for.

The headline does relate to the content of the article and does not breach Principle 5 of the Press Council Statement of Principles.

The complaint is not upheld.

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

CASE NO: 2119 – KIWIS FOR BALANCED REPORTING ON THE MIDEAST AGAINST STUFF

Introduction

Kiwis for Balanced Reporting on the MidEast (KBRM), through the chairman Rodney Brooks, made a formal complaint to the Press Council on March 7, 2010 about a John Minto piece of October 22, 2009 published on the *Stuff* website. The complaint had a considerable history and the Press Council agreed to adjudicate it, despite it being technically out-of-time. The complaint is not upheld.

Background

The October 22 +opinion piece – under the headline "A Dispiriting Overreaction at the Museum" – looked at the media reaction to a group of schoolboys paying homage to the swastika during their visit to the Auckland Museum. Public opinion generally abhorred the boys' actions, and Minto's column was an attempt to get this behaviour into perspective. He said that young people often assume particular attitudes when in a peer pressure situation; other groups of young people (or individuals) mock Muslim leaders, terrorist leaders, and political leaders such as George W. Bush in their social activities. His argument around such activities is that they should be regarded in a balanced way, and with recognition of the proclivities of the young.

His piece then explored his views on how public opinion, and media coverage, deals with criticism of Israeli/Palestinian matters, that criticism of Israeli actions against Palestinians is often seen as anti-Semitism, and that "Some Jewish groups go so far as claiming any criticism of Israel is fuelled by anti-Semitism".

He then went on to argue that we should be educating people, not just on Belsen and Anne Frank but about other aspects of the war and its aftermath which are largely unknown to many people.

The Complaint

It is the highlighted statement that has actioned this complaint. The complainant sought redress on this statement firstly from the columnist, then from Fairfax (the publishers of *Stuff)* and – unsatisfied at the response of the *Stuff* group on-line editor – from the Press Council.

In his formal complaint, Rodney Brooks claimed that the highlighted statement is false and defamatory. "It damages the reputation and credibility of groups who defend Israel against invalid and unfair criticisms."

In a later response to a defence of the column, Mr Brooks said that it was clear that John Minto did not seem to understand the difference between the words some and any. If the sentence had read "Jewish groups go so far

as claiming some criticism of Israel is fuelled by anti-Semitism" there would be no problem.

In essence, Mr Brooks thought that the statement as written by John Minto was a false accusation; John Minto should have been prepared to change the wording as suggested by Mr Brooks.

The Responses

The group on-line editor of *Stuff*, stated that she believed the column was reasonable and balanced. Mr Brooks had complained about one sentence in the Minto column. She maintained that Mr Brooks had provided no evidence to support his view that there are no Jewish groups that believe that all criticism of Israel is fuelled by anti-Semitism.

John Minto, in his submission to the Press Council provided a number of sources which he believed supported his statement.

Discussion

The political issues in the Middle East – and reporting of these issues and the actions that ensue – are divisive and unresolvable at this particular time. It is understandable that groups with particular perspectives are concerned that what they perceive as fairness in the reporting of events is maintained.

The Press Council believes that commentators can bring their slant to political events, and world events, and that the debate that follows may contribute to a better understanding of differences and the conflict that arises out of such differences.

A political commentator, recognized as such, whose opinions take a particular stance in what are frequently divisive viewpoints, has an important role to play.

The Press Council has considered historical and current views, presented by the complainant and John Minto, on anti-Semitism. It has reached the conclusion that there are many responsible and thoughtful intellectuals and thinkers who agree (in summary) that there is a movement trying to suggest that criticism of Israeli actions in the Middle East can be construed as anti-semitism.

Taken as a whole, the Minto piece is a commentary on a schoolboy prank which received unprecedented publicity, and a plea for balance and an end to "hypersensitive overreaction".

The complaint is not upheld.

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

CASE NO: 2120 – MARIA LEMPRIERE AGAINST TARANAKI DAILY NEWS

Maria Lempriere complained that an item she had contributed to the *Taranaki Daily News*, was published under a reporter's byline; that some detail she provided was omitted; and that she was not publicly credited with supplying a photograph that appeared alongside the story.

The complaint is not upheld.

Background

On March 4, 2010 the newspaper published a story and photograph on an Eltham-made cheese that had just won a national award.

That same day, Ms Lempriere, an event organiser who specialises in lifestyle food making courses like cheese making, submitted a follow-up story to the *Taranaki Daily News*. Her story and the photograph featured Esta Souber of Inglewood, who had won a silver medal for cheddar in the same awards, under the champion hobbyist cheese category.

Ms Lempriere sent the story and photograph to the newspaper's features editor, with whom she had had previous dealings. The story and picture appeared on the newspaper's front page the next day, under a different staffer's byline. Ms Lempriere complained by e-mail to the reporter about how it had been handled and his failure to thank her for the story.

On March 8 she wrote to editor Jonathan MacKenzie complaining about this, the reporter's failure to speak to Esta Souber, omissions of any published credit for her own work on the story and photograph, and the story's failure to recognise the contribution of another woman who had been the catalyst for Esta Souber's success.

Response from the Newspaper

Apart from a brief acknowledgement, on March 9, Mr MacKenzie did not answer Ms Lempriere's emailed complaint by March 23, the date she complained to the Press Council.

The editor said Ms Lempriere's correspondence to the newspaper had been treated as a press release and processed accordingly by the reporter. The photograph was treated as "supplied" and no credit given, in accordance with treatment afforded press release material.

"To my mind the news was the person who produced the winning cheese, not the person who was in some way involved in the course that the winner attended."

He said he believed Ms Lempriere misunderstood how the news media operated. He apologised for not getting back to her.

Complainant's Response

In an April 22 e-mail, Ms Lempriere expressed dissatisfaction with Mr MacKenzie's explanation. She criticised the newspaper's "shabby" journalism and said the editor did not respect the newspaper's readers.

Final Comment

On April 30 Mr MacKenzie again apologised for his lack of detailed response to her initial e-mail. The subsequent failure to send a response drafted by his chief of staff was an honest mistake.

He rejected Ms Lempriere's claim about "shabby journalism". The reporter had at least 30 years experience, and was well versed in writing stories based on details provided in press releases.

He stated "It is a journalist's job to determine what is appropriate and applicable information for news stories."

Concerning the picture, the newspaper believed it was supplied for publication. It was common practice to

publish pictures from sources other than the newspaper's own photographers. Such pictures normally carried the published credit "Supplied". However, sometimes when the picture was published small, the credit was dropped to save space.

The story and picture had appeared on the front page, so Ms Lempriere's efforts were not in vain.

Decision

This complaint has arisen from a misunderstanding. Many such stories are received by a newspaper each day, and mostly the suppliers are pleased simply to see their contribution in print. The newspaper's actions were not unusual.

However, it is unfortunate that the newspaper, on receipt of the initial complaint, did not take the time to explain the situation to Ms Lempriere. At the time she was simply seeking thanks.

The complainant is aggrieved at how "her" story was treated; the reporter's byline on what was essentially her work; and the lack of credit for the picture she supplied. She also takes issue with some of the details the story omitted.

However, the story was accurate in so far as it went and its content was the newspaper's prerogative. Not all material supplied in a press release "makes it". Often press releases do not appear at all. In this case, the story did appear on the newspaper's front page**,** and the Council notes that the photograph is now credited to Ms Lempriere on the *Taranaki Daily News* website.

The Press Council does not uphold the complaint.

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

CASE NO: 2121 – JO MILLIS AGAINST WANAKA SUN

Jo Millis complained about the "TXT Message Board" section of the *Wanaka Sun.* She raised various concerns about the anonymity of the text contributors, personal attacks and a lack of fairness and balance. Her complaint is not upheld.

Background

The TXT Message Board is a recent development in the *Wanaka Sun*, appearing alongside a traditional Letters to the Editor section.

The "messages" are generally from anonymous senders, and retain the chatty, informal, much-abbreviated format frequently used in texting.

Contributors are encouraged to "voice their opinions" on local issues and there is also an opportunity for community groups to list not-for-profit events.

The Complaint

Dr Millis claimed that the published texts were often derogatory and showed a lack of balance. As examples, she pointed to comments posted about the chairman of the board and the principal of a local primary school, following an earlier *Wanaka Sun* article about school donations.

She questioned whether such comments should be published anonymously.

In a final letter to the Press Council, she stressed that her complaint was not about anonymous texts which simply gave an opinion, it was about the anonymity of texts referring to members of the community in a negative and personal manner. She suggested this could be a form of "public text bullying".

The Response

The editor, Malcolm Frith, explained that the TXT Board had been created to connect with a section of the paper's readership that would never write a letter to the editor. It had proved very popular.

Conditions surrounding this forum had been published and included caveats against swearing and offensive comments. The newspaper also reserved the usual right to abridge and edit.

He acknowledged that anonymity was "a major problem", but feared that if people had to supply names and addresses, few would give their opinions openly.

Mr Frith stressed that he took personal responsibility for the monitoring the board and in his view the printed texts had not been "libellous, defamatory or offensive". Several texts had been rejected because they were inappropriate.

The phone numbers were logged and he firmly rejected any inference that the texts were occasionally created by any of the newspaper's staff.

Discussion and Decision

The examples supplied by the complainant, while critical of some members of the local community, did not seem either vitriolic or vicious. In the view of the Council they were disparaging rather than gratuitously offensive.

Further, as far as lack of fairness or balance is concerned, the newspaper also published several texts (and letters) that were in support of the school's position on donations and by extension, the board chairman and principal.

For these reasons this complaint is not upheld.

Nevertheless, the complainant's general concerns about publishing texts from anonymous sources are also of concern to the Press Council.

First, there is an obvious contradiction in the *Wanaka Sun*'s stance on letters and its stance on texts. The rules for letters clearly state that "letters sent in anonymously will not be published" yet texts suffer no such restriction.

Further, the very nature of texting seems to encourage an instant, forceful, almost throwaway response rather than the more considered approach of composing a letter to the editor. This may be well be exacerbated when you do not have to back your comment with your own identity.

There is also a difference between attacking, say, a politician, who might be expected to be subject to robust comment, and criticising someone working in a voluntary capacity within the local community.

Press Council Principles stress that editors have considerable freedom in the selection and treatment of letters for publication: nevertheless, the Council has also

noted that "the letters to the editor section is not to be a forum for personal attacks". (See Adjudication 2087)

To some extent, such message boards might be considered analogous to the websites now operated by many newspapers and the Press Council has previously stressed the need for constant and vigilant monitoring of such sites to prevent personal attacks. (Again, Adjudication 2087)

Finally, the complainant's point that publishing texted messages, could quickly degenerate into the personal, and become akin to "text bullying" especially within a small, localised community or township, should give editors pause to consider the dangers inherent in creating such text platforms.

This complaint is not upheld but it raises valid concerns about how the print media industry might utilise, and control, recent developments in communication technology.

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

CASE NO: 2122 – AIRWAYS NEW ZEALAND AGAINST MOUNTAIN SCENE

Introduction

Airways New Zealand (Airways) complains that articles published in *Mountain Scene* on March 11, March 18 and April 8, 2010 breached the Council's principles in respect of accuracy and balance (including omission), comment and fact, corrections and headlines and captions. The complaint is upheld.

The first article, a front page article, appeared under the overline and heading:

Sacked air controller fears for safety in the skies

Tower trouble

The first paragraph of the article read:

> A SACKED local air traffic controller claims a "frightening" lack of experience among former colleagues is causing an increasing number of safety incidents at Queenstown Airport.

The article then continues, listing her concerns about safety issues centred on air traffic control at Queenstown Airport.

The article refers to the controller's claim to know of three safety incidents, one of which was a "near miss" that the Airways safety manager knew about but never investigated. The article continued on the second page under another bold heading:

Ex-controller slams tower

The second article which appeared on March 18, 2010 was headed:

Pilot rarks up CAA

'They need to mitigate the threat of a repeat'

This article quoted an Air NZ pilot's view that the national aviation watchdog was not taking a "loss of separation" incident between two planes in Queenstown seriously enough. The newspaper commented that the pilot's concern followed its previous story in which the sacked air traffic controller claimed rookie controllers were causing an increasing number of safety incidents at Queenstown. It noted that the controller had succeeded in an unjustifiable dismissal case against Airways. It also noted that Airways had found that there was no loss of separation in the incident complained of but that a Civil Aviation Authority (CAA) investigator noted that the incident should have been reported to CAA.

The last article appeared on April 8, 2010 under the heading:

Airways irate over 'Tower Trouble'

This article summarised a complaint which Airways had made about the article of March 11, acknowledged some errors in the March 11 article and sought to justify other comments. It will be necessary to refer more particularly to this article later.

The ex-controller had succeeded before the Employment Relations Authority with an unjustifiable dismissal claim against Airways.

The Complaint

The basic complaint of Airways is that the articles amount to inaccurate, unbalanced, inflammatory and biased accounts published both in *Mountain Scene* and online. It is alleged that the inaccuracies and innuendo contained in the articles have the potential to adversely impact the public's confidence in air traffic control by implying risks to safety that do not exist. Airways says that the publication has caused significant damage to its reputation.

A related matter is that Airways claims it spent considerable time speaking to the reporter prior to publication and advised her that she needed to have solid evidence to back up the claim she was making with regard to safety, particularly because the primary source for the claim was a disgruntled ex-employee who was, at the relevant times, involved in proceedings before the Employment Relations Authority (ERA). Airways claims that this advice was ignored and that *Mountain Scene* acted irresponsibly.

A summary of the statements which are allegedly inaccurate and the reason for the alleged inaccuracies is:

a. …a frightening lack of experience amongst former colleagues is causing an increasing number of safety incidents at Queenstown Airport – *the safety incidents attributable to air traffic control over the period quoted dropped significantly.*
b. In the six months before I left there'd been an increase in incidents caused by inexperienced controllers. I know this because I investigated half of them – *factually incorrect as there were no incidents reported attributable to air traffic control.*
c. An inexperienced crew manning the Queenstown tower is "just as dangerous" as having rookie pilots, she says – *no safety data to back up this claim.*
d. …the Airline Pilots' Association has black-listed

Queenstown as a difficult airport – *this is factually incorrect.*

a. Her warning comes two weeks before the annual influx of light aircraft for Warbirds Over Wanaka, which [the ex-controller] says most tower staff haven't been involved with – *most of the current tower staff have experience with the Warbirds Over Wanaka event and the statement is a red herring unrelated to the issue being considered in the article and designed to instil fear in readers.*
b. [The ex-controller] also claims to know of three safety incidents – including a "near miss" between an Air New Zealand plane and a hot air balloon in 2008 – that the Airways Safety Manager knows about but never investigated – *factually incorrect as all incidents that are reported are investigated and the Air New Zealand incident was reported to the CAA. The "near miss" is a serious misrepresentation of the facts.*
c. …when a departing Air New Zealand Boeing 737 flew head-on into the smaller plane's course – *this is an inflammatory depiction of a standard procedure and CAA did not refer to either aircraft flying "head on" into "each other".*
d. There are other people on the [Queenstown] airfield who aren't happy with the standard of controlling. The airlines are [also] concerned – *Air New Zealand denies that this statement represents its views and it was not approached by the newspaper to substantiate the claim.*
e. My personal opinion is I was sacked because I knew there were safety-related issues at Queenstown – *a factually incorrect statement the ex-controller did not allege this in her claim to the ERA. Nor did the ERA find that this was the reason for her sacking.*

The statements referred to in the previous paragraph appeared in the article of March 11. Although Airways did not follow the correct procedure by complaining to *Mountain Scene* about comments in the article of March 18, it included comments from that article in its complaint to this Council. The comments and the summarised reasons for the complaints are:

a. An Air NZ pilot believes the national aviation watchdog isn't taking a "loss of separation" incident between two planes in Queenstown seriously enough – *the CAA investigation found that no loss of separation occurred and a pilot's disagreement with this finding does not mean that CAA did not take it "seriously enough".*
b. The 737 captain, who can't be named because of a media ban in his contract, says the Civil Aviation Authority should have made recommendations following an air traffic control episode at Queenstown Airport on March 2 last year – *the CAA did make a recommendation, as the newspaper acknowledged in an earlier article. It appears that the reason for restating this matter is to increase fear in the community about aviation safety.*
c. The 737 captain, echoing the [ex-controller's] warning, says the Queenstown tower's not alone when it comes to concerns about air traffic controllers – "given what I know of the under-resourcing and overwork in many of the control towers around the country" – *factually incorrect.*
d. "Human factors are an important element to consider in terms of any given failing of a controller and it seems all too convenient to try to shift the problem onto the individual seemingly responsible – but has it really dealt with the root cause?" – *this seemed not to make sense in the context and because material was omitted creates an unbalanced and misleading story.*
e. "The economic drivers are not necessarily complementary to safer skies" – *factually incorrect. There is no evidence to show any correlation between the price of air fares and aviation safety.*

Airways also takes issue with the headlines in the articles of March 11 and 18, in particular:

a. The headline and overline of the March 11 article (see above) was factually incorrect to imply that there was "trouble" at the tower. The headline implied chaotic operational and staff management practices to cause readers to conclude that they should be concerned about aviation safety in Queenstown.
b. The headline of the April 8 article was incorrect. Airways had sent a measured response to *Mountain Scene* and was not "irate".
c. The headline and overline of the March 18
d. article is factually incorrect. The CAA, after investigation, determined that there was no loss of separation and reclassified the incident as a Non-Reportable Occurrence.

Airways also complains about the "corrections" article of April 8, 2010 claiming that in it the editor acted as both judge and jury. The article repeated the inaccuracies and misinformation already published. The following three particular comments were referred to:

a. …we have no regrets about publishing this highly-experienced air traffic controller's strong fears and honestly-held doubts over local air traffic control – *the newspaper should have substantiated the claims made by the ex-employee, as other media organizations did, and then decided not to publish.*
b. …we stress where [the ex-controller] claims incidents increased in the six months before her sacking, not two years. We've also sighted correspondence from a senior aviation source early in 2009 signalling an upward trend in aircraft "Traffic Collision Avoidance System" warnings at Queenstown – *factually incorrect.*
c. The article repeats early misinformation contained in the previous articles. In doing so, it suppressed the truth. The earlier articles were factually incorrect.

The Newspaper's Response

It is not necessary to summarise the detailed point-by-point response of *Mountain Scene*. Its basic position is that it has evidence to back up its March 11 report and the items of dispute. It notes that the ERA decision which led to the first article centred on a confrontation in the tower. It

quoted a CAA spokesman who had said that CAA had since told Airways to "sort out" its procedures in relation to this Queenstown tower incident. It also quoted a CAA Aeronautical Services Officer who said:

"There is no question that the incident was reportable [to CAA] because it had the potential to be a hazard, given the controller was technically not applying separation in accordance with the documented procedures."

The first article with its overline clearly showed that it was an opinion from the ex-controller and not a statement of fact. Many of the statements complained of were opinions of the ex-controller. The overline referred to a "sacked air controller" and this invited readers to make a value judgment about her comments. The reference to "sacked" indicated that the ex-controller was "unlikely to be trumpeting the virtues of her former employer".

Discussion and Decision

The complaint and the response omitted information which the Council believed to be important and it therefore requested both parties to answer a series of questions. In the main, the parties agreed on the answers, although there were some discrepancies. The reporter from *Mountain Scene* had phoned a member of Airways the day before the article appeared. The reporter put many of the allegations to Airways and was advised that she should contact CAA/TAIC to back up her claims and seek evidence. The reporter did not take this advice.

The Council has repeatedly said that a newspaper should seek a response from a party against whom allegations are being made. This is particularly so if there may be disputed facts and where, as here, a delay in publishing would not have diminished the value of the story. It is also important to obtain balance where a story may alarm a section of the public.

On the other hand, an organisation which has allegations against it put to it by a reporter, runs the risk of misreporting if it suggests that the reporter should go to some other organisation to get an answer to the allegations. This appears to have happened here.

The story in this case was clearly a matter of public interest and *Mountain Scene* was entitled to report it. Many of the facts objected to by Airways were clearly statements of opinion from an ex-air controller. *Mountain Scene* was entitled to publish these opinions and the only issue in this respect is whether it failed to give adequate balance.

The first article made serious allegations against Airways. It referred to safety incidents increasing at the airport; a "frightening" lack of experience in the tower; the Airline Pilots' Association blacklisting the airport; near misses known to Airways which were not investigated; and safety being compromised because of economic drivers.

Mountain Scene, in its correction article, acknowledged a lack of balance in respect of the ex-air controller's opinion on the reason for her being sacked. The Employment Relations Authority decision, which *Mountain Scene* had, made it clear that her sacking was not related to safety-related issues. Secondly, it acknowledged that the Airline Pilots' Association had not blacklisted the Queenstown airport. There were other allegations in the article which were not checked by *Mountain Scene.* Some of the main allegations, however, were put to Airways which did not directly answer them but suggested that the reporter should contact CAA/TAIC. Nevertheless, in some important aspects, balance was lacking. The question is whether the correcting article absolves *Mountain Scene.*

The allegations in the second article were not put to Airways before publication. The article was critical of the CAA and, by implication, Airways Corporation. It repeated some of the allegations made by the ex-controller in the previous article and, in effect, built on them. In the Council's view, *Mountain Scene* should have sought balance by putting the new allegations to Airways.

The Council does not uphold the complaint on the headlines and overline. In its view, the headline and overline of the first article fairly conveyed the substance of the article and the particular fears of the ex-controller. If *Mountain Scene* had sought balancing comment, the headline may have been different but was appropriate for the article.

The headline of the second article was stronger by including the word "rarks". However, once again, the Council would not uphold that complaint.

The question is whether the correcting article was such that the complaint relating to lack of balance in the first two articles should not be upheld. The newspaper accepted two errors. However, it reiterated its stance on other statements on which it had not sought comment from Airways, namely the staff's involvement with Warbirds Over Wanaka, the three safety incidents and the fact that other air operators and airlines were unhappy about Queenstown's air traffic control standards. It had not put this allegation to the airlines.

In the Council's view, the correcting article did not go far enough. In some respects, it reinforced the lack of balance. The tenor of the article, while accepting some errors, clearly restated views on which it had not sought balance.

For the reasons given above, the Council upholds the complaint on the grounds of lack of balance. In an article which was likely to inflame views, the newspaper had a responsibility to obtain greater balance even if that meant delaying publication of the article for a week.

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

CASE NO: 2123 – THE CHURCH OF SCIENTOLOGY AGAINST WOMAN'S DAY

The Church of Scientology of New Zealand complained that articles in two issues of *Woman's Day* were unfairly biased and unbalanced on the subject of Scientology.

The complaint about the articles is not upheld. A complaint about a misleading headline is upheld.

The Complaint

The March 15, 2010 issue of *Woman's Day* contained articles and pictures of actor Katie Holmes, wife of actor Tom Cruise. The cover stated "Katie forced into Scientology boot camp" and the article was headed "Katie is sent to baby boot camp." The essence of the article was that Ms Holmes had agreed to attend the "baby boot camp" in preparation for a second child but she had one condition.

Mike Ferriss, the church's New Zealand secretary, complained in a letter to the editor of *Woman's Day* dated April 8 that the cover heading was misleading because the article reported Ms Holmes had agreed to go to a church programme and was not forced.

There was no such thing as a "baby boot camp" programme in Scientology, and the article's description of a Scientology practice called auditing was incorrect and misleading.

The article had also said the actor would be expected to follow the sect's "Clear Body, Clear Mind" plan, which involved "rigorous exercise, sauna sessions and vitamins and minerals to cleanse the body of 'toxins.' "

This was not factual and also misleading. The plan was a purification programme and under the church's rules, a pregnant woman was not allowed to do it.

The April 12 article was headed "As Tom's Scientology cult crumbles . . . Katie takes control." The article said that Mr Cruise's world was crashing about him because Scientology was being attacked after a spate of damaging claims around the world.

It went on to say the actor was believed to hold "the revered second-in-command position in the controversial cult" and he was facing pressure to manage the bad publicity following the allegations of abuse and fraud. His wife, however, was blooming, taking charge of the family and ensuring the children, including those from his previous marriage, were calm and happy.

Mr Ferriss complained that Mr Cruise held no ecclesiastical position in the church and did not manage any aspect of the church or its affairs, including publicity.

The article had quoted recent negative events and controversies surrounding Scientology including a French court decision, a *New York Times* article and an Australian *Four Corners* television programme, but sought no response from the church on any of these, making the reporting biased and unfair.

A section of the article headed *Scientology Explained* was full of "strange and incorrect information that is a mockery of Scientology." None of the information came from an official Scientology source, he said.

Lack of balance and the reporting of one-sided and negative and false information were emphasised by Mr Ferriss in his complaint to the editor and later to the Press Council. The magazine routinely did not invite any comments from the church or any authoritative source, a pattern extending back for a considerable period.

The church had written to the magazine on several occasions. On November 19, 2009, following a telephone conversation, Paul Dykzeul, the chief executive, had responded that ACP, publisher of the magazine, did not set out to denigrate the church. Most of the articles were sourced from overseas. The chief executive acknowledged Mr Ferriss's concerns and said they would bear them in mind in the future.

The Response

In his response, Malcolm Swan, New Zealand general counsel for ACP Media Ltd, said *Woman's Day* prided itself on the standard of its journalism and quality of stories.

"Having said that, it is widely understood that women's weekly genre magazines do focus on local and overseas celebrities and many of its stories are understandably more sensational. The objective of the magazine is to entertain and report on celebrity gossip and other human interest stories."

Readership data showed readers were very interested in the relationship of Ms Holmes and Mr Cruise and the impact of the church on it, especially given the bad press the church had received in Australia and overseas.

Mr Swan said the church had written on numerous occasions and, on all but one occasion when the editor was overseas on extended leave, they had been responded to. The persistent complaints had become tiresome.

At no point in any of the stories had the New Zealand church been mentioned. All of the stories had been sourced from overseas reporting on overseas church activities, particularly the US. The magazine had never purported to describe the workings of the New Zealand church, and had published the articles verbatim on the understanding that the sources were genuine and contents accurate.

Comment from local churches on international stories was not possible on occasions because of deadline pressures, nor was it relevant.

The heading in the April 12 issue about Mr Cruise's Scientology cult crumbling and Ms Holmes taking charge was not misleading and, as the article was written in Australia for an Australian magazine, they saw no need to contact the New Zealand church for comment.

The March 15 headline about the "baby boot camp" was editorial licence to describe a rigorous cleansing regime practised by the church in the US. Again, the article was from overseas and published in good faith and the sources were believed to be genuine.

Mr Swan said the magazine did not set out to denigrate the church in New Zealand and did not believe the articles were unfair or biased, given the nature of the magazine "and the recent world wide scandal and negativity surrounding the church."

Further Comments from the Complainant

In his response, Mr Ferriss disputed *Woman's Day* had responded to correspondence when the NZ church

attempted to correct inaccurate information. While *Woman's Day* had not covered the New Zealand church, it had covered Scientology often within the context of celebrity gossip. Because it was sold in New Zealand, it had an impact on readers as well as the local Scientology community – "we do hold the same beliefs as our overseas churches."

It was good journalistic practice to check facts, especially when the church had pointed out inaccuracies. Deadline issues were not an excuse, degrading the profession of journalism and making it appear irresponsible and careless.

The New Zealand church was not acting for Scientology celebrities, it was concerned only about accuracy when reporting on Scientology and its practices.

Discussion

There are several elements to this complaint.

The Press Council has debated before the question of ensuring accuracy when articles are sourced from overseas. It is not reasonable to expect publications to have to do so when sources are considered reliable. The magazine says this applies here.

The New Zealand church had asked that it be given a chance to respond to claims before publication but, given the acknowledged international sourcing of the stories and the fact that they were mainly about celebrities, there seemed no good reason to do so, although the magazine editors should have been aware of the New Zealand church's claims of past inaccuracies.

Both the New Zealand church and ACP Media agree that the church has made complaints about *Woman's Day's* coverage of Scientology celebrity stories – to the point of becoming tiresome, according to Mr Swan.

There is inconsistency in the magazine's attitude to the complaints, however. The chief executive had said last November in direct response to one such complaint that the church's concerns were noted and they would bear them in mind for future publications. The response of Mr Swan, the legal adviser, indicates a quite different attitude.

Nevertheless, with a story written by sources considered reliable in another country about international figures, it seems a step too far to have to take local sensibilities into account, even if the readership is local.

There is little doubt that the celebrity aspect is the main interest of the magazine, that is, the actors themselves, their relationship and their association with the church. Mr Swan stands by the standard of *Woman's Day's* journalism but asks the Press Council to take into account the genre of women's magazines and reporting of "celebrity gossip" which, taken literally, means what is reported may be groundless.

The Council has debated this point before - Case 1060, which also involved *Woman's Day*. In that case, the complaint involved misleading cover headlines and, by a 7-4 majority, the Council upheld a complaint of inaccuracy on Principles 1 and 10.

In the meantime, the Council has amended its Statement of Principles and genre of publication can be taken into account in its deliberations. In some circumstances, the publication of gossip in magazines that deal in "celebrity" gossip openly so that the ordinary reader would be aware of its reputation, would not warrant a reprimand on the ground of accuracy.

Much of both articles fall into this category. The presentation of the articles and pictures are sensational and typical of gossip magazines, as is the writing. The March 15 article is speculative and contains vague attributions to a "source," "reports" or an "insider." The April 12 article is largely a mixture of observations and speculation based on public sightings of Ms Holmes and Mr Cruise's children, reported issues involving the church published or broadcast elsewhere and a quote from a South Australian senator.

The Press Council believes an ordinary reader of *Woman's Day,* knowing its genre, would therefore view the articles and their lack of confirmed substance presented in a sensational manner as largely gossip and would judge them accordingly.

The secondary article on Scientology itself in the April 12 issue is more worrying. It is presented as fact and purports to present some detail of Scientology and how cult members should behave. Mr Ferriss disputed its accuracy. But he offered little or no alternative documentary material of the correct position. The Council therefore is unable to make judgment.

Nevertheless, the Press Council believes there are limits to which a "gossip" magazine can claim latitude or "editorial licence," as Mr Swan put it. One such limit is where there are contradictions between heading and text. Such an instance exists here.

The headline, "Katie forced into Scientology baby boot camp", is contradicted, as Mr Ferriss pointed out, in the first paragraph of the March 15 story which began: "Katie Holmes has agreed to attend Scientology baby boot camp in preparation for a second child, but she has one condition."

The facts as presented by *Woman's Day* indicate the actor was not forced into the programme. The headline is misleading, as is the stand-first above the first paragraph. The latter talks about the star having a "few conditions," the introduction reports on only one.

Decision

The Church of Scientology of New Zealand's complaints about the articles on the grounds of accuracy and being misleading are not upheld on the grounds that it is clear the articles are gossip and can not bear a strict test of accuracy.

The complaint about the headline, "Katie forced into Scientology baby boot camp," is upheld on the grounds that it does not reflect the article.

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

CASE NO: 2124 – ANDREW GEDDIS AGAINST THE SUNDAY STAR TIMES

The Press Council has upheld a complaint by Andrew Geddis against the *Sunday Star-Times* over a front page story about a drink-driving case heard by the High Court.

Background

On June 20, 2010 the *Sunday Star-Times* published a report of the case in which a woman successfully appealed her sentence. The main headline read 'Sex attack gets drink-driver off – and a sub-heading said 'High Court judge accepts panic defence'. A sidebar panel to the story highlighted three other cases where drivers who had been drinking were discharged without conviction.

The Complaint

Andrew Geddis complained to the Press Council that the heading, sub-heading and story were inaccurate and misleading.

In his complaint, he says the headlines imply that the driver escaped conviction and punishment for her actions, which is not the case. He says the second paragraph of the story implies that her conviction and sentence were overturned on appeal – and that was also not the case.

In fact, while the woman's disqualification from driving was overturned by the court, her sentence of community work was tripled to 300 hours. She had not appealed her conviction, only her sentence. This clarification, however, came only towards the end of the story.

Mr Geddis says the story would have misled a reader "into believing that a judge in the High Court allowed an offender to walk completely free after accepting a (rather salacious) defence to a drink-driving charge. This did not happen".

He says the sidebar panel to the story further misleads by suggesting the woman had escaped any legal consequences.

The Newspaper's Response

The *Sunday Star-Times* defends its treatment of the story on the basis that the woman was allowed to keep driving, despite being over the limit. Editor David Kemeys says, "The headline and story make it clear an important aspect of a drink-driving conviction – that drunks are taken off our roads – was overturned".

Mr Kemeys says the woman had her disqualification from driving overturned, meaning "she got off".

The story says that her conviction was not overturned and does not suggest the woman has escaped any legal consequences.

Discussion

The newspaper's view is that the woman driver "got off" a drink-driving charge because her disqualification was overturned. It says the story makes it clear that she did not escape legal consequences entirely. But that is not what the main headline says and, while the sub-heading may have been accurate on its own, when it is used to expand the meaning of the first heading, it too becomes inaccurate.

The use of a sidebar panel headed 'The ones that got away' only reinforces the impression that the woman got off scot free.

A reader getting to the end of the story would eventually put all the pieces together – and by that time would know that the driver did not actually get off the charge at all.

The Press Council upholds the complaint.

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

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

CASE NO: 2125 – BRYAN HARRISON AGAINST BAY OF PLENTY TIMES

Bryan Harrison complained to the Press Council about an article published in the *Bay of Plenty Times* on May 31, 2010. The complaint is upheld.

Background

The story, published under the headline "Motorcyclists lose road traction", was a report of two motorcyclists crashing off the road on State Highway 2, 10 kms from Waihi.

The report stated that the motorcyclists (who with their pillion riders were taken to hospital) slipped on a bend and crashed. Comment from the Fire Service and police implied that the cyclists had not taken sufficient care when travelling in wet conditions.

The Complaint

Mr Harrison complained to the newspaper and then, in the absence of a response, to the Press Council.

He provided the Press Council with photographs to support his claim that the accidents were caused by a poor road surface on a corner where there had been a fatal accident two to three weeks earlier. The road had been repaired after the accident but the tar did not have gravel embedded in it. There was a large smooth tar strip on the road which had led to lack of traction for the motor bikes and caused the accidents.

As the photographs showed, the weather was not a factor as it was not raining and the road was dry at the time of the accident.

The complainant said that the motor bikes involved were part of a larger group, all of whom were experienced bikers, and that they were travelling well under the speed limit.

He noted that motor cyclists did not need bad reporting at a time when they are under pressure from ACC. It was important to get the facts right, as incorrect statistical reporting could lead to issues with insurance companies and ACC.

The Newspaper's Response

The editor in his response said that the article was written in good faith, based on the comments of highly respected personnel from the fire service and the police. The newspaper did not always have the resources to check on the comments of senior emergency personnel when preparing a story to meet deadlines.

The editor apologized for the delay in responding to the initial complaint, and stated that he was more than willing to discuss a correction with Mr Harrison.

Discussion and Decision

The newspaper published information from authoritative sources in good faith. However, on being advised of the inaccuracy of the report, no action was taken.

The Fire Service has apologized to Mr Harrison for providing incorrect information on these accidents; but the public record has not been amended.

The Press Council believes that factual errors should be corrected as soon as possible after publication, and although the editor has now offered a correction, this offer was only made after Mr Harrison complained to the Press Council.

The complaint is upheld on the grounds of failure to correct inaccuracy.

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

CASE NO:2126 – SHELLEY HOLDSWORTH AGAINST HAWKE'S BAY TODAY

Shelley Holdsworth complained to the Press Council about an article and accompanying photograph published in the *Hawke's Bay Today* on April 19, 2010. The complaint is upheld.

Background

The article headlined "Home fire highlights need for vigilance" was about a house fire caused by an unattended pot left on a hot stove.

Most of the information in the article was provided by the local fire service, and named the street where the fire occurred.

The fire service wanted to warn other householders about the danger of unattended stoves, and the need for functional smoke alarms.

The article stated that the homeowner was alone in the house at the time, that the smoke alarms were not working, and that a neighbour was alerted to the fire by screaming and shouting.

The photograph, captioned "PREVENTABLE: The fire damaged property in Hastings" showed part of the damaged back section of the house and damaged contents strewn outside.

The Complaint

Complaining on behalf of her mother who was the householder, Ms Holdsworth raised the following issues:

Without permission, the photographer climbed over a 5ft. locked gate at the rear of the house to take the published photograph. This occurred even though the family had been refused admission to the property to take their own photographs (presumably by the Fire Service).

Publication of the street where the fire occurred made the property readily identifiable and as the house was not secure after the fire, the family had to move quickly to empty the house of its contents.

As well as the complainant's mother being in the house, there were also two children.

It was the working smoke alarms that alerted the adult occupant to the fire. She got the children out of the house safely, and by shutting the door to the front of the house prevented the fire spreading further.

Ms Holdsworth noted that complaints to the newspaper about the inaccuracies in the article, and the "trespass" by the photographer got her nowhere; the newspaper said the information was provided by the fire service and they had the "right" to publish it, including the street address. They had also been discourteous in their dealings with her.

The Newspaper's Response

In responding to the complaint the editor dealt firstly with the issue of the alleged trespassing on private property. The photographer had found the gate unlocked, got no response from knocking on the door, and then re-shot the fire scene, obtaining the picture which was published.

Ms Holdworth's unhappiness about the manner in which her verbal complaint had been dealt with was rebutted. The chief reporter, with whom Ms Holdsworth had spoken, said he was not rude to her. However, the editor acknowledged that the chief reporter had not followed up the complaint, nor did the newspaper later acknowledge and address the points raised in her written complaint.

Naming the street in which a fire occurred is usual.

Discussion and Decision

Despite the information being provided by the Fire Service, the story as published was inaccurate. The newspaper had a duty to check the facts, particularly as publication of such a story can add to a family's distress at such a time. Although the story stated only one person (an adult) was in the house at the time of the fire, two children were also there. The smoke alarms did work, and they warned the occupants of the fire.

The Press Council is not in a position to rule on whether or not the gate to the back of the property was locked or unlocked. Although publication of the damage to house and contents, and publication of the street address caused distress to the homeowner, taking a photo of a damaged house, and naming the street, is a common practice with newspapers.

The complaint is upheld on the grounds of failure to correct inaccuracies in the article. A correction published quickly at the time of the original complaint would probably have satisfied Ms Holdsworth.

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

CASE NO: 2127 – IN KYUNG LEE AGAINST THE PRESS

Background

In Kyung Lee is a New Zealand Korean living in Christchurch where another Korean family died in particularly sad circumstances in May. Mr Lee complained at the publication of photos of the two girls who had died, and of a photograph taken of the father before his death. The complaint is not upheld.

The complainant said it was considered disrespectful in Korean culture to publish photographs of the deceased in the media, the more so when the dead man in this case had requested privacy when he was still alive.

Young Jin-Baek, was in South Korea when his wife, Sung Eun Cho, and their two daughters, Kelly Yeon Sue Baek, aged 13, and Holly Yeon Jae Baek, 17, were all found dead in their Avonhead home on May 5. The police said no other person was involved.

Young Jin-Baek, arrived in Christchurch on May 7, a Friday. The funeral was arranged for Sunday.

On Sunday morning, a few hours before the service, Mr Baek was found dead in his car at an Avonhead shopping centre.

Mr Baek's funeral was held on the Tuesday. That evening Mr Lee emailed the Fairfax Group online editor objecting to the use of photographs of the dead on the Stuff website, asking that they be removed, and that they not appear in the next morning's edition of *The Press*. The message was copied to the email address of an editorial administration assistant at *The Press*.

Two days later, having had no reply from either, Mr Lee complained to the Press Council. Mr Lee later received a response from the editor, which did not satisfy him, and he asked the Press Council to proceed with the complaint.

The Complaint

Mr Lee said he was, "disappointed in The Press editor's failure to consider the cultural implications of using the deceased family's photos." He said, "It is considered quite disrespectful in the Korean culture to use the deceased's photos in the media, and more so when Mr Baek had requested privacy when he was still alive."

He added that the request for privacy was made known to the website and the newspaper, and the request had even been noted in a previous article, and yet photographs were published.

The Newspaper's Response

The editor of *The Press*, Andrew Holden, told the Council the newspaper had been aware of the sensitivities in the Korean community ever since the three bodies had been found on May 5. It had been in almost daily contact with a spokesman for the Korean community, Kevin Park.

The Press had tried to find a balance between what is acceptable in New Zealand and not offensive in Korean culture.

"As I explained to Mr Park, the Korean people are part of our wider community and we try to treat them with respect, but their needs sometimes clash with the needs of our news organisation to inform our wider society, who understandably demand information around four bodies found in our city." Mr Holden said.

Discussions with Mr Park had persuaded *The Press* to remove a picture of Mr Baek from its website while his relatives were in the city. Mr Park had said he would get a more suitable photograph of Mr Baek for publication after the relatives had left.

When no photo was forthcoming once the relatives had gone, the original photo was put back on the website, "because the news value of the story and the picture remains extremely high," said Mr Holden.

He added that paper had used pictures of the daughters only once, "as their pictures were sitting among a flower tribute at their house. Mr Park had never raised any concerns about using pictures of the girls. His only concern was around the picture of the grieving Mr Baek taken at the airport."

The Complainant's Response

Mr Lee told the council his compatriot Mr Park had not adequately represented the Korean view to *The Press*. He said Mr Park had not had time to consult the community in this case and "gather consensus".

He wanted to know why the newspaper considered the photographs to have "high news value" They certainly did not have that value to those who had expressed concern. He had no wish to obstruct press freedom but the editor had not explained why the news could not be delivered in words alone.

Although pictures of the dead were sitting among floral tributes at their home, he said, "personal tribute by family and friends is not considered the same as articles written (or photos used) by third party news agencies."

If the editor needed to be satisfied that his complaint represented more than an individual concern, the editor ought to say so and he would invite the wider community to give him feedback.

The Decision

The Council has no doubt the publication of the photograph caused widespread concern among the Christchurch Korean community.

But it is not as clear that the case involves a particular cultural tapu. The complainant says Korean culture permits pictures of the deceased to be displayed by friends and family at funerals but not to be published by "third party news agencies".

The general principles applied by the Press Council call for publications to give "special consideration" to those suffering grief or trauma. *The Press* did that in this case, removing the offending photos from its website while the relatives of the deceased were in its circulation area.

The question for the Council is whether it should have

removed them permanently out of cultural respect, and whether newspapers should not publish pictures of the deceased when Korean deaths are newsworthy.

A finding of that nature would be a serious infringement of press freedom. Pictures of the deceased are an important element of reporting a tragedy such as this.

The Council is reluctant to discourage newspapers from carrying compelling pictures where Koreans are concerned. It finds *The Press* treated this case with due sensitivity to the relatives of the deceased.

A ruling that would restrict press freedom on the ground of cultural sensitivity should not be made unless the Council is convinced the particular culture's sensitivity is more than the disapproval common in all cultures of many things a free press may do.

In the circumstances the complaint is not upheld.

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

Pip Bruce Ferguson abstained from ruling on the complaint.

CASE NO: 2128 – FIONA MOORE AGAINST NEXT

Background and Complaint

The April 2010 issue of *Next* magazine included a five-page feature entitled "Reinventing Family Ties". It examined unconventional house-sharing arrangements and was a series of small stories focusing on different people and their "alternative" ways of living.

Men's ties are a theme in the photographs accompanying the stories, reinforcing and playing on the feature's main heading "Reinventing Family Ties".

One of the stories featured a group comprising a woman and daughter; a father and son; and a father of three, all sharing a house.

Fiona Moore complained that her permission had not been obtained for a section of the article and the main photograph, which featured her four-year-old son beside his father. Ms Moore also complained about aspects of the photograph.

Magazine's Response

The editor of *Next* advised that permission to take the photograph was gained from the father and in accordance with standard practice. The consent was taken in good faith. She sincerely regretted that the complainant felt the magazine had been irresponsible. "However, in this case we genuinely did not believe there would be any issue with parental consent."

Discussion and Finding

The two issues which are in the Press Council's jurisdiction are whether the magazine should have published the article, given the father's consent, and whether they should have published the photograph.

There was consent both given and implied in the participation in the feature and photograph. It was reasonable for the magazine to continue on the basis of the father's consent. The Press Council does not uphold this aspect of the complaint.

The Press Council sees nothing untoward in the photograph and this complaint is not upheld.

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

CASE NO: 2129 – KEN ORR AGAINST THE PRESS

Introduction

Ken Orr complained about a cartoon published in *The Press* on April 1, 2010.

Mr Orr stated that the cartoon was misleading, false and offensive, and breached Principles relating to Accuracy and Comment and Fact.

The complaint is not upheld.

The Complaint

The cartoon depicted Pope Benedict holding a censer with the smoke from the incense covering the torsos of three small children; three pairs of legs and a teddy bear appeared below the cloud and a banner with the word "ABUSE" written on it was tied to the leg of one child. The word bubble emanating from the Pope's mouth contained the words "The great thing about incense … it masks out unpleasant smells".

Mr Orr stated that while he fully supports the freedom of the press to uphold the right to freedom of expression and for the public to be informed, he believes that this cartoon is ill informed and contains false statements and highlights an absence of investigative journalism on an important issue.

Mr Orr stated that *The Press* could have obtained correct information by accessing the Vatican Information Services website.

Mr Orr went on to say that the cartoon, in his view, was "inaccurate and lacks fairness and balance and misinforms readers by depicting Pope Benedict as the person ultimately responsible in the Catholic Church for covering up child abuse by a small number of priests".

He said the cartoon did not make the distinction between fact and conjecture and could be perceived by readers as expressing fact, which was not the case.

The Newspaper's Response

Newspaper editor Andrew Holden responded that *The Press* did not consider the cartoon had breached any Principle of the Press Council.

The editor stated that "Principle 1 is primarily concerned with factual articles rather than cartoons and the cartoon was an editorial cartoon published on a page clearly marked 'Opinion'".

The editor cited a Press Council adjudication from 2009 (Case 2078) where a complaint was not upheld regarding a cartoon about Pope Benedict. In that adjudication, the Press Council noted that "The cartoon is critical. But cartoonists must be permitted to challenge and confront. At times cartoons will cause offence but freedom of expression does not mean expressing only views that people agree with and suppressing other views. Without that understanding, freedom of expression ceases to exist".

In regards to Mr Orr's complaint of a breach of Principle 4, Comment and Fact, the editor noted that Mr Orr had omitted the final two sentences of that Principle.

Principle 4 states that "A clear distinction should be drawn between factual information and comment and opinion. An article that is essentially comment or opinion should be clearly presented as such. Cartoons are understood to be opinion".

Discussion

The cartoon was published on a page that was an opinion page and did not purport to be news reportage. The Principle relating to accuracy does not apply.

Cartoonists must be allowed to challenge and confront which at times may cause offence. Freedom of expression means that the view being expressed does not have to be one that a reader agrees with, but rather allows the cartoonist to express his own view.

Conclusion

The cartoonist had the right to highlight his views about Pope Benedict and the ongoing debate about sexual abuse by priests within the Catholic Church. The newspaper had the right to publish it.

The complaint is not upheld.

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

CASE NO: 2130 – PEACE MOVEMENT AOTEAROA AGAINST THE NEW ZEALAND HERALD

The Coordinator of Peace Movement Aotearoa, Edwina Hughes, complained about a lack of accuracy in a report published in the *New Zealand Herald* and a subsequent failure to correct the alleged inaccuracy with reasonable promptness.

By a majority of six to three the complaint is upheld.

Background

The article was published on March 12, 2010. It explained that the Minister of Justice, Simon Power, was about to defend New Zealand's human rights record before the United Nations Human Rights Committee.

He would face "a grilling from the committee of 18 countries" on various issues relevant to the International Covenant on Civil and Political Rights. The 18 countries that would question Mr Power were listed.

The Complaint

The complainant claimed there were "factual inaccuracies and misleading statements in the report".

Her main complaint was that Mr Power would not stand before a committee of 18 countries, rather he would face "18 independent human rights experts", elected by all the states party to the ICCPR. Her point is that members of the Human Rights Committee serve as individuals and do not represent the views of their nominating countries.

She also complained that the article had not drawn a clear distinction between the Human Rights Council (a UN Charter-based body) and the Human Rights Committee (which has a Treaty monitoring role) and had failed to make it clear that they were separate entities.

Finally, she suggested that the following sentence was misleading: "Asked how he felt about being questioned by countries with dubious records themselves, he (Simon Power) said it was better to compare New Zealand against its own record of improvement rather than against other countries."

The complainant argued that it was not at all clear whether this referred to NZ's appearance the previous year (before the Human Rights Council) or the upcoming appearance (before the Human Rights Committee). As the very next paragraph referred to "countries that will grill Mr Power" it was likely that readers would assume the latter and that was inaccurate because any "grilling" would be by individual experts, not by countries.

The complainant had telephoned the newspaper with her concerns on March 12. Advised to notify the chief journalist and the reporter, an e-mail message was sent to both that morning, outlining the alleged inaccuracies and asking for prompt correction. By 15 March no correction had appeared and no response had been received, and Peace Movement Aotearoa wrote a further e-mail, this time to the editor, Tim Murphy. Again, there was no response and a complaint was taken to the Press Council on June 10.

The Newspaper's Response

The deputy editor, David Hastings, noted that in the light of the information supplied via this complaint he had altered the copy. It now read :"a grilling over two days from the committee of independent experts from 18 countries" and the ending of the article had been amended to read : "Members of the Human Rights Committee that will grill Mr Power come from Tunisia etc"

He refuted the claim that a clear distinction had not been drawn between the Committee and the Council.

Further, "being questioned by countries with dubious records themselves" clearly referred to past events, not the upcoming questioning in New York.

Later, in a second and final response to the Press Council, he apologised for the delay and noted that this matter would have been best addressed in the *Herald*'s corrections column.

Discussion and Decision

The Press Council accepts the newspaper's argument that there was a distinction between the Human Rights Council and the Human Rights Committee within the report. For example, it gives as background information, that "Mr

Power told the broader Human Rights Council last year . . ."

However, the Press Council is less certain about the deputy editor's claim that "being questioned by countries with dubious records themselves" clearly refers to the past (ie the previous year, when Mr Power appeared before the Human Rights Council).

The phrase "the point of the exercises" would suggest both the appearance before the Human Rights Council the previous year as well as the upcoming appearance before the Human Rights Committee.

As the complainant points out, the article immediately went on to list the countries that would ask such questions.

Moreover, the whole thrust of the report is about how Mr Power was prepared for "a robust discussion" that would take place in the immediate future.

The complainant argues that this section of the report is misleading and it does seem an example of imprecise, even clumsy reporting.

In the end, however, the key part of this complaint is whether the newspaper was inaccurate in stating that Mr Power would face a grilling from a committee of 18 countries. The deputy editor has accepted that this was indeed inaccurate, by altering the copy.

This was not at all a large issue and it could easily have been put right. A prompt and straightforward correction was a simple solution.

There has been a three month gap between publication and correction. That correction only occurred after a formal complaint had been lodged with the Press Council. It took four months for the newspaper to apologise for their delay in responding to the complainant.

The Press Council agrees with a comment made in the final submission by Peace Movement Aotearoa – "Both the initial lack of response and the failure to explain it are quite extraordinary".

This complaint is upheld, on the grounds of a lack of accuracy and a failure to correct promptly.

Dissenting Opinion

Dissenting members of the Press Council agree with the thrust of the majority decision but do not believe that the complaint should be upheld because any errors are minor in the overall context of the article's subject. Further, in time, the errors were corrected and an apology made for the delay.

The complaint is another reminder of the importance of timely responses and careful consideration of complaints, and the dissenters believe a speedier acknowledgement was warranted. But in the end, the *New Zealand Herald* corrected the story. Having done that, the newspaper does not deserve further censure.

Press Council members upholding the complaint were Pip Bruce Ferguson, Ruth Buddicom, Sandra Gill, Keith Lees, Lynn Scott and Stephen Stewart.

Press Council members dissenting from this decision were Barry Paterson, Clive Lind and Penny Harding

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

CASE NO: 2131 – JAY REID AGAINST THE DOMINION POST

Jay Reid complained to the Press Council about an article published by *The Dominion Post* on June 8, 2010. He contended that the article breached Principles 1, 4 and 11.

His complaint is not upheld.

Background

The subject article was headlined "Activist has cost council $384,477" and its primary focus was made clear from that headline, namely, to inform the public about the costs which the ratepayers were effectively incurring in the various and ongoing legal proceedings between Mr Reid and the Tararua District Council. In particular, the reporter detailed some of the steps which had been taken and/or were being taken to enforce recovery of a debt owed to the Tararua District Council by Mr Reid.

The newspaper also reported that the Tararua District Council was considering an attempt to have Mr Reid declared a vexatious litigant so that he would be prevented from bringing further legal proceedings against it or any of its staff without first getting the Court's approval to do so.

The Complaint

Under the first head of complaint (accuracy) Mr Reid took issue with what he saw as an inferences that he was insolvent (which he denies) and that there were proceedings already in train to have him declared a vexatious litigant. He contended it was not correct for the newspaper to state that the Tararua District Council had petitioned for his bankruptcy for 5 years.

He also said it was not correct that the council had been "cleared of any wrongdoing". He contended that the newspaper had failed to distinguish between fact and opinion.

He complained that the newspaper did not seek his comment on the article which it published with the consequence that it was unfair and unbalanced. Further, he alleged bias on the part of the newspaper.

He maintained that he fulfilled a wider advocacy role for the Woodville community and this role should have been attributed to him by the newspaper.

He had asked the editor to retract her false claims by way of a retraction / correction but that she had declined to do so.

The Newspaper's Response

The editor did not accept that the article implied Mr Reid to be insolvent. She said there was a distinction between someone who could not pay his debts and someone who chose not to. She maintained that the article made it clear that Mr Reid fell into the latter category. The reporter noted that a previous attempt to have Mr Reid adjudged bankrupt was not successful and that he was "fighting" the present proceedings.

The editor did not accept that there was any basis for Mr Reid to claim that proceedings to have him declared a vexatious litigant had already commenced. The reporter made it clear that the Tararua District Council was

providing information to the Crown "in a bid to have Mr Reid classified as a vexatious litigant".

In relation to the 'five years' claim, the editor maintained that it was not inaccurate to describe the proceedings in this way in that there had been ongoing court actions involving the parties over a period of some five years. A costs order in favour of the Tararua District Council had been made at the conclusion of an action brought by Mr Reid in 2004. There have been various attempts to have that debt recovered over the ensuing five years.

Without referring to any part of the substantive judgment, the editor also contends that the fact of a costs order having been made by the Court against Mr Reid shows that he had lost his claim that the sale of the block of land in Woodville had been illegal. She maintained that to state that the district council had been cleared of any wrongdoing was factually accurate and was not a matter of opinion.

The editor was satisfied that the reporter had made attempts to contact Mr Reid both before publication of the article and that the newspaper had been inviting him to comment after publication of it. Mr Reid subsequently provided written information but did not make any other contact with the newspaper. The offer of interview was not taken up. The editor maintained that she remained open to Mr Reid's views and urged him to supply any further relevant information. She rejected the claim of bias.

In relation to Mr Reid's claim that he fulfils a wider advocacy role in the Woodville community, the editor accepted that Mr Reid had both supporters and detractors. She exercised her editorial discretion in this particular story so that the focus was on Mr Reid's individual responsibility for the costs being incurred by the Tararua District Council in its ongoing legal disputes with him. The editor maintained this was a matter of legitimate public interest to other affected ratepayers.

She also contended that there was no need to correct or retract any part of the published article as had been demanded by Mr Reid.

Discussion

It is apparent that Mr Reid has firm views on the judgment issued by the High Court and from which the liability to pay costs to the Tararua District Council has arisen. It is not for this Council to become engaged in any aspect of debate about the Court's judgment (which was not provided to us) and about which much of the ensuing litigation between Mr Reid and the Tararua District Council has revolved. We do observe, however, that costs orders fall as a matter of practice on unsuccessful parties. It is a matter of public record that the Judge imposed that liability on Mr Reid.

Our concern is whether the article breaches the Press Council Statement of Principles in any of the ways complained of by Mr Reid.

The Council concludes it does not. It is satisfied that the article accurately reported that Mr Reid was the judgment debtor in proceedings to have him adjudged bankrupt and that he was defending those proceedings. The article was accurate about the Tararua District Council providing information to the Crown with a view to a possible application to have him declared a vexatious litigant.

It might not be strictly accurate to state that the Tararua District Council "has petitioned for five years to bankrupt Mr Reid" but this alleged 'inaccuracy' when viewed against the reported observation of the Court of Appeal and the comments of His Honour Judge Ronald Young in relation to various stages of the ongoing litigation between the two parties does not suffice in the Council's view to infringe the wider principle. It is apparent that the parties' litigation (albeit not solely bankruptcy petitions) has taken various manifestations including appeals over what seems to be a largely ongoing and continuous 5 year period.

Insofar as the Court has ordered costs against Mr Reid, this Council concludes that the Court has found in favour of Tararua District Council and that the newspaper is entitled to report this fact.

In relation to the claim of bias, the editor has made it clear both to Mr Reid and to this Council that she remains open to Mr Reid providing her with further information which might substantiate any other story. The Council does not find evidence of the bias claimed by Mr Reid.

There is a factual dispute between the parties regarding pre-publication attempts to contact Mr Reid. On the information provided by each party, that factual dispute cannot be resolved by the Council. We observe, however, that the post-publication offers for interview of Mr Reid were not taken up so possible redress of any perceived imbalance was effectively passed up by the complainant.

We recognise that an editor is entitled to exercise her editorial discretion about 'angles' for any story. She chose here to focus on Mr Reid's individual accountability to the district for legal costs incurred by the Tararua District Council. There is no obligation on an editor to seek wider comment (as desired by Mr Reid) in these circumstances.

Finally, the Council agrees that there was no need for any correction to be published for the reasons already set out.

The complaint is not upheld.

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

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

CASE NO: 2132 – BRIAN STEEL AGAINST THE NEW ZEALAND HERALD

Brian Steel complained to the Press Council about a report published by the *New Zealand Herald*. He contended that various statistics had been presented and reported inaccurately and that the headline could not be justified by the substance of the report.

His complaint is not upheld.

Background

The article appeared in the *New Zealand Herald* on March 14, 2010. It featured the results of a *Herald*-Digipoll on the mayoral campaign for the Auckland 'Super' City.

It was headlined "Brown has big lead over Banks for super mayor." The opening words repeated "a big lead" and the next paragraph detailed that in a head-to-head match-up Brown was on 48.4 per cent, 11.4 percentage points ahead of Banks on 37 per cent.

The scope of the survey was given – 731 respondents across Auckland.

A note at the end of the article explained when the poll had been conducted and that the margin of error was 3.6 per cent.

The Complaint

Mr Steel took issue with the term margin of error. He contended that this should only be used when a probability sample had been carried out and in his view the poll was not true probability sampling.

He disputed that Brown's lead was "a big lead". Even if the poll were accepted as a probability sample, hypothetically Brown's share could lie between 44.8 per cent and 52.0 per cent and Banks' share could lie between 33.4 per cent and 40.6 per cent. ie there was a chance that Brown might be only at 44.8 per cent and Banks at 40.6 per cent. A possible difference of only 4.2 per cent could not justify "a big lead".

The newspaper responded promptly to Mr Steel, but, dissatisfied, especially with the comment that "enough detail was provided for readers to make up their own minds", he took his complaint to the Press Council.

In submissions to the Council, he repeated his concern that the Digipoll survey did not meet the criteria for a valid probability sample.

He questioned the response rate achieved and suggested that this was a very important variable (and one not covered in the *Herald* report).

He claimed that the *Herald* report published only the base percentages rather than indicating that the lead might have been somewhere between 4.2 and nearly 19 percentage points. In his view the latter statement would have been more helpful.

He explained that the background to his complaint was "to get media to develop a more responsible attitude to reporting surveys".

He submitted a great deal of material in support, including the ICC/ESOMAR International Code on Market and Social Research and papers from the National Council on Public Polls (US).

Mr Steel stressed that his complaint was against the newspaper, not Digipoll (although he reiterated his view that the sampling method was a representative sample, not a probability sample).

The Newspaper's Response

David Hastings, the deputy editor, explained that he had sought information from Digipoll. Their advice was that the survey used "statistically sound probability sampling". The response rate for this particular poll had been 41 per cent.

He countered the second part of the complaint by suggesting that the difference, even at the smallest possible gap of 4.2, was still "10 per cent in relative terms" – enough for a "big lead".

Further, there had been enough detail for "readers to make up their own minds". The base percentages had been given as well as the margin of error and readers could easily work out the lead might possibly have ranged between 4.2 and nearly 19 percentage points.

Later, in submissions to the Press Council, he stressed that readers do understand margin of error – and the way this term was used is standard practice in reporting poll results.

He pointed out that the CEO of Digipoll rejected "in the strongest possible terms" the contention that their survey was not a probability sample.

He understood that the Mr Steel wanted the newspaper to have printed "the gap was 19 points at one extreme and 4.2 at the other" but anyone with basic arithmetic would have been able to calculate that from the report.

Discussion and Decision

First, the Council accepts that much of the material supplied by Mr Steel in support of his complaint would be of value to the print media, especially the paper prepared by the National Council on Public Polls entitled "20 Questions a Journalist Should Ask About Poll Results."

However, on the issue of whether the poll in question was a valid probability sample the Council could find no evidence that the newspaper and Digipoll were incorrect and therefore the use of margin of error seems justified here.

In any case, the Council agrees with the deputy editor's contention that this is usual practice for media reporting of polls and that it gives a clear warning that readers should view base percentage figures with some caution.

This part of the complaint is not upheld.

The second part of his complaint, that the newspaper should not have claimed "a big lead" for Brown is more difficult.

As the complainant claims, the gap might have been nearly 19 points at its largest margin and merely 4.2 points at its narrowest margin.

Yet those are the extreme points of a range. They might be possible but the much more probable lies around the mid point and the mid point was an 11.4 percentage point difference between the two candidates.

Moreover, the margin of error was published and readers could work out these outer edges of the range for themselves (though they had to read through to the end to get that information).

Was the *New Zealand Herald* justified in its claim in the headline and opening to the report?

The paper cited above (20 Questions a Journalist Should Ask about Polls) states that "when the gap between two candidates is equal to or more than twice the error margin . . . you can say with confidence that the poll says Candidate A is clearly leading Candidate B".

The gap was about three times the error margin and the newspaper's claim for "a big lead" of Brown over Banks seems both justified and reasonable.

It might have been useful to place the detail about the given margin of error closer to the percentage results for the two candidates and also to publish the response rate for the survey but these are minor issues.

For the reasons outlined above the two parts of this complaint are not upheld.

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

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

CASE NO: 2133 – TRINETTE TAWSE AGAINST SUNDAY NEWS

The Press Council has not upheld a complaint by Trinette Tawse against the *Sunday News*.

Background

Ms Tawse was the subject of an article entitled "I've hired a billboard to protest about benefits", published in *Sunday News* on January 3, 2010. Ms Tawse had approached the paper about her proposal to use the billboard to publicise issues that she had with the Ministry of Social Development over eight years, believing that they were denying her benefit money for a variety of reasons, with which she disagreed. The paper indicated that if they were to cover the story, it would need to be an exclusive.

Ms Tawse was not happy with the paper's coverage of her story. She believed that the exclusivity deal meant that her story would be on page one, 'full page'. In fact, it covered five columns across around a quarter of page 7. She had written to the editor of the *Sunday News* on January 31 to complain about incorrect reporting and to request that "you publish my story in full on the full front page, as per the original agreement, and without the erroneous slew of the existing story". She further stated that she "Also will have editorial oversight of the correction, to ensure that your paper makes a responsible job of its reporting duties". There is no record of a reply by the editor to Ms Tawse.

The Complaint

In a letter to the Press Council Ms Tawse complained that the story 'defaulted in' issues of accuracy, fairness and balance. Under accuracy and fairness, she claimed that it 'misled and misinformed, used commission and omission' and under balance, that it did not fairly cover the substance of her situation, 'obstructing public interest in the information about WINZ policies and its implications, as provided in the correspondent's information.'

She also complained against another paper and a radio station – the latter is the domain of the Broadcasting Standards Authority, and the other complaint was dealt with separately to this one.

The executive director of the Council contacted Ms Tawse asking for more specific details of her concerns about the article, as the complaint's grounds were insufficiently specific, but no further information was received.

The Newspaper's Response

The deputy editor responded that they had given Ms Tawse no assurance that her story would be published on the front page; rather 'in the front pages' and this had been done. He stated that the story was 'accurate, fair and balanced; did not mislead or misinform, and was of a reasonable length given the subject matter'. He stated that the article *had* covered the substance of the matter, namely Ms Tawse's long-term unhappiness with the Ministry of Social Development and WINZ.

Ms Tawse replied reiterating in a general way the comments that she had made in her intial letter. She still maintained that if the paper had gone through the extensive material she had provided, they would see that they had committed errors and omissions, and had been inaccurate in some of their claims.

She continued to maintain that the paper had assured her of front page status for the article. She asserted that 'the "eat and run" approach to reporting was totally irresponsible and unprofessional. It lacked ethics and integrity.'

Discussion

It was obvious, both from the paper's article and Ms Tawse's material, that Ms Tawse felt very hard done by through the way that MSD and WINZ had dealt with her benefit claims. That is a separate issue; the issue for the Press Council in this case was whether the paper misrepresented her situation based on the material she had provided to them, and whether the article was unfair and unbalanced.

The issue of placement was immaterial to this complaint as it did not pertain to issues of fairness, balance or accuracy that Ms Tawse cited as her grounds for complaint.

The paper should have replied to Ms Tawse's initial letter of concern; there was no indication that they had done so. If they had replied, the situation might have been resolved without recourse to the Press Council.

However, considering the grounds for the complaint and the material provided by Ms Tawse to substantiate her complaint, the Council does not believe that the paper had been remiss on any of the grounds cited.

Conclusion

The complaint is not upheld.

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

CASE NO: 2134 – TRINETTE TAWSE AGAINST THE MANAWATU STANDARD

A complaint by Trinette Tawse against the *Manawatu Standard* was not upheld.

Background

In his editorial, dated January 4, 2010, editor Michael Cummings referred to what he headlined "Wacky logic in billboard bleat". He described the action of Ms Tawse in buying a two-story high billboard in downtown Auckland to complain about her inability to access government financial support as an 'absurdity'. "Someone must have slipped something into her chai latte that skewed her grip on reality," he claimed.

The gist of the editorial was that the public should applaud WINZ for its stewardship of taxpayer money, because if Ms Tawse had properties, she should either live off the rental money from these or sell them to cover her own support. The taxpayer would pick up her support when she reached retirement age in due course.

Ms Tawse sent a strongly-worded letter by email to the editor on the same day that the editorial was published, stating that he "would be entitled to bleat if I *hadn't* worked hard, you silly little man". She stated her work background and the complaints she has about the difficulties that people over 50 find in obtaining work.

She said she could not afford to live in the home she owned because of the mortgage costs, and because she did not live in it, she was denied the benefit. She then listed various attempts she had made to obtain funding from WINZ and to find work, mainly unsuccessfully. She claimed that WINZ penalises hard work.

The Complaint

Ms Tawse, complaining to the Press Council, claimed that Mr Cummings should have approached her to check the accuracy of his article, which she claimed was based on a story that ran in the *Sunday News*. This, she claimed, was irresponsible, and she had had to spend money to run an advertisement in the paper to offset the claimed inaccuracy and fairness.

She claimed that the editorial defaulted in accuracy, fairness and balance; that it misled and misinformed, using omission and commission; did not fairly cover the substance of the story it was designed to cover, and obstructed public interest in information about WINZ policies and its implications, 'as provided in the correspondent's information'.

She concluded her complaint by claiming that the coverage of her story "shows a disgraceful irresponsibility and alarming unprofessionalism'.

The Newspaper's Response

The editor stated that the paper had not replied to Ms Tawse's original communication as it was not considered to be a complaint – it did not identify anything specific in the editorial that was factually inaccurate, was vitriolic in its tone and content, and did not specifically request a reply.

He noted that the piece was clearly marked in bold lettering as "opinion" and that the paper stood by its view that buying a two-storey high billboard to draw attention to money troubles is absurd.

Discussion and Decision

The crux of this complaint was the assertion by Ms Tawse that the paper should not have published its editorial without reference to her, and that she believed the editor should have acquainted himself with 'the full story' before publishing. The editor did not accept that perspective, arguing that the editorial was clearly an opinion piece.

The Press Council does not deem it reasonable for editors to have to check what a complainant refers to as 'the full story' before writing an editorial. An editorial is an opportunity for a newspaper to comment on an issue in the news and to express an opinion. Further, the Council did not accept that the information provided in the editorial was inaccurate.

The complaint is not upheld.

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

CASE NO: 2135 – NEIL WAY AGAINST TARANAKI DAILY NEWS

Neil Way objected to a provocative "Korero" column written by a local Maori leader, Peter Moeahu, and published in the *Taranaki Daily News* on June 14, 2010.

The complaint is not upheld.

The Complaint

The column appeared on June 14 2010 and also featured on the newspaper's website. Mr Way objected to it, in a letter to *Taranaki Daily News* editor Jonathan MacKenzie on the day of publication, quoting some of the words and phrases used. He said it was blatant Maori racism and worded to incite racial disharmony

Complaining to the Press Council, Mr Way admitted Mr Moeahu was entitled to his views, but said he and the newspaper were not entitled to print "propaganda in a manner intended to incite racial disharmony." Mr Way said he did not consider himself a racist.

The Newspaper's Response

Mr MacKenzie said the newspaper had not breached any press or human rights codes. The column was an opinion piece, the views it expressed were Mr Moeahu's alone and did not represent the newspaper's view. The columnist aimed to stimulate debate and present a view – a Maori view – that was likely to be different from that of many readers.

In a further explanation to the Press Council, deputy editor Robert Mitchell said Mr Moeahu was a well known

and respected Taranaki Maori leader. Previous letters to the editor from him on issues pertaining to Maoridom and societal attitudes were well written, provocative and well-read. He had been invited to write a regular opinion column to give readers an insight into the other side of the race debate and its impact on lives around the country and the Taranaki region.

"First and foremost, Korero is opinion. It is on the opinion page and the paper has made it clear that Mr Moeahu's views are his alone and not those of the paper. It is not 'propaganda', it is his opinion, and we have regularly printed many counter views through our Letters forum."

Referring to Mr Way's assertion that Mr Moeahu was racist and hostile to "white people", Mr Mitchell admitted the column complained about was "strident" and demonstrated hostility towards the State, particularly over the "racist perspective" of the seabed and foreshore legislation. "But that is his opinion and his 'hostility' is often displayed by those who write a letter to the editor complaining about rates, and local and central government."

While the column could be provocative and often strident, it was not "threatening" and the only people who would find it abusive or insulting would be those offended by robust debate.

He believed a regional newspaper should publish commentary that pushed the debate and boundaries and raised readers' understanding on major issues such as race.

Mr Moeahu was provocative, satirical and sometimes tongue-in-cheek but also provided a valuable informative insight into Maori grievances and politics.

Further Comment from the Complainant

Mr Way noted that Mr Moeahu was a well known Taranaki Maori activist whose letters to the editor had been increasingly abusive to "whites". Mr Way disagreed with the newspaper's view that the column provided an insight into the other side of the race debate: "I didn't realise that this country was having or indeed required any such debate!"

He disagreed with other aspects of Mr Mitchell's explanations and said the column merely showed Mr Moeahu's personal bitterness over perceived past injustices. He appreciated that the column was an opinion piece and presented as such but the wording would be considered grossly inappropriate "if not blatantly racist" if used against Maori, Chinese or any other minority race.

As the column also appeared online, he asked if it was painting an inappropriate picture of New Zealand.

Discussion and Decision

The *Taranaki Daily News* has made it plain that Mr Moeahu's views were his alone and not those of the paper. It regularly published counter views through its Letters forum. The column appeared in a page labelled Opinion.

While some may find Mr Moeahu's views not to their taste or indeed offensive, he is expressing those views as a columnist, in what is clearly an opinion piece. Columnists are encouraged and entitled to express their views in a forthright and provocative way. Columns aim to stimulate debate and often walk a fine line in terms of offending sensibilities.

Mr Way's complaint cites as grounds the Press Council's Clause 1, which relates to accuracy, fairness and balance. However, this is clearly an opinion piece, not reportage, and the columnist is entitled to express his views in that context. This column complies with the Press Council's Principle 4 on Comment and Fact.

Accordingly the complaint is not upheld.

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

CASE NO: 2136 – DAWN DUNJEY AGAINST THE OAMARU MAIL

Dawn Dunjey complained to the Press Council about a front page article published by *The Oamaru Mail* on May 17, 2010. The complaint is upheld.

Background

Under the headline "Troubled life cut short for local woman" the article (written by the newspaper's editor) started as follows: "A young North Otago woman who gained notoriety for her skirmishes with the law died suddenly on Friday"

The article then went on to revisit a number of events in Elle Dunjey's life over the past months.

Accompanying the article was a photograph of Elle taken when she was arrested in January 2009 wearing night garments and accompanied by police.

There was an immediate public outcry about the publication of the article and photograph.

The editor then wrote an editorial published on May 19 (the day before Elle's funeral).

In it, the editor defended her decision to publish the article and photograph, saying that it was only one of several deaths of young people in the Oamaru area in recent times which had left people upset and questioning.

The editorial also offered an apology to Elle's family and friends for any upset publication of the article and photograph had caused.

Feedback from the public had been a learning experience, and the newspaper accepted that a more appropriate photograph than the one used should have been chosen.

The Complaint

The complainant, mother of Elle, listed a number of principles of the Press Council which she believed had been breached by the publication of the article and the photograph. In particular she cited the following from the Press Council's Principles: "Those suffering from trauma or grief call for special consideration".

She stated that publication of the article and the photograph had caused extreme distress to Elle's family and friends.

Further, the editorial of May 19 only added to the distress already caused by the first article. In the days following publication of the article there were many letters to the editor, highly critical of the newspaper's handling of such a sensitive event.

The Newspaper's Response

The editor stated that she had tried to contact the Dunjey family after learning of Elle's death, and was told they were not available and would not want to comment.

She then prepared the story, summarizing Elle's colourful life. She and her sub-editor believed the public would want to know about the death of such a high-profile member of the community

A public backlash started almost immediately and she wrote the editorial to explain why she had written the article and published the photograph. She apologized in the editorial for any distress the article and photograph had caused.

Public reaction continued to be intense.

She and the general manager of the newspaper had a meeting with Mrs Dunjey sometime after publication of the article and photograph. Mrs Dunjey was distraught and upset and spoke in very strained tones for about five minutes. The manager told Mrs Dunjey that it was important that she could state her case and thanked her for coming in, after which she left.

Discussion

The Council does not deny the newspaper its right to publish the fact of the death – but it is the way the newspaper went about it that has brought it into conflict with Elle's family, the local community and the Council's Principles.

Publications, particularly those serving small communities, have a particular duty to report tragic events with sensitivity. The untimely death of a young person is distressing to such communities as there is a greater likelihood of individuals being known to one another, and in the event of a highly publicized sudden death, the community becomes alight with speculation.

In this case, the front-page lead article and its accompanying photograph added fuel to fire. It contributed to increased distress and trauma of Elle's family and friends at this time of tragedy.

The editor did not try hard enough to obtain positive details about Elle; the article was simply a list of her problems with the law.

The Press Council acknowledges that the editor tried to make amends in the editorial published on May 19. She outlined her reasoning behind publication, but also admitted that it would have been more sensitive to publish a different photograph. She also apologized to the family and friends for any hurt caused. She said the newspaper would welcome letters that gave a positive picture of Elle.

If the editor had taken the advice she herself outlined, the community would have been better served. Despite the editorial, the damage caused by the original article and photograph continued, and continues, to cause distress to Elle's family and friends.

The editor can be in no doubt that this article crossed the bounds of acceptability - her community told her that.

The Press Council Principle on Privacy states: "Those suffering from trauma and grief call for special consideration." This special consideration was lacking here: both in publishing the photograph of Elle while under arrest, and in failing to provide any positive qualities or memories of the young woman.

The complaint is upheld on the grounds of insufficient consideration for those suffering from trauma and grief.

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

CASE NO: 2137 – LISA FORSTER MCNICHOLL AGAINST THE PRESS

The Press Council has not upheld a complaint by Lisa McNicholl against *The Press* over the publication of a photograph of a wounded soldier.

Background

The edition of *The Press* of August 5, 2010 contained news coverage of a border clash between Israeli and Lebanese troops. A photograph accompanying the report showed a Lebanese soldier, wounded by Israeli tank fire, lying on a street.

The Complaint

Ms McNicholl complained to the newspaper that the photograph was gruesome and graphic. She said publication was in bad taste and readers came upon it without warning. She said the image should have been censored.

Not satisfied with the response from the editor, Ms McNicholl then complained to the Press Council, saying she had found the image distressing. Its publication had not been necessary to the report, as people knew the ramifications of war.

The Newspaper's Response

Editor of *The Press*, Andrew Holden, advised that with images involving violence, the newspaper makes a judgement about their relevance to the story, their placement in the newspaper and the tolerance of readers to images of violence.

He stated images of violence were not published without considering the affect on readers. The newspaper tried to strike a balance between the potential for upsetting readers and the newspaper's duty to show readers the truth of the event. He believed the image published was within the bounds of what readers will accept.

Mr Holden also said that words can never match the documentary and emotional impact of a photograph.

Discussion

There is no argument that photographs of violence can upset people, as in this case. But the Press Council is committed to upholding the freedom of the press and, in

war and other catastrophes and violent incidents, this is of extreme importance.

Newspapers must balance their duty between covering our world, and the likely impact that shocking and distressing reports and images may have on their readers.

The Press Council is persuaded that *The Press* did not publish this photograph without considering the impact on its readers.

The Press Council does not uphold the complaint.

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

CASE NO:2138 – KAREN KNIGHT AGAINST THE NEW ZEALAND HERALD

Introduction

The Press Council has not upheld a complaint by Karen Knight against the *New Zealand Herald* about an article entitled "Fallon says Italian team behaved like little girls" which appeared in the *New Zealand Herald* on June 22 and on the nzherald.co.nz website from the same date.

The Article

The article followed the historic Soccer World Cup 1-1 draw between the All Whites and the then-reigning world champion soccer team Italy and quoted All White striker Rory Fallon. Fallon's comments that the Italians were 'diving around like little girls" and "rolling round like girls" were made within the context of him being pulled up time and again by the referee for using his elbows in aerial challenges and his booking within 15 minutes of the game beginning. Fallon's view was that histrionics by the Italians made a meal of the challenges of playing the All Whites and were aimed at conning the referee.

The headline: "Fallon says Italian team behaved like little girls" was a theme repeated three times in the article including by two direct quotes: "The Italians were diving around like little girls." and "The fans want to see a good game and they don't want to see people rolling around like girls."

The Complaint

Karen Knight wrote to the editor of the *New Zealand Herald* (cc to the Press Council) on June 26 lodging a formal complaint about the headline and three repetitions of 'erroneous and offensive gender-stereotyping' statements and identified the phrases relating to the Italians behaving like girls as the offending statements.

She described the analogy as tasteless, irrelevant and without foundation as female soccer players, in her view, generally don't roll around. She argued that the "unfortunate reporting will again reinforce the already macho societal view …that girls can't compete in field sports, are weak, unsuited and unsporting." She claimed that inference was that the Italians cheated in order to win and that meant girls had to cheat to win. She felt female soccer players and supporters of New Zealand deserved better than tacky, off-hand treatment and deserved a prominent apology from the New Zealand Herald.

The Response

Deputy editor, David Hastings, replied to Ms Knight that the expression is common currency and that the inferences she drew went far beyond what Mr Fallon meant and what most people would have understood. However, he agreed some people would see it differently.

He suggested a letter to the editor would have been the appropriate response rather than a call for an apology even though time for such a letter to be published had then passed. He noted that such letters had been received and published.

Final submissions

Ms Knight advised the Press Council she was in no way satisfied with the response from Mr Hasting saying it did not address her concerns and sought to down play and trivialise the issue. She likened the comments to Paul Henry's regarding Susan Boyle and those of Paul Holmes about a former UN Secretary-General. She felt it showed contempt and disregard for females and particularly female soccer players.

For the *New Zealand Herald*, Mr Hastings responded that his treatment of the complaint was appropriate to the issue and argued that the report was an accurate record of what someone said about an event of high public interest.

He rejected that there was a valid comparison between remarks made by high profile broadcasters and, though some people did find Fallon's remarks offensive, freedom of speech meant that there needed to be freedom to speak even if the comments might give offence to some.

In her final submission Ms Knight argued that the comments actively encouraged bigotry and prejudice against all women and particularly sports women and were inaccurate, unfair and unbalanced. She referred to Principle 1 relating to these issues. She also argued that the comments promoted hateful and outdated stereotypes and required Principle 6 (regarding discrimination and diversity) to be considered in the adjudication. Ms Knight felt Fallon had chosen girls as an analogy for his ridicule and the *New Zealand Herald* had given high profile to his comments. She asked what would be the response if the word "Maori", "Samoan" or "Muslim" were substituted for the word "girls". She anticipated that would provoke a serious backlash.

Discussion

While the Press Council essentially agrees with the complainant that the remarks were sexist and denigrating to women, in the highly charged and competitive arena of international sporting contests such foolish remarks are often made without any intention to give offence or indeed any awareness that some might potentially find them offensive.

A well-argued Letter to the Editor would have exposed the remarks as mindless prejudice and perhaps raised the awareness of leading sports people about the risk of giving

offence should they fall into stereotypical language.

A complaint to the Press Council is a bridge too far. For the *New Zealand Herald* reporter not to have used Fallon's exact words would have required a degree of censorship that seems unnecessary in this day and age when women have a strong view of themselves and are robust in accepting that some, perhaps less evolved males, still fall back upon outdated stereotypical prejudices to express themselves.

Press Council members considering this complaint were Barry Paterson (Chairman), Kate Coughlan, Sandy Gill, Penny Harding, Keith Lees, Lynn Scott and Stephen Stewart.

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

CASE NO: 2139 – PIERRE LE NOEL AND EXECUTIVE RECRUITERS INTERNATIONAL LIMITED AGAINST THE NEW ZEALAND HERALD

A complaint by Pierre Le Noel and Executive Recruiters International Limited (ERI) against four articles appearing in the *New Zealand Herald* has been upheld on the grounds of lack of balance and fairness.

The Articles

The first article appeared on May 17, 2010 under the heading:

Migrant felt her boss was blackmailing her

The standfirst read:

Contract was altered to deceive Immigration, says worker.

The first article referred to an allegation made by an immigrant to the Employment Court (actually the Employment Remuneration Authority) that she had been asked to pay her own taxes and wages in order to stay legally in New Zealand. She said she was asked to do this "in order to deceive Immigration officials into thinking she was being employed at $55,000… for her to meet skilled migration requirements." The article noted that the employer denied the allegations "and Mr le Noel claimed she had full knowledge and was in agreement of the arrangement between them." The immigrant's evidence was that she felt that she was being blackmailed by Mr Le Noel.

Coincidentally, the decision of the Employment Relations Authority was issued on the day that the article appeared. As a result of a phone call from Jenny Le Noel the *NZ Herald* on May 18 published the second article headed:

Migrant loses grievance case against employer

The standfirst read:

Employment authority finds South African woman not a victim of constructive dismissal.

The first paragraph of the article stated:

A woman has lost a case in which she claimed her employer asked her to pay her own taxes and wages to support her residency application.

It also stated:

The Authority also found that Pierre Le Noel, who she accused of blackmailing her into working for nothing, was not her employer and therefore had no liability as a party to her employment contract.

The article then summarised the decision which included a finding that ERI had unilaterally varied the original terms and conditions, which was a serious breach of the employment agreement. However, the immigrant had acquiesced in the variation and had not been constructively dismissed. The claim, therefore, failed.

The third article of May 22, 2010 stated:

Migrants gaining residency via scam

The standfirst read:

Immigrants paying own wages and taxes for employers' support with application.

The lengthy article dealt with the practice of immigrants being asked to pay their own wages and taxes to obtain permanent New Zealand residency. The article included:

This week, South African migrant worker, Jacqueline Sydow, lost her personal grievance case in the Employment Relations Authority after alleging that her employer, Executive Recruiters International, had asked her to pay her own taxes and wages to support her residency application.

The final article published on May 25, 2010 was headed:

Employment-case loser told to leave NZ

The article referred to Ms Sydow's work permit being revoked. It stated she had lost the employment case against her employer but also included:

Miss Sydow claimed Executive Recruiters International asked her to pay her own taxes and wages to support her residency application.

It went on to say that she lost her case but there was a further inference to her allegations when it noted that the Head of Immigration New Zealand:

… said migrants with information about arrangements of such a nature were encouraged to come forward, but the agency could not guarantee immunity from enforcement action.

The Complaint

The complaint is that the articles were inaccurate, misleading, and did not offer a balanced response. The background was the employment dispute in which the Employment Relations Authority determined that there was no case against Mr Le Noel or ERI. Subsequent to the complaint being lodged, Ms Sydow was ordered to pay court costs. Notwithstanding the result of the court proceeding, the *NZ Herald* published these articles which contained "New allegations of blackmail and fraud". The complainants complained that in these articles the newspaper repeated the unsubstantiated and previously unpresented claims by Ms Sydow of blackmail and fraud. The articles were slanted to indicate that these claims were the basis of the case.

Although the complainants won the court case, their complaint is that the articles damaged the reputation of Mr Le Noel and ERI and that the *NZ Herald* continued in the series of articles to make allegations which they knew to be incorrect.

In response to the *NZ Herald*'s allegation that Mrs Le Noel, in her telephone conversation with the deputy editor, said that if they had been asked they would not have commented anyway, Mrs Le Noel's position is that it was the deputy editor who stated "You would not have commented anyway". The complainant's position is that at no time did the NZ Herald seek comment from them and therefore was unfair and unbalanced.

The Newspaper's Position

The *NZ Herald* denies that its coverage was misleading, inaccurate and lacked balance. Its position is that it conformed to normal reporting standards of tribunals and rightly included follow-up stories on issues arising from the case.

The first article was based on the briefs of evidence provided for the case by Ms Sydow and Mr Le Noel. The *NZ Herald* specifically rejected the suggestion that the allegations of blackmail and fraud were new and previously unpresented because they appeared in the briefs of evidence. The newspaper also makes the point that its story reported something which the complainants prefer to ignore, namely that the Authority found there had been a serious breach of the employment agreement.

The editor states that after publication of the article, Mrs Le Noel phoned several times, making allegations similar to those now in the complaint and threatening legal action for defamation. The deputy editor of the *NZ Herald* phoned Mrs Le Noel to discuss the complaints. He refused her request to remove the story from the newspaper's website but gave an undertaking that the report of the ERA ruling would appear in the next day's paper in the same position as the original story. This the newspaper did, in the second article, and it claims to have accurately summarised the reasons for the ERA rejecting Ms Sydow's claim. Shortly thereafter, the newspaper's legal counsel replied to a written letter from Mr and Mrs Le Noel alleging defamation and claimed statutory qualified privilege.

The third article was a broader story on the practice of migrants getting fake jobs to support visa applications. It mentioned the Sydow case in passing and that the complainant had lost her case.

The fourth article was merely a final story to tie up the loose ends after the revocation of Ms Sydow's work permit.

Discussion

It was a coincidence that the first article appeared on the day that the ERA decision was released. That article is clearly based on the briefs of evidence provided to the court. The allegations of blackmail were in Ms Sydow's brief and were reported as such. The article referred to the allegation that Ms Sydow was asked to pay her own taxes and wages and that these allegations were denied by the complainants.

On the face of it, the article was nothing more than normal reporting of allegations made in court and the respondent's response to those allegations. The complainants allege that a reading of the article would lead to the conclusion that Mr Le Noel was replying to Ms Sydow's allegations re fraud and paying her own wages when he was quoted as saying that "She had full knowledge and was in agreement of the arrangement between them". The Council accepts that this is a conclusion that a reader could come to and the matter could have, and perhaps should have, been stated more clearly. However, in the Council's view, any ambiguity is sufficiently immaterial to uphold the complaint in respect of this article.

The second article was, in the main, an accurate report of the decision of the ERA. The introductory paragraph referred to Ms Sydow's claim that she had been asked to pay her own taxes and wages. It also added a gloss to the finding that Mr Le Noel was not liable by noting Ms Sydow accused him of blackmailing her into working for nothing. Thus, the article summarized the decision of the ERA but repeated claims adverse to Mr Le Noel, even though those claims had not been referred to either directly or indirectly in the ERA decision.

The third article was a general article and the only matter in respect of which there is a complaint is the quotation referred to above in which Ms Sydow alleged that ERI had asked her to pay her own taxes and wages to support her residency application.

The final article was a "tidy up" article reporting on Ms Sydow having her work permit revoked and being asked to leave the country. It also repeated her claim that ERI had asked her to pay her own taxes and wages to support her residency application.

The *NZ Herald* was entitled to report the facts included in the first article. It included Ms Sydow's allegation of blackmail and that she was asked to work for nothing. Those allegations were repeated in the second article when the newspaper reported on the ERA decision, although there was no mention in that decision to those allegations. It then repeated the allegations in the general third article and in the fourth tidy-up article.

Allegations that a person has asked an employee to pay her own taxes and wages in order to obtain permanent residency and the blackmailing allegations are serious allegations. While the *NZ Herald* made it clear that they were allegations, it repeated them in four articles and in the last three of those articles would have known that although the ERA knew of the allegations, it did not refer to them in its decision. This may have been because the ERA determined that the allegations were not relevant to the issue in the case but the failure to comment on them could not advance the allegations.

Although an inference can perhaps be drawn from the fact that Mr Le Noel did not specifically deny the allegations in his brief of evidence, the continued publication of this allegation is likely to reflect on the integrity of Mr Le Noel and the ERI. In the circumstances, the Council is of the view that the *NZ Herald* should have, before repeating the allegations in the third and fourth articles, specifically sought from Mr Le Noel his response to the allegations. In not doing so, it put out an unbalanced story which may have been unfair to the complainants. For this reason, the complaint is upheld on the grounds of lack of fairness and balance.

The website version of these articles is to be flagged as having been subject to a Press Council ruling and a link to the adjudication on the Press Council website is to be provided.

Press Council members considering this complaint were Barry Paterson (Chairman), Kate Coughlan, Sandy Gill, Penny Harding, Keith Lees, Lynn Scott and Stephen Stewart.

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

CASE NO: 2140 – DICK MARSH AGAINST WAITOMO NEWS

Dick Marsh complained that the *Waitomo News* had breached several of the Press Council's principles. In particular, he complained that the newspaper had censored or refused to publish letters to the editor that were critical of the Waitomo District Council (WDC). His complaint is not upheld.

Background

Mr Marsh has often questioned the performance of the WDC, and the mayor, Mark Ammon, via the letters to the editor section of the *Waitomo News*, a twice-weekly community newspaper.

In April 2010 the newspaper published a letter from Mr Marsh, criticising the WDC's intention to continue to subsidise wastewater charges against two local companies. He linked that decision to hospitality the mayor had enjoyed in China, courtesy of the owner of one of the companies.

A week later, the mayor responded to the criticism, via the letter to editor section. He claimed that Mr Marsh's letter contained false statements and cheap shots, and, overall, lacked accuracy and common sense.

Mr Marsh met with the editor, Sue Sarich, and demanded a right of reply.

She agreed but subsequently balked when Mr Marsh submitted a letter of over 1300 words.

Despite protracted negotiations (see below) a resolution could not be reached and Mr Marsh took his complaint to the Press Council.

The Complaint

The essence of his complaint is that the editor gave an undertaking to publish his letter but then failed to meet that commitment.

Mr Marsh explained that she had asked him to shorten the letter but he wished to keep the thrust and pertinent information intact.

During subsequent discussions she had "eventually" agreed to publish the letter in full.

However, the letter was not published.

Again he met with the editor. Again she asked him to shorten it.

This time the complainant drafted a series of suggestions, which included publishing in full, publishing in full over two editions, and publishing as part of an article with which Mr Marsh would "assist".

She rejected these suggestions and offered to shorten his right-of-reply letter herself.

However, her draft was in turn rejected by Mr Marsh. He saw it as "censorship of the most blatant form."

When the letter did not appear he made a formal complaint to the Press Council.

He also complained that the newspaper carried paid advertisements for the WDC containing "self-promotion, propaganda and fiction", and that letters and articles by the mayor contained "false and misleading information".

In summary, he argued that the *Waitomo News* favoured the WDC and its mayor while censoring or selectively reporting criticism, in order to obtain advertising revenue.

The Newspaper's response

Ms Sarich firmly rejected the notion that the newspaper was in collusion with the mayor and the WDC.

She noted that she had met with the mayor and the CEO of the WDC to discuss their belief that many letters were inaccurate and vexacious. Both had been informed that "the letters to the editor column was an avenue . . . to voice concerns in a public forum and would continue to be so".

Paid "advertorial" was carried by the paper for the WDC and she admitted that "we may have been remiss" in not emphasising enough that this was WDC copy and not newspaper copy.

The newspaper had published letters by the complainant in the past, with little or no abridging, but his letter of May 13, in reply to the mayor, had not been published because it was both too long and contained a personal attack.

She explained that she had made several attempts to resolve the matter.

Discussion and Decision

Newspapers must take care to delineate the boundary between "advertorial" and "editorial' content. The editor herself recognises that the double-page spread distributed with the *Waitomo News* for the WDC and entitled Waitomo Way might well have been over-printed with the words "Paid Advertisement" to avoid any possible confusion.

There was further room for confusion because the newspaper published other copy generated by the mayor and/or WDC, such as the mayor's regular column, "In My View".

However, there was little to substantiate Mr Marsh's sweeping claims about collusion between the newspaper and the mayor/council and the editor declining to print material critical of the WDC for fear of losing advertising.

That aspect of his complaint is dismissed.

In general, the Press Council is reluctant to accept complaints about letters to the editor. A footnote to the Council Principles states: "Selection and treatment of letters for publication are the prerogative of editors, who are to be guided by fairness, balance and public interest . . ."

The Council accepted this complaint because there was an issue of fairness. After being so sharply criticised, Mr Marsh could reasonably expect a right-of-reply.

It is impossible for the Press Council to determine what undertaking was made, if any, but it is important to recognise that the editor seems to have readily accepted that he was indeed entitled to a response.

But Mr Marsh was not entitled to respond at such great length – he submitted over 1300 words – and his unbending demand that it be "published in full" was simply unreasonable.

The newspaper's "house" rules are published alongside the letters to the editor section and include "The editor reserves the right to abridge and preference is given to letters no longer than 300 words . . ."

Finally, the Press Council is of the view that her suggested shortening of the letter, while removing some of the more colourful language attacking the mayor, maintained the complainant's pointed criticism of the WDC and the mayor, effectively granting him over 500 words to make his case.

Mr Marsh declined to accept this reasonable compromise and his specific complaint about censorship and non-publication is not upheld.

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

CASE NO: 2141 – RIGHT TO LIFE NEW ZEALAND INC AGAINST THE PRESS

Ken Orr, secretary of *Right to Life New Zealand Inc*., made the complaint that an article published in the *The Press* on June 18, 2010 breached Principle 1 (Accuracy, Fairness and Balance) of the New Zealand Press Council Statement of Principles.

The complaint is not upheld.

Background

The article headlined "Decline in abortion rates", reported the decline in the number of Asian students having abortions. It included comment from a surgeon and the president of the Abortion Law Reform Society

The article quoted statistics released the previous day and compared them to the statistics from 2003.

The complaint concerned the fact that *Right to Life New Zealand Inc* or a similar organization was not asked to provide input so that there was balance in the article. Mr Orr stated that for the article to be balanced, both sides of the abortion debate should have been featured.

Mr Orr stated that *Right to Life New Zealand Inc* accepts that balance has been achieved in the past by comment being sought from the pro-life movement, and that *The Press* has a reputation for fairness, accuracy and balance in its reporting.

But Mr Orr could not agree that this particular article was fair or balanced given that no comment from any pro-life organization or group was included in the article.

Mr Orr pointed out that media releases from the pro-life movement commenting on the statistics were released on the same day, but accepted that *The Press* did not receive them.

Response from The Press

The editor of *The Press* responded stating that the article did not breach Principle 1 of the New Zealand Press Council Statement of Principles.

He noted that Principle 1 does state that publications should be bound at all times by accuracy, fairness and balance. But it also goes on to state that where an issue is long-running, balance is to be judged on a number of stories rather than a single report.

The editor stated that the article that was the subject of the complaint was a short factual one about the drop in abortion rates, in particular among Asian students.

He noted that the article was not about the merits or otherwise of the practice.

The editor went on to point out that the debate on abortion has been in existence for over a decade and is a long-running one.

The editor acknowledged that the reporter did see the statement from *Right to Life New Zealand Inc* but, because *Right to Life New Zealand Inc* sent material in by fax, it did not reach the reporter until the day after the article was published. The reporter was also not aware of any other statements commenting on the statistics from pro-life organizations when she wrote the article.

A longer and more detailed article, also drawn from the statistics, had been published on 7 July.

Discussion and Conclusion

The debate on abortion is a long-running one and as such meets the requirements of Principle 1 that where an issue is long-running, balance is to be judged on a number of stories rather than a single article.

The Press has published articles on both sides of the debate and Mr Orr himself commended the newspaper on the article published July 7 that included quotes from sources on both sides of the debate.

The complaint is not upheld.

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

CASE NO: 2142 – NEW PLYMOUTH AND DISTRICTS RETURNED SERVICES ASSOCIATION AGAINST TARANAKI DAILY NEWS

Reginald Trowern, an executive member of the New Plymouth and Districts Returned Services Association, accused the *Taranaki Daily News* of bias and inaccuracies in its coverage of his club's financial difficulties.

Mr Trowern attended the Press Council meeting, accompanied by Tony House. The editor was also invited but declined the invitation.

The complaint is not upheld.

Background

In 2008 the RSA club in New Plymouth, which had been losing money for several years, entered a financial arrangement with brothers David and Steve Crow whose late father had been the club's president.

Steve Crow is well known in New Zealand for sex industry promotions and it was his role in the RSA's

difficulties that made it newsworthy, especially when the arrangement exploded in acrimony in 2009.

The Crow brothers had bought the club's building and land for $1.9 million, almost all of which of which was a mortgage to them from the club. The remainder, $375,000, which the Crows raised as a first mortgage with a finance company, went to the club.

The club was renovated with a $736,000 loan from the RSA's trust that administers its fund for veterans' welfare. Under the arrangement with the Crows the club was to buy back part of the property in five years by cancelling most of its mortgage to them. In the meantime, the club would pay rent to the Crows.

The new owners sought to make operational changes at the club that were resisted by some members.

Unable to make the changes they thought necessary, the Crows eventually ceased making payments on their mortgage and club members voted to buy back the title so as to sell the property and clear the club's debts.

At the time this complaint was lodged the property was being offered at auction and Mr Trowern believed the RSA stood to lose $1,525,000 partly as a result of adverse comment in the *Daily News*. (In the event the premises sold for $1.675 million, from which the RSA recovered $1.2 million.)

The Complaint

Mr Trowern told the Council the New Plymouth RSA valued its privacy and had maintained a policy of no comment as the problem played out. However the *Daily News* continually sought comment from the Crows and printed their side of the story whether it was true or not, he said. He accused the newspaper of glorifying the Crows and believed it was intimidated by them.

In an oral submission to the Council's meeting Mr Trowern said the club's financial agreement with the Crows contained a confidentiality clause, included at the Crow's request, which prevented club officials giving information to their own members, let alone the public. He said the officials kept to the confidentiality agreement even when it was evident the Crows were speaking freely to the *Daily News*.

When the newspaper was given a confidential briefing on the loan from the welfare fund it published a report that quoted former president Tony House though the briefing was supposed to be off the record. Mr House accompanied the complainant and endorsed his oral submission to the council.

Mr Trowern's written complaint stated that *Daily News* articles and editorials on the club's use of its welfare fund caused donations to dry up and Air Cadets would not help on poppy day because they were led to believe the money would be misappropriated.

He alleged bias and inaccuracies in no less than 24 articles published from November 2009 to August 2010. He did not submit them in detailed form to the newspaper as he had learned his complaint would be handled by a deputy editor whom he believed had written the editorials included in his complaint.

Mr Trowern therefore asked that the case go directly to the Press Council and the newspaper agreed, making its response in turn directly to the Council.

The Response

The deputy editor noted that most of the specific complaints are out of time under the Council's procedure and he confined his detailed response to those arising from the last three articles cited.

The first of those, headlined 'Veterans' welfare on the line', reported the fears of a former chairman of the trust administering the RSA's welfare fund that veterans' welfare would suffer if the club was unable to repay the trust's loan.

Mr Trowern complained that the story quoted a veteran unknown to the RSA and the newspaper did not approach a club spokesperson. The deputy editor replied that the veteran quoted was an RSA member and the *Daily News* reporter had made several attempts to contact the club's designated spokesman but calls were not returned.

The second article was a published letter from the Crows explaining why they had defaulted on the mortgage they had taken out for the purchase of the RSA's clubrooms. Mr Trowern complained that the newspaper had said no more letters on the subject would be published. The deputy editor replied that no such rule had been made. The paper ran practically every letter received on this issue unless they repeated points already made.

The third item was a front page report of the meeting at which RSA members voted to raise a loan to buy the Crows' defaulted mortgage. The story was illustrated with a picture of the Crows at the meeting. Mr Trowern believed it "glorified" them.

He also complained that the newspaper had carried comment from Steve Crow despite the chairman's ruling that Mr Crow could not address the meeting as he had recently been banned from directing companies for four years. The deputy editor denied the story glorified the Crows and pointed out there was no legal bar to quoting Steve Crow. Any reporter covering the meeting would have sought his view.

The Decision

While these three specific complaints may be the only ones filed in time, the Council has read and considered all 24 articles cited by Mr Trowern. It does not agree with him that they show a bias towards the Crows and it finds much of what Mr Trowern called inaccuracy to be contestable.

Only one item, a profile of Steve Crow, could be said to be sympathetic but it hardly "glorified" him. News items mostly carried his comments uncritically but the reporters had been refused balancing comment from the RSA.

The one serious error occurred in an editorial that suggested money lent to the club by the RSA's veterans welfare trust had been raised from poppy sales. The money for the loan came from the sale of flats for war veterans. The newspaper published a correction the next day.

The Council is not inclined to uphold a complaint of this nature when the complainant's organisation has adhered to a policy of no comment.

If the paper breached confidentiality in quoting Mr House (a complaint it has had no opportunity to answer) it did the RSA no harm.

It seems to the Council highly unwise of the club to have agreed to a confidentiality clause that prevented it

communicating with its members and with the community from which it raises money.

The newspaper gave proper attention to a subject of considerable local interest, concerning the stewardship of the RSA's property and trust funds. Overall, the Council finds the coverage to have been careful and fair. The reporters have worked hard to overcome the difficulties placed in their way by the RSA's unfortunate confidentiality agreement and they have largely succeeded.

The complaint is not upheld.

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

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

CASE NO:2143 – THE NEW ZEALAND SEAFOOD INDUSTRY COUNCIL AGAINST NORTH & SOUTH

The Press Council has not upheld a complaint by the New Zealand Seafood Industry Council against *North & South* over an article about Antarctic toothfish.

Background

North & South magazine published an article in its July 2010 issue, "Fish out of water: Hypocrisy on the High Seas" discussing the commercial fishing of Antarctic toothfish in the Ross Sea. The article argued that not enough was known about the impact of fishing either on the species or on the marine environment and raised questions about the decision to fish there.

The Complaint

The New Zealand Seafood Industry Council (SeaFIC) complained to the Press Council that the article was unfair and unbalanced and contained omissions, inaccuracies and serious distortions. SeaFIC listed 16 specific instances. These claims can be grouped as follows:

- It claimed the article was inaccurate in claiming little was known about the juvenile toothfish and challenged the ages given for sexual maturity and life expectancy. SeaFIC pointed to research supporting its point of view.
- It rejected figures quoted for the size of the average annual catch and the number of vessels involved, providing figures from the Commission for the Conservation of Antarctic Marine Living Resources (CCAMLR) for each season between 1996/97 and 2009/10.
- It rejected the statement that CCAMLR did not seek the views of a scientist who had been studying the toothfish for 50 years and had dismissed his research. It said the scientist concerned had presented a paper to a 2008 meeting of a CCAMLR working group, which had found inconsistencies and asked for more information.
- It challenged the view presented in the article that little was known about the impact of fishing on the marine environment and on the toothfish species and cited a number of papers presented to CCAMLR on ecosystem monitoring and management.
- It rejected the article's criticism of the management of the fishery, saying that CCAMLR operated a phased development of a new fishery in the Ross Sea with annual notification, a research plan, annually submitted research and fishery data and regular review of data.
- It disputed the claim that there were CCAMLR observers on board the fishing boat the *Paloma V* while it was operating illegally in Antarctica. It said the vessel was flagged in Sierra Leone not Namibia as reported.
- It claimed the magazine misreported a statement by container shipping company Maersk about transporting Antarctic toothfish from New Zealand.
- It disputed that overfishing had caused the collapse of Canada's cod fishery, saying it was considered to be a victim of regional employment policy.

In more general comments, SeaFIC said the article misused research data and other information to misrepresent the level of management, research and control in place for the Antarctic toothfish fishery. The article was not executed in good faith and 'unjustifiably vilified fisheries scientists, agencies and New Zealand fishing companies'.

SeaFIC also challenged the magazine's choice of photographs in the use of pictures of an Australian customs vessel tackling boats fishing illegally in the South Atlantic, rather than the Ross Sea.

The Magazine's Response

North & South editor Virginia Larson did not accept the article was biased, unbalanced or inaccurate. She said the article was carefully researched and represented a wide range of scientific and expert viewpoints. The writer had extensive information and source material and had conducted interviews with more than 20 people. These included representatives of the Ministry of Foreign Affairs and Trade, the Ministry of Fisheries, NIWA, Antarctica New Zealand, Sealord and the Seafood Industry Council (the complainant).

She said the story was not about the New Zealand fishing industry in general, or how it compared internationally in its fish stock management, but was about a specific fishery – the Antarctic toothfish and the Ross Sea. The story dealt with fishing in the world's most pristine ocean, which was an issue of international concern.

The magazine responded point by point, citing its sources, to the 16 points initially outlined by SeaFIC.

On the issue of whether a juvenile toothfish had been discovered, the magazine cited research prepared for CCAMLR in 2007 and a submission to the Marine Stewardship Council in 2008. On the question of the age of sexual maturity, it cited an interview with a NIWA principal scientist. On the life expectancy of a toothfish the magazine cited four scientific papers.

To back its assertion that ships take more than 3000 tonnes of toothfish each year, the magazine provided

figures from a 2009 CCAMLR fishery report and it also cited a NIWA document prepared for CCAMLR in 2007. It said the same report backed its view that the numbers of fishing boats had increased to more than 20.

The magazine said CCAMLR did not seek the views of a scientist who had been conducting long-term research on the toothfish. The scientist had submitted a paper to a working group, which had dismissed his research as unscientific and incomplete.

The magazine made reference to an interview and a statement by New Zealand's Minister of Foreign Affairs to support its claim that the *Paloma V* was a Namibian-flagged vessel. As to whether there was a CCAMLR observer on board it cited an interview with New Zealand's CCAMLR commissioner.

North & South quoted from a Maersk press statement to back its report that the company was reviewing its practice of transporting toothfish from New Zealand.

Discussion

The complaint by SeaFIC is broad, challenging the magazine on its facts, on the people it interviewed and industry viewpoints it failed to express. Its complaint is a defence of what it says is a well-managed 'exploratory' fishery where careful reporting and scientific research is part of the process.

SeaFIC and *North & South* have presented scientific and other material to back their claims – for example, we have different views on what is a juvenile fish, age at sexual maturity and life expectancy. When it comes to figures, both sides interpret annual tonnages provided by CCALMLR to arrive at different results.

SeaFIC claims the writer shows bias and lack of balance; *North & South* has provided a list of 18 people whose views contributed to the article, including a representative of SeaFIC.

In considering this complaint, the Press Council will not attempt to determine the points in contention one by one. The Council cannot arbitrate between scientists over what is happening to the toothfish or the Ross Sea – and cannot be expected to rule on accuracy about what age a toothfish dies.

It is clear, however, that no one yet knows the likely impact of the fishing. The Ross Sea fishery is still classed as exploratory 14 years after fishing began in 1996 and, according to information supplied in SeaFIC's complaint, the fishery will remain exploratory because it is not allowed to expand faster than the information needed to manage it can be collected.

This tends to support one of the main arguments of the article that there are gaps in the knowledge about the toothfish and the impact of fishing: "we go in and fish, do some science afterwards and hope we haven't made an irretrievable mess in the interim". This view doesn't seem that far removed from the explanation of the process by CCAMLR itself: "the conservation measure that the Commission has implemented for exploratory fisheries allows for continued regulation of the fishery while the scientific information required for a full assessment of the fishery and stock(s) concerned is being collected".

There is clear disagreement on whether there were CCAMLR observers on board the Paloma V when it was operating illegally but the Press Council accepts that the magazine relied on the view of New Zealand's CCAMLR commissioner.

As to whether CCAMLR dismissed the views of a scientist doing long-term toothfish research, material supplied by SeaFIC itself supports the statement by the magazine. On the statement by Maersk, the article is also supported by material supplied by SeaFIC that the company is reviewing its practice of shipping toothfish. References to overfishing off the California coast and to the collapse of Canada's cod fishery are fair comment in the context of the article. On the choice of photographs, the pictures showing Australian Customs at work in Antarctic waters are suitable in the context.

SeaFIC is concerned to defend New Zealand's fishing industry's good international record of fisheries management. *North & South*, however, is entitled to challenge the practice of fishing in the Ross Sea and to ask questions. The Press Council considers that the magazine took a conscientious approach and canvassed a wide variety of viewpoints, including those of the industry and agencies responsible for managing and reporting on the fishery.

The complaint is not upheld.

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

CASE NO: 2144 – THE OTAGO MENTAL HEALTH SUPPORT TRUST AGAINST CRITIC TE-AROHI

Mike McAlevey of the Otago Mental Health Support Trust has complained to the New Zealand Press Council that an article in the Otago University student newspaper, *Critic Te-Arohi*, headed The Bum at the Bottom of the World, was among other things, inaccurate, discriminatory and in poor taste.

Mr McAlevey also complained that an associated item in a "Bunch of Five$" feature in the same issue could incite to violence.

As well, he complained that an apology published by the newspaper about the initial article was insincere.

The complaint against the initial article is upheld. The complaint against the associated item is not upheld. Further, the Press Council has no reason to believe that the newspaper's apology was not sincere.

The Articles

The May 24 issue of *Critic* contained an article which purported to be a feature on some of what it described as Dunedin's homeless, transients and vagrants, specifically characters said to be well-known to students called Speedy, Tony the Pony and Joan the Butcher.

A preamble to the article said: "Dunedin's most well-loved celebrities are not politicians or sports stars, they are

vagrants known to most as Speedy and Joan the Butcher. Thomas Redford spent time on the streets to find out the truth about Dunedin's homeless, running into Tony the Pony and Smokey Robertson."

The article included a rambling question and answer interview with "Smokey Robertson" in which the author implied he had supplied his subject with beer. He then went on to give further details of the three other characters and their habits, much of it in the way of second-hand or background information. He did not quote any directly. The article included drawings of the trio.

The overall impression the article and drawings conveyed was derogatory to the individuals alleging alcoholism or drugs, vagrancy or unusual or bad behaviour.

Further in the issue, in what is said to be a regular feature, five women students were asked the same five questions, one of which was "Fuck, marry or kill?Joan/Speedy/Tony the Pony?" The five students gave varying answers to the question.

The Complaint

About a month after publication, on June 22, Mr McAlevey complained to *Critic's* editor-in-chief, Ben Thomson, by letter, saying the articles were "poorly written, poorly researched, in disgustingly bad taste, defamatory, discriminatory, and possibly inciting violence." He said families and friends had been affected and he condemned plying possibly vulnerable people with alcohol.

There had been no attempt to establish whether the people were homeless or lacking income while the "Bunch of Five$" item might be seen as inciting violence against people who were already subjects of abuse by students and others.

He described the article as "disgusting and inexcusable" and an apology in *Critic* would not suffice.

In his complaint to the Press Council dated August 5, Mr McAlevey said Mr Thomson had telephoned him on June 29 and said that as a result of complaints received, he intended to publish an apology in *Critic* on July 19. He asked Mr Thomson to send a letter of response but none was received. He had since seen the apology and was not satisfied it was sincere.

Critic's Reaction and Response

In an editorial headed "A Bum Note" in the July 19 edition, Mr Thomson explained the article had been part of a package of stories about money following the budget.

"The article named three people, well known to many students, and perpetuated many of the myths and stories that circulated widely about them. It was unflattering to say the least and, upon reflection, it was uncaring, rude, obnoxious, and unnecessary," the editorial said.

Mr Thomson said the newspaper had set out to explore some of the myths and stories that many students associate with the characters, "who are undeniably a part of any Otago student's experience here in Dunedin. Online there are videos, groups and discussion boards dedicated to them."

The author of the article had spoken to a medical student who had dealt firsthand with mental health patients and they had "invented" the "Smokey Robertson" character and conducted a mock interview. No alcohol was offered to anyone.

The editor thought it was obvious that the interview was made up but he was wrong in that assumption and apologised to anyone who felt misled.

He acknowledged the article had annoyed the local mental health community and others and some representatives had contacted them. In subsequent discussions, the editor acknowledged "in this case we completely misjudged where the line was."

The complainants were advised a planned, more serious article on the topic had been brought forward and an apology would be offered at the same time.

"I apologise to the three individuals that were humiliated and hurt. And I am also sorry to our readers whom we let down. I can assure you we've all learnt from the experience."

In the same July 19 edition, another writer, in an article headed "Home is Where the Heart is", gave a fuller picture of the plight of the homeless.

The article corrected details about two of the people mentioned in the original article and quoted reliable and official sources about what being homeless meant, its effect on families, services and accommodation available and statistics.

The same issue also published three letters critical of the article, including one from the chief executive of the Mental Health Foundation of New Zealand and another from the Community Care Trust.

In his response to the Press Council dated August 20, Mr Thomson said the three people named were prominent members of Dunedin's "transient" community and very well-known to students, with groups on Facebook with more than 1000 members where students shared stories and sightings, including videos on YouTube.

The article was not meant to be mean-spirited but rather a look at the personalities. All the information discussed was true.

The author was concerned that an interview could be seen as exploitative so it was decided to invent a character based on real-life cases the medical student had dealt with. At the time, they believed readers would realise that interview was made up.

The editor gave details of how they had responded to approaches from several official sources in the wake of the first article, and how they had agreed the article did come across as mean and uncaring and an apology was in order as quickly as possible, given that there would be a production break over the university holidays.

They had explained to those they met that *Critic* always tried "to tread the fine line between being offensive and writing in an 'edgy' manner that attracts student readers."

Mr Thomson said he took issue with the accusation that the apology was insincere, "as I am indeed very sorry about the original article, and it should not have been published."

He did not agree with Mr McAlevey's complaint about the "Bunch of Five$" item. The question complained of was one that was almost always asked and was based on a popular drinking game, and it was not meant to be taken seriously. To suggest it was encouraging violence against anyone was an insult to readers' intelligence.

The Complainant's Response

Mr McAlevey said the editor's reference to transients again reflected poor journalism and discriminatory labelling. None of the people was transient. Nor was all the information published "true."

The fictitious interview discriminated against people with mental health issues by portraying them as fair game for exploitation by plying them with alcohol in exchange for lurid information.

The article and the "Bunch of Five$" feature were linked and, by associating the latter with a drinking game, *Critic* was "creating a dangerous mix of excess alcohol consumption, discussion of violence and demeaning portrayals of vulnerable people."

He did not accept the published apology was genuine, questioning whether *Critic* had met with the individuals and tried to gauge the extent of the damage caused.

Mr McAlevey said he believed *Critic* was trying to be as rude and obnoxious as it could get away with, "and take some pride in their success."

Discussion

Student newspapers as a genre have a long history of provocation and even offensiveness, and that is to be expected in fiery crucibles such as universities. As well, their choice of language and in-your-face approach to issues are often not for the faint-hearted.

The Press Council acknowledges the genre and is prepared to make allowances for it, as long as essential principles are maintained.

This is not the case with the May 24 article. Making up an interview and including it in a larger article is a ridiculous concept, particularly when there is no explanation to readers that this has taken place.

An item on Dunedin's homeless is, of course, an entirely worthwhile topic for any newspaper. Interviews with some of the homeless or apparently homeless would be justified for such an article. In the right context, there would be nothing exploitative with such an approach.

By publishing rumour and other details about three easily-identified people without giving them an opportunity to respond, or without making serious inquiries, *Critic* let itself down badly. The newspaper argues they are well-known. In fact, as the corrected facts revealed, they are not.

It did not help that the same issue included the names of the three people in one of its questions to the five students. Nevertheless, it seems a step too far to accuse the newspaper of perhaps inciting violence against those named in an item based on a ridiculous premise. It may be in poor taste and offensive. However, in the context of what the "Bunch of Five$" feature covers in most issues of *Critic*, the question is an impossible premise, and it was not an incitement to violence.

The Press Council must also decide whether the responsible, follow-up article and the apology in the editorial remedy much of what was done incorrectly and badly in the first. In the correction and provision of information about a poorly-covered topic, it does, but not sufficiently to right all wrongs of the first.

The information and explanations provided in the second article were all available to the newspaper for the first article. They should have been provided then.

Mr McAlevey does not believe the paper's apology is sincere –he argued from the start that an apology would not suffice. The editor assures the Press Council it was sincere.

While a personally-delivered apology to affected parties is an optimal result, as Mr McAlevey appears to suggest, there is no overall obligation for an editor to do that. In this case, the editor says his apology is sincere and the Press Council has to accept that. If the editor was not being sincere, it is difficult to believe he would have written as apologetically as he did.

Decision

The complaint against the May 24 article is upheld.

The complaint about the "Bunch of Five$" feature in the same issue is not upheld.

The Press Council accepts the editor was being sincere in his apology.

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

CASE NO:2145 – ELIZABETH OVERTON AGAINST THE NEW ZEALAND HERALD

Introduction

The Press Council has not upheld a complaint by Elizabeth Overton against the *New Zealand Herald* about an article entitled "No accounting for mistakes" which appeared in the *New Zealand Herald* on Saturday July 17 and on nzherald.co.nz from the same day.

The Article

The article is part of the ongoing debate surrounding the reassessment of the findings of the well-known 1988 Cartwright inquiry into the treatment of cervical abnormalities at Auckland's National Women's Hospital. It reports that Auckland University supports history professor Linda Bryder's academic freedom to express her views in the revisionist work *A History of the "Unfortunate Experiment" at National Women's Hospital* "despite scientific evidence showing her [Bryder's] central conclusion is wrong."

The report gives voice to a chorus of critics of Bryder's view that there was no experiment and so the conclusions of the Cartwright inquiry were wrong. Critics included academics from Otago and Auckland universities, from Deakin University in Australia and a recent Australian and New Zealand Journal of Obstetrics and Gynaecology report supporting Cartwright's interpretation of scientific data at the heart of the inquiry's findings.

The article canvasses a range of other related material including: a call for Bryder to apologise to people affected, Bryder's view that she is the subject of a smear campaign, support for academic freedom from various quarters and a list of apparent 'Inaccuracies in Linda Bryders book".

The Complaint

Elizabeth Overton complained that the article contained a mistake in the following sentence: "She [Clare Matheson] was discharged in 1979 [from National Women's Hospital] with carcinoma present."

She argued: "The last smear Clare Matheson had at National Women's before leaving Auckland was on 27th September 1979. This was normal."

Therefore it is a factual error that merits correction as it infers inadequate management at National Women's Hospital.

Despite a lengthy response from the newspaper disagreeing with her pivotal assertion the complainant restated her case that the article contained one error of fact.

The Response

The newspaper editor said the relevant medical file had been "checked and rechecked" and it showed a repeated finding of carcinoma in situ over 12 years. The editor argued that despite the negative smears, the complainant would be aware that pathological finding over-rides the negative smear findings.

The response also included a significant degree of complex medical information which - in her second letter to the newspaper – the complainant argued was essentially anecdotal and irrelevant to her pivotal assertion.

Final submissions

Following the newspaper's response, the complaint was received by the Press Council accompanied by a summary of the patient's medical notes. The complainant noted that the smear which accompanied the patient on her discharge from National Women's Hospital in 1979 was grade 1 – which is normal. The patient was referred back to National Women's Hospital six years later with overt cancer.

At the core of this complaint is Elizabeth Overton's opinion that no woman would ever be sent out of hospital with carcinoma present.

In response, the newspaper quoted the independent expert to the Cartwright inquiry and argued that a 1977 pathological finding for the patient in question should over-ride a negative smear from two years later.

Discussion

Despite both parties providing significant amounts of detailed medical information in support of their view, the material did not provide a clear answer. It is beyond the expertise of the Press Council to interpret complex medical reports, pathology results and transcripts of expert testimony let alone come to conclusions about their accuracy and significance some 30 years later. The interpretation of this complex medical data causes ongoing debate even among experts.

Therefore the complaint is not upheld.

The Council would like to note, however, that given its role in supporting freedom of the press and freedom of expression, it is unwilling to support the contention of the newspaper that because the matter had been the subject of a judicial enquiry it should not be re-examined.

Healthy debate is the goal.

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

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

CASE NO:2146 – DARROCH TODD AGANST THE DOMINION POST

A complaint by Darroch Todd against *The Dominion Post* newspaper has not been upheld.

Background

The Dominion Post's reviewer Jane Bowron wrote an opinion piece (clearly labeled as such) on a recent re-enactment on T.V. of the kidnapping of Baby Kahu, the whangaied (informally adopted) daughter of Donna Hall and Sir Eddie Durie. In the course of her review, the writer referred to the birth parents of the baby as 'the real parents'; 'the real father'; and 'the birth mother'. The review was published on July 20, 2010 in *The Dominion Post*.

The Complaint

Complaining first to the newspaper, Mr Todd, an adoptive parent himself, objected to the references to 'real' and 'birth' parents. He claimed that the article was factually incorrect, based on ignorance and 'incredibly insulting of all adoptive parents'. He suggested that the paper's choosing to print the article appeared to condone this claimed disparagement of adoptive parents.

Assistant editor Oskar Alley replied the next day stressing that the article was a review of a T.V. show and the reviewer's comments related only to the depiction in that show of Baby Kahu's guardianship. The article did not claim to be on the subject of adoption or parenting, as it was not on the news pages. There was no intention by the writer or the paper to suggest that parents who adopt are any less devoted than 'birth parents'.

Dissatisfied with the newspaper's response, Mr Todd laid a complaint with the Press Council the following week, reiterating the points he had made to the paper. He claimed that Press Council principles of accuracy, fairness and balance; children and young people; and discrimination and diversity, had been breached.

The Newspaper's Response

Bernadette Courtney, editor of *The Dominion Post*, replied with the following points.

She said that the use of the term 'real parents' in the review was an attempt to differentiate between the actions of the adoptive parents and the birth parents, as the reviewer explained the narrative of the T.V. programme.

The editor did not accept that the term 'real parent' was denigratory of the relationship between Baby Kahu and her adoptive parents. It did not infer that the adoptive parents' distress was reduced because they were not the baby's

biological parents. There was no attempt to discriminate against adoptive parents in general.

The editor then rejected each of the complaints, stating that Principle 1 on accuracy, fairness and balance was covered by the clear presentation of the article as opinion; the Principle on children and young people being irrelevant in a review of a television programme, as it is more applicable to news reporting; that of discrimination and diversity being covered by the right a newspaper has to 'express opinions' which is what the review did. No gratuitous emphasis was shown in the review about the status of Baby Kahu's guardianship.

Whilst acknowledging Mr Todd's own personal preference around terminology, the editor did not believe that the term 'real parents' used in the context of the review had caused widespread offence to adoptive parents in general, and his had been the sole complaint received.

Decision

The Council, in its deliberations, did not accept that this opinion piece, covering the review of a re-enactment, was factually incorrect. The reviewer's use of the term 'real parents' might have been unfortunate from the complainant's perspective, but was not factually incorrect or intending any disparagement of adoptive parents. It was not deemed to breach any Press Council principles.

Accordingly, the Press Council does not uphold any of the grounds for this complaint.

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

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

CASE NO:2147 – MARK WILLIAMS AGAINST CENTRAL HAWKE'S BAY MAIL

Mark Williams, a candidate for the Aramoana ward in the Central Hawke's Bay local body elections, complained about the publication of a letter to the editor of the *CHB Mail*, a weekly newspaper, on September 28 2010. The abridged letter was published without its author being named, but the author's name and address had been supplied to the paper. Mr Williams, said the letter published misleading information about him, at a sensitive time close to the October 9 local body elections. Mr Williams wanted the *CHB Mail* to accept wrongdoing and apologise. The complaint is upheld.

Background

The anonymous letter writer referred to two candidates standing for the Aramoana ward saying they had been closely associated with attempts to get ratepayers to pay for the Aramoana Woolshed project, naming the candidates as ex-councillor Williams and another person. The writer noted that in 2007 the public of CHB showed they did not want their money going into that purchase "and to have these people on the council would worry me." The writer also said that sitting members on the council were doing a good job and should be returned.

The Complaint

On the day of publication, Mr Williams wrote to the editor of the *CHB Mail* in Waipukurau saying he was appalled that at such a sensitive time in the local body elections the newspaper had published the letter and kept the writer anonymous. "The inference that I want to revisit the Woolshed project is so far from the truth that it is laughable." With voting due to close in less than two weeks "this can only be extremely damaging to my attempt to once again serve the people of CHB. I will have the right of reply but a whole week will have gone by before it will be published."

Mr Williams handed his letter of complaint to the *CHB Mail* in person. It was forwarded to the editor of *Hawke's Bay Today*, Anthony Phillips, who had overall responsibility for the *CHB Mail*.

The Newspaper's Response

Mr Phillips said the *CHB Mail* offered Mr Williams the standard right of reply, but he initially rejected it. Hawke's Bay Newspapers had also offered him the opportunity to have a letter published in the daily *Hawke's Bay Today* so he would not have to wait a week till the *CHB Mail*'s next publishing date. Mr Williams rejected this. (Later, Mr Williams agreed to send a right of reply to the *CHB Mail*, and it appeared on October 5.)

Mr Phillips said the *CHB Mail* had had a policy of publishing letters "with names and addresses withheld on request". Hawke's Bay Newspapers would be prepared to review this policy on advice from the Press Council.

Initial Interaction with the Press Council

The Press Council was kept informed of these developments from the outset by both parties, because of the imminence of the local body elections and the possible need for a fast-track ruling. In his initial letter to the Press Council (sent on the day he complained to the newspaper) Mr Williams was concerned that the *CHB Mail*'s weekly publication date would reduce the impact of his right of reply. The damage to his reputation and his potential loss of votes was a "very real worry" in what would be a tightly contested race. "I believe at this time in the elections if letter writers are not prepared to sign their names then any paper that prints said letters is letting the community down big time."

In correspondence with Mr Williams, the Press Council said a decision on his complaint could not be released in time for publication in the *CHB Mail*'s October 5 edition. (The local body elections were on October 9, after a postal ballot). The Press Council suggested Mr Williams accept the newspaper's offer of publishing a right of reply. It was published on October 5.

The *CHB Mail*'s chief reporter, in email traffic with *Hawke's Bay Today* editor Antony Phillips, said that two of Mr Williams' supporters had also written letters to the editor. A separate man also contacted the chief reporter complaining of harassment, as he was suspected of writing the original letter. He did not write it. The chief

reporter also received five "unpleasant" calls from people demanding the author's name. She had not published the name as the person did not want it divulged. Later the author called again, to ensure she would not divulge it to Mr Williams or his supporters.

Discussion and Decision

The Council's Statement of Principles says that the selection and treatment of letters to the editor for publication are the prerogative of editors who are to be guided by fairness, balance and public interest in the correspondents' views. Thus the Press Council is usually wary of complaints concerning publication (or non-publication) of such letters.

However, the issue of identifying the letter writer, particularly in time and issue-sensitive cases such as this, calls for a Press Council ruling.

In previous adjudications the Press Council has commented on different issues concerning anonymous letters to the editor:

> *Letters published with a pseudonym are no longer appropriate in almost every case in modern journalism. A publication which is available for public subscription does a disservice to its readers and the general principle of robust editorial debate by concealing letter writers' names. (Case 836)*

> *In a small community particularly, the privileged position held by publications, especially those appearing weekly at a crucial time in a postal ballot for local body elections, means it is vital to identify those who express views which may influence the outcome. (Case 836)*

> *The vast majority of newspapers now require correspondents to demonstrate the courage of their convictions by publishing their names. That may from time to time inhibit people from expressing their views. However, that is better than enabling publication of allegedly damaging misinformation anonymously, in a time critical period. (Case 797)*

The Press Council must take Mr Williams' word that the inferences published about him were far from the truth and politically damaging at a crucial time in the local body election. It does not know if the letter influenced the election result, though it notes that Mr Williams was elected.

Hawke's Bay Today offered Mr Williams the chance of expressing a reply in its daily publication, instead of waiting for the CHB Mail's next publication on October 5. Mr Williams declined the offer, for his own reasons, and later had his right of reply published in the CHB Mail on October 5.

Hawke's Bay Newspapers has also offered to amend the *CHB Mail*'s policy of publishing letters with names and addresses withheld on request. The Press Council is inclined to agree.

The complaint is upheld.

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

CASE NO: 2148 – WARREN WILSON AGAINST NATIONAL BUSINESS REVIEW

A complaint by Warren Wilson against the *National Business Review* was not upheld.

The Article

The *NBR* article reported on a High Court hearing on an application to release two caveats. The property concerned was owned by a company in liquidation (company A) which was associated with a man (B) who had been quoted in another newspaper article, which appeared approximately 11 months earlier, as confessing to a crime.

B is being pursued by his creditors, who have evidently lost a considerable sum of money because of his activity, but is apparently elusive.

Mr Wilson is the liquidator of company A and was in court and addressed the Judge.

The article stated that the Associate Judge "says B can be contacted through his 'friendly' liquidator, Warren Wilson…". The article referred to Mr Wilson's address.

The Complaint

The complaint alleges breaches of accuracy, fairness and balance.

Mr Wilson complains:

a) the Associate Judge did not refer to him as the "friendly liquidator";
b) the article did not report a comment made by the Associate Judge in his decision when the Judge responded to comments made by Mr Wilson;
c) the *NBR* was in breach of a suppression order made at an earlier stage;
d) the article was not accurate, fair or balanced, particularly when it did not refer to the nature of the proceeding and made no attempt to obtain any balancing comment.

The Response

The *NBR*'s response to the four elements of the complaint is:

a) The "friendly liquidator" comment was made by one of the solicitors involved who said that Mr Wilson was a "friendly liquidator" appointed by B. NBR says the article did not say that the Associate Judge had made the comment.
b) At the time the article was published, the Judge's written decision was not available to the reporter. The report gives a fair account of what the Judge said at the hearing.
c) The reporter was not aware of the suppression

order which was not made in that particular proceeding. Further, the Associate Judge had extracted from Mr Wilson his contact details so that he could refer creditors to them in his decision.

d) The article did mention the nature of the proceeding.

Discussion

The reference to the "friendly" liquidator lacks clarity as to who made the comment. The word "friendly" appeared in quotation marks to indicate that it was a quotation from someone. It is not unnatural for most readers to assume that it was a quotation from the Associate Judge. While this may be sloppy journalism, and the report should have indicated who made the remark, it in itself is not sufficient to uphold the complaint. The claim was made in the court hearing.

The Associate Judge gave his judgment orally and if the written copy now available is an accurate transcript of it, the reporter presumably heard the comments which Mr Wilson claims should have been included in the article. The comment noted Mr Wilson had intervened again to correct an earlier statement in the decision which was impliedly critical of Mr Wilson.

This complaint is not upheld for two reasons. First, the thrust of the article was on B and not Mr Wilson. It is not necessary to balance every particular aspect of comments made. Second, the Council suspects that Judges reserve the right to edit oral judgments and there is no certainty that the final judgment follows accurately what was said, albeit that the substantive reasons given by the Judge for his decision would not have been altered.

There are two aspects to the complaint of a breach of suppression order. First, a breach of a suppression order is a criminal matter, not an ethical matter. This Council has, as a matter of course, taken the view that the courts are the usual forum for complaints of breach of suppression orders. Exceptions to this practice are rare and are usually because the newspaper has admitted that it breached the order.

Second, the complainant is not B. Mr Wilson has declined to attempt to obtain B's consent to that issue of the complaint. The usual practice of the Council, when the complaint is on behalf of a third party, is to require that party to consent to the complaint. Mr Wilson refuses to do so. It is relevant in this case that B's barrister wrote to *NBR* to advise of the breach but, to the Council's knowledge, has not laid a complaint with the Solicitor General.

In this case, the *NBR* says the reporter was unaware of the suppression order. The order was made several weeks before the case reported in the article and was made in a separate criminal proceeding and not in the caveat case then before the court. A breach of the suppression order leads to strict but not absolute liability. There have been cases when a newspaper, having taken all reasonable care that a reasonable person would take in the circumstances and being unaware of the suppression order, has not been found guilty of contempt of court when charged with a breach of the suppression order. These cases highlight why the Council is not prepared to adjudicate on suppression orders unless the case is clear-cut. This case is not and the *NBR,* if prosecuted, may well not be liable.

The case illustrates why a register of suppression orders would be useful to journalists.

The final complaint relates to the nature of the proceeding not being published and no attempt being made to obtain any balancing comment. The article did make it clear that the application was in respect of a release of caveats. The balancing aspect is also not upheld as the thrust of the article was in respect of creditors not being able to contact B and what appears to have been the Judge's intention that B should be contactable through Mr Wilson. The Judge appears to have highlighted that B could be contacted through Mr Wilson, in an attempt to assist B's creditors. If balance were required, it was a statement from B who was not present at the proceeding and who by all accounts was being elusive.

Decision

For the above reasons, the complaint is not upheld.

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

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

CASE NO: 2149 – PETER WINDSOR AGAINST THE DOMINION POST

Introduction

Peter Windsor's complaint relates to an article published in *The Dominion Post* July 15, 2010. Mr Windsor objects to both the content of the article and the headline.
The complaint is not upheld.

Background

The headline of the article is "School Board not told of bus driver allegation" and the introduction read "A Wellington bus driver who lost his job after being accused of sexually harassing a 13-year-old girl has lost an employment relations case but remains a board member of Mana College".

The article relates to events regarding Mr Windsor's employment with Mana Coaches, his Employment Relations Authority (ERA) case, and his position as an elected member of the Board of Trustees of Mana College.

Complaint

Mr Windsor believes that the headline was unnecessarily sensationalist and that the article contained misleading and incorrect information.

Mr Windsor states that the first paragraph of the article has incomplete information for sensational effect. He states that the allegation of sexual harassment was found to be without foundation by Mana Coachlines but this was not stated in the article.

He goes on to outline the following issues with the article:

The 4th paragraph is incorrect as he did not deny the incident, but rather he was responding to the reporter's questions.

In regard to the 6th paragraph, Mr Windsor states that he resigned from his employment, and that this fact was stated in the ERA decision.

In regard to the 9th paragraph, Mr Windsor states he was responding to the reporter's question concerning the ERA determination and not the alleged sexual harassment. This paragraph relates to Mr Windsor allegedly stating to the reporter that he felt that he was a victim, and that he thought there was "more to the story than meets the eye".

Mr Windsor states that "the main crux here is that a reader will believe that I did commit sexual harassment, but this is further from the truth".

Mr Windsor states that he told the reporter that the allegation of sexual harassment was found to be without foundation, but the article associated the alleged sexual harassment and his denial in a manner that was misleading to anyone reading the article.

Mr Windsor states that the article twisted the facts to blatantly mislead the reader rather than inform in a proper manner.

Mr Windsor acknowledges that *The Dominion Post* did run a clarification on July 17 stating that Mr Windsor's employer, Mana Coach Services, did not regard the complaint about Mr Windsor as one of sexual harassment, but he states that this was only after he contacted the paper and provided them with relevant information. Mr Windsor states that this did not mitigate the damage done to his family by the original article.

Mr Windsor also requests the Council to rule on the refusal of the assistant editor of *The Dominion Post* to allow Mr Windsor to re-publish e-mail correspondence between himself and Mr Windsor. Mr Windsor believes that this "runs counterproductive to the very essence of the freedom of free speech".

Newspaper's Response

The editor replied that the paper "is satisfied that the article complied with Council guidelines, being based on the contents of the Employment Relations Authority's determination and follow-up interviews by the reporter".

She goes on to say that "Mr Windsor contacted the newspaper's head of news on the date of publication and raised two issues with the article – that the allegation of sexual harassment had been found to be without foundation and his concern with the article's headline".

As a result of this, after making further enquiries, the newspaper published a clarification on July 17 which stated "Wellington bus driver Peter Windsor's employer Mana Coach Services did not regard a complaint about him as sexual harassment, as reported on Thursday, but did regard his behavior as serious and a matter that could result in dismissal".

The paper does not accept that the headline was inaccurate. The information in the article, "Mana College board of Trustees chairperson Chris Toa said Mr Windsor informed him of the incident last year. He [Mr Toa] and principal Mike Webster had decided to not inform the rest of the board of trustees as it was a "private matter"" supported the headline.

The paper provides the following information:

In regard to paragraph one, the ERA determination clearly states that the nature of the schoolgirl's complaint was deemed by Mr Windsor's employer to be one of sexual harassment. A letter supplied by Mr Windsor himself from his employer also acknowledges that the allegation was one of sexual harassment. The article did not say that Mr Windsor committed sexual harassment, but said he was accused of sexual harassment.

In regard to the 4th paragraph, the paper states that this paragraph was not inherently wrong. Mr Windsor does not accept he sexually harassed the schoolgirl and his employer said that this claim was without foundation. To a question from the reporter about the sexual harassment allegation, Mr Windsor said it was without foundation and was quoted on this.

In regard to the 6th paragraph, the paper states that the ERA decision shows that Mr Windsor was told by his employer on August 26 that a preliminary decision had been made to dismiss him. This action was confirmed to Mr Windsor on September 3. The ERA decision, paragraph 22 states "The final meeting occurred on September 7: Mr Windsor resigned (p160) but was also dismissed (pages 151 – 156)".

In regard to the 9th paragraph, the paper states Mr Windsor was asked by the reporter to comment on the initial sexual harassment allegation and he did state that it was without foundation and was quoted in the article as saying this.

The paper goes on to state that the reporter did not confuse the difference between sexual harassment and alleged sexual harassment. The introduction to the article states that Mr Windsor was "accused of sexually harassing a 13-year-old girl". This is phrased as an accusation, not as a confirmation, of sexual harassment. Mr Windsor is also correctly quoted on the article as saying this allegation was without foundation.

The paper does acknowledge that while the article is accurate in saying that Mr Windsor was accused of sexual harassment by a schoolgirl, the article could have been clearer in stating that the employer found this claim to be without foundation. Mr Windsor was quoted to this effect in the article, and further clarification was made in *The Dominion Post* on July 17, 2010.

The paper goes on to state that the reality is that Mr Windsor's behaviour towards the schoolgirl is the catalyst for the negative publicity he has received. He has lost his job as a result of his "fundamentally inappropriate" behaviour. This is not the viewpoint of the newspaper but of his now former employer and the ERA.

The paper states that this matter has come to the public attention due to the public release of the ERA decision and that ERA decisions are regular features of media reports. The reporter read the ERA decision and then contacted both Mr Windsor and the school board chairman for comment.

In regard to Mr Windsor's request that the Council provide a ruling on the decision of a newspaper employee to refuse Mr Windsor permission to republish e-mail correspondence between Mr Windsor and the employee, the paper submits that unauthorized publication of a *Dominion Post* employee's e-mails is a copyright issue and can be handled by Fairfax Media's lawyers.

Discussion and Conclusion

Mr Windsor makes the complaint that the headline used in the article in question was sensationalist, and that the article contained incorrect facts.

The headline was "School board not told of bus driver allegation". This headline was based on the fact that the reporter was informed by Mr Toa, Chairperson of the Board of Trustees of Mana College, that he and the Principal, Mike Webster, had made the decision "not to inform the rest of the board of trustees [about the allegation against Mr Windsor] as it was a private matter" although Mr Webster informed the reporter that he did not know about the incident.

The information provided by Mr Toa clearly shows that the full Board of Trustees was not informed about the situation.

The headline does relate to the content of the article and does not breach Principle 5 of the Press Council Statement of Principles.

In regards to the article containing incorrect facts or information, the opening paragraph of the article clearly states that Mr Windsor was "accused of sexually harassing a 13 year old girl" and does not go on to state this as a concrete fact. It does note Mr Windsor's denial of the claim and his comment that it was without foundation.

When Mr Windsor contacted *The Dominion Post* following publication, and made the newspaper aware of his concerns, a clarification was published in *The Dominion Post* on July 17.

The Press Council also notes that the web version of the story has been amended and reads "A Wellington bus driver who lost his job after being accused of inappropriate behaviour with a 13-year-old girl has lost an employment relations case …" The article then goes on to outline the ERA case and decision.

Mr Windsor's states that he resigned from his employment, but he did take a case of constructive dismissal against his employer.

The article which is the subject of Mr Windsor's complaint is based on information obtained from a public ERA decision, information obtained from the Chairperson of the Mana College Board of trustees and Mr Windsor himself. While Mr Windsor may not agree with the ERA decision and the information contained within it, the decision stands unless overturned by an appeal and can be used as a resource by the newspaper.

In regard to Mr Windsor's request that the Council provide a ruling on the decision of a newspaper employee to refuse Mr Windsor permission to republish e-mail correspondence between Mr Windsor and the employee, this is a copyright issue and Mr Windsor will need to address this issue with *The Dominion Post.*

The complaint is not upheld.

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

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

CASE NUMBERS: 2150, 2151, 2152, 2153, 2154, 2155, 2156, 2157

DR JOHN ANGUS, CHILDREN'S COMMISSIONER; MARGOT DONALDSON; LEWIS MILLS; GEN O'HALLORAN; KATIE SATHERLEY; WILL AND CATE SLATER; ASSOCIATE PROFESSOR ROSEMARY TOBIN; AND RICHARD WELLS AGAINST HERALD ON SUNDAY

Complaints that were lodged with the Press Council by Dr John Angus, Children's Commissioner; Margot Donaldson; Lewis Mills; Gen O'Halloran; Katie Satherley; Will and Cate Slater; Associate Professor Rosemary Tobin; and Richard Wells regarding a breach of Principles 2 (Privacy) and 3 (Children and Young People), against the *Herald on Sunday,* with regard to publication of a child's photograph have been upheld.

Further complaints by Lewis Mills with regard to publication of the child's name, and by Will and Cate Slater with regard to publication of details relating to a woman accompanying the child, are not upheld.

Background

On September 26, 2010 The *Herald on Sunday*, ran a story on aspects of the Carmen Thomas case in which Ms Thomas, mother of a 5-year-old child, had died and her body had been dismembered, allegedly by her ex-partner Brad Callaghan, then awaiting trial.

On the front page of the newspaper, a photo of Callaghan's pregnant fiancée Tanith Butler appeared, with photos of Callaghan and Ms Thomas. Readers were referred to a substantial article on the case that ran on page 7 of this edition.

The major photograph on page 7 was a shot of the child walking to school with Ms Butler. He was wearing school uniform and his face was not pixelated. Both parties were identified by name. Ms Butler was wearing sunglasses and her hair partly obscured her face. The child was clearly identifiable. Ms Butler's employer (she was then on maternity leave) was also identified in the article, which examined aspects of the case.

The Complaints

Complaints were lodged with the *Herald on Sunday* between 26 September and 6 October by all respondents named above. Complainants O'Halloran and Wells also notified the Children's Commissioner of their concerns (his complaint was lodged on 27 September). All complainants

alleged that the paper had breached Principles 2 and 3 of the Press Council with regard to the publication of the child's photograph, and in school uniform which would enable identification of his school. In addition, Will and Cate Slater stated that publication of Ms Butler's photograph and employment details also breached Principle 2; Mr Mills stated that publication of the child's name breached Principles 2 and 3.

The Editor's Response

Editor Bryce Johns replied to each complainant promptly, along substantially the same lines. These were that 1) the paper didn't set out to upset readers and he was 'disappointed you have taken offence'; 2) that the decision to publish the picture had been a difficult one and hotly debated, but in the end that public interest was deemed to justify the decision; 3) that the availability of a photograph of the child and his mother provided by the Police had 'swayed' the paper's decision; 4) that a recent story out of Australia in which parents had both been killed but their newborn baby's photograph had been published had not generated 'a great outcry'; 5) that it was a tough decision, he was happy to consider publication of letters from complainants or key parts of those in the paper if requested; 6) that complainants unhappy with his stance could complain to the N.Z. Press Council; 7) that 'based on the reaction this week I can assure you we don't intend to repeat this in the coming weeks'; 8) that he was 'comfortable that the public interest overrode the privacy and concerns about the effect on [the child] – at that time' (last comment to complainant Tobin); and (9) that the photograph had been taken in a public place..

In response to two of the complainants, Mr Johns stated while he stood by his decision, 'I don't mind a reality check' if the case was referred to the Press Council.

Further Comment from the Complainants

None of the complainants was satisfied with the editor's response and all chose to make a formal complaint to the Press Council. Several of the complainants, in their formal complaint, referred to the irrelevance of the editor's citation of the Australian case, with one saying the situations were not at all comparable – "That tragic case bears little resemblance to the need for privacy for a child at the centre of a murder (sic) case". Another said the editor was unlikely to be in a position where he would know what complaints might have been generated by the Australian case.

The Children's Commissioner claimed that the *Herald on Sunday* story 'would not have lost any impact had they also [as did other media] decided to blur or pixalate this child's image'.

Several complainants referred to the dissimilarity of the photo released by police, of the child with his mother. In that photograph, the child was younger; his face was turned away from the camera and he was not in clothing that would identify his school.

Discussion

The newspaper's decision to publish the child's photograph is the main issue in these complaints. His name had already been published and was widely known, so this fact subverts the complaint that the child's name should not have been published.

The publication of Ms Butler's employer, likewise, was not deemed to be in breach of Principle 2, so this aspect of the Slaters' complaint is not upheld. The Press Council notes that it has received no complaint from Ms Butler.

However, from the general tenor of the complaints and from consideration of Principles 2 and 3, it is clear that, as one complainant put it, "By publishing his photo the *Herald on Sunday* may have compromised his ability to get on with his life, free from the glare of the public". And as two other complainants mentioned, the story being of interest to the public does not necessarily mean that publication of details such as a photo of the child who is now deprived of both parents, is in the public interest.

Principle 3 states that 'In cases involving children and young people editors must demonstrate an exceptional public interest to override the interests of the child or young person'. The Council has not upheld previous complaints about the publication of the photograph of a child involved in a crime of violence (Cases 2089 and 2090). The child in that case had been wounded in the arm by a gunman who had also fatally shot the boy's father. The photograph showed the boy being tended by ambulance officers as he walked into the hospital. A majority of Press Council members voted not to uphold the complaint as they believed that the photograph's 'effect was not to shock but to make the viewer feel sorrow and concern'. In that case the boy was clearly part of the story and the published photo had currency as at the time of publication the gunman was still on the run.

In this case the Press Council believes that there was no public interest in publishing this photograph of the boy, let alone the exceptional public interest required by Principle 3. The photograph had no relevancy to the unfolding case, it was simply a small boy on his way to school, and the publication of it was gratuitous.

The Press Council accepts the editor's genuine desire to place this decision, which he freely admitted was a difficult one, before the Council. This kind of scrutiny of the Press by an independent body is one way that editors can ensure that their decisions are sound.

The publication has breached Principles 2 and 3 and the complaints are upheld

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

CASE NO: 2158 – PAUL FLEMING AGAINST THE PRESS

Paul Fleming was upset about the way a reporter from *The Press* conducted a phone interview with his wife. He said his wife, who is French, spoke English but misunderstood the reporter's intent. Mr Fleming said

the reporter failed to ensure his wife had 100 per cent understanding of what the interview would be used for. He was also concerned about the article's potential to create problems for their small business.

The complaint was not upheld.

Background

Mr Fleming and his wife, Martine Carpentier, operate a Christchurch shop selling tobacco products. A *Press* reporter phoned because of planned changes to New Zealand's tobacco laws. The call was prompted by the release of a report by Parliament's Maori affairs select committee.

The next day (November 4, 2010) a report appeared in *The Press* giving his wife's name and that of their shop. The one-paragraph reference to Ms Carpentier and the shop appeared at the end of a more substantive report about the select committee's findings.

Complainant's View

Mr Fleming said his wife told the reporter English was her second language, yet the reporter did not make extra effort to ensure she "understood 100 per cent" or ask for her consent that her details be used.

Mr Fleming said that, during the call, his wife told the reporter three times that he (Mr Fleming) was the principal partner and that the reporter should speak to him. He said this should have happened as English is natural for him, whereas it was a second language for his wife. However, the reporter did not speak to him

"If Martine had been made fully aware that this was going to happen then she would never have allowed it, or only on condition of anonymity." He and his wife considered this "a gross breach of professionalism".

The story had no consideration for his wife's right to privacy and/or giving consent to having her name and details published without her express consent. Because of the anti-tobacco laws neither he nor his wife would have been willing to put their names or that of their shop to such a newspaper report.

"'Assumed' consent may, dubiously, be OK with native English speakers but definitely is totally inadequate with non-native speakers."

He said the newspaper report could create large problems for their small business because of stringent anti-tobacco laws, especially as far as advertising was concerned.

The Newspaper's Response

Editor Andrew Holden said it was a routine phone interview. The reporter called, gave her name and that of *The Press*, and explained the purpose of the call. She asked Martine Carpentier if she were the owner and was told that she and her husband ran the shop. The reporter explained the select committee's proposal, which included making tobacco illegal by 2025, and asked what Ms Carpentier thought of the idea. The interview lasted a few minutes, Ms Carpentier spoke easily in English, and the reporter felt there was no language barrier.

Mr Holden said Ms Carpentier asked if the reporter wanted to speak to her husband and said that he would be back the next day. "The reporter replied that, because the report had been released that day, the newspaper would be running the story the next day."

The reporter then asked for the spelling of her name. (In previous e-mail correspondence with Mr Fleming, the newspaper said the reporter told her the story could not wait another day, and that Ms Carpentier had then spelt out her name.)

Mr Holden said the reporter's recollection was that Ms Carpentier never said the reporter had to speak to her husband, or that she did not want to be quoted, "or in any way indicated that she did not understand she was speaking to a journalist".

He did not believe *The Press* had acted unprofessionally. The resultant published material was an accurate and fair account of the conversation. Ms Carpentier's privacy and confidentiality were not breached and no discrimination was involved. The reporter had extensive experience of dealing with people for whom English was a second language.

Complainant's Reply

Mr Fleming said the editor had avoided the main issue of whether the reporter had clearly and openly asked for consent for a quote to be used. Assent had been assumed, which was unprofessional and unethical.

Discussion and Decision

Mr Fleming says *The Press* should have taken greater pains to explain the purpose of the interview because English is not his wife's usual language. However, *The Press* says it was a routine interview, accurately reported, with the reporter correctly introducing herself and the newspaper, and explaining why comment was being sought. The reporter did not feel any language barrier was involved, as Ms Carpentier spoke easily in English. The reporter is also accustomed to talking to people for whom English is a second language (by no means common in New Zealand). No subterfuge was involved.

Mr Fleming says consent to the interview was "assumed" and is upset by that. However, Ms Carpentier spelt her name to the reporter, after being told the reporter needed comments then and could not wait till Mr Fleming would be available. There is no suggestion of any comments being made "off the record" or not for publication as would have been expected if Ms Carpentier did not want to be quoted.

The published reference to Ms Carpentier and the shop was also small and not the main thrust of the newspaper's report.

The Press appears to have carried out its duties in a responsible manner.

The complaint is not upheld.

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

CASE NO:2159 – MICHAEL GIBSON AGAINST THE DOMINION POST

Introduction

The Press Council has not upheld a complaint by Michael Gibson against *The Dominion Post* about the use of lower case letters to identify Mr Gibson's affiliation as a candidate for the Wellington Regional Council.

The Complaint

Mr Gibson stood as a REFORM candidate for the Wellington Regional Council, Wellington Constituency during the local body elections in October.

Mr Gibson's candidacy was identified on the ballot paper as REFORM.

The Dominion Post's pre-election coverage included, on September 25, a full page article outlining some of the issues involved with the election of members to the Greater Wellington Council including a full list of candidates.

In this list Mr Gibson was referred to as "Michael Gibson – Reform".

Mr Gibson complained to the newspaper that he had been incorrectly referred to as having "Reform" affiliations and requested the newspaper publish a correction.

Mr Gibson subsequently complained to the Press Council under Principle One (Accuracy) claiming the newspaper had made an error. He sought an urgent adjudication because of it being an election matter. However, due to the lateness of the complaint (received October 1) it was of no value to have it fast-tracked.

Responses

The newspaper replied that it was their style to use lower case for the names of political parties or affiliations and there would be no correction.

The newspaper reserved its right to apply its own style and stated there would be no exception, in this instance, to the use of lower case when referring to affiliation. The newspaper explained the regular exception to this style for the ACT party was required to avoid potential reader confusion between the ACT party and acts of parliament.

Mr Gibson argued that an exception had been made for REFORM by the Returning Officer who accepted that it complied with the two requirements for an exception: namely that it refers to an organisation or affiliation acronym and that such an organisation had supplied suitable credentials to the returning officer regarding this.

Mr Gibson asked the newspaper whether it would be prepared to use capital letters for acronyms where they had been accepted by a returning officer.

The newspaper, in response, reiterated that it reserved the right to apply its own style guidelines. It cited case Number 2102 (W Garry Whincop v *New Zealand Herald* December 2009) in which the Press Council declined to uphold a complaint regarding the use of an apostrophe in the name of a province of New Zealand.

Decision

The Press Council upholds the right of a newspaper to apply its own style guide notwithstanding the decision of an official such as the returning officer for a local government election.

Accordingly the complaint is not upheld.

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

CASE NO: 2160 – ROBIN GRIEVE AGAINST NEW ZEALAND HERALD

Introduction

Robin Grieve's complaint related to a column published in the *New Zealand Herald* on Saturday October 9, 2010 which he believed was inaccurate, unfair and lacked balance.

The complaint was not upheld.

Background

The article by Paul Thomas, a *Weekend Herald* columnist, related to Paul Henry and his use of humor in the context of Mr Henry's television show.

The article cited several examples of comments made by Mr Henry that had caused offence within the general public and TVNZ's overall support for Mr Henry.

Complaint

Mr Grieve believed that the article contained misleading and incorrect information and that Mr Henry's character was unfairly portrayed.

Specifically, Mr Grieve said that "Paul Thomas states in his article that Paul Henry called a rather brave Scottish woman [Susan Boyle] a retard".

He went on to state that Mr Henry used the word retarded not retard and that the word retarded is an adjective which is the correct use of the word when describing someone who is slow or backward.

Mr Grieve also stated that "calling someone a retard is an improper use of a verb and as such is used by people in a derogatory and insulting way".

Mr Grieve contacted the *New Zealand Herald* requesting that "they redress this misrepresentation" but his request was declined though "the *New Zealand Herald* admitted that Paul Henry had not used the term retard".

Mr Grieve said that "Anyone writing in a newspaper should know the difference in usage of the term retard and retarded. They should know that retard is an improper and insulting term. They should also know that while retarded is not the preferred description for someone who has intellectual challenges it has no where near the same level of offence".

Response from the New Zealand Herald

In reply the deputy editor stated that "Mr Grieve seeks to make a distinction between the word "retard" and "retarded" arguing that the former is offensive but the

latter is not". He provided dictionary definitions of both words to show that both are derogatory and offensive.

He went on to state that there is no material difference between the words and that "retarded' is arguably the more derogatory and offensive. He stated that Mr Henry was "not making an objective statement regarding the singer, he was laughing at her".

The deputy editor said that he believed that Mr Grieve seemed to be saying that Mr Henry was not being offensive when using the word retarded and was therefore treated unfairly by the columnist.

The deputy editor provided information relating to the Human Rights Commission (HRC) and the Broadcasting Standards Authority (BSA) who had upheld complaints relating to Mr Henry's comments regarding the incident.

He quoted from the BSA decision that "In para 60 it said "the message that viewers would have received was that people with intellectual disabilities can be identified and characterized by certain physical features, and are appropriate subjects for ridicule".

Discussion and Conclusion

Mr Grieve made the complaint that the article in question contained incorrect facts and unfairly portrayed Mr Henry.

The article in question does use the word "retard" rather than "retarded" and the *New Zealand Herald* provides dictionary definitions supporting the premise that both words are offensive and have the same overall meaning.

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

While the columnist did use the word "retard" and Mr Henry used the word "retarded", regardless of which word is used, both are derogatory and offensive when used to describe another person in the manner used by Mr Henry.

Both words have the same connotation and meaning.

The complaint is not upheld.

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

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

CASE NO: 2161 – HON MURRAY McCULLY AGAINST HERALD ON SUNDAY

Hon Murray McCully, Minister for Sport and Recreation, accused the *Herald on Sunday* of failing to comply with Principles 1 (Accuracy, Fairness and Balance) and 11 (Corrections) of the Press Council Statement of Principles in reporting matters involving Canoe Racing NZ (CRNZ) and two of its senior coaches Ian Ferguson and Paul MacDonald.

The complaint was upheld.

Background

In its October 3, 2010 edition the *Herald on Sunday* reported "Canoeing Crisis Sparcs Row". This alleged crisis involved a reported breakdown in the relationship between the prominent former competitive canoeists Ian Ferguson and Paul McDonald on the one hand and CRNZ (the body established to administer competitive canoeing in this country) on the other. Messrs Ferguson and McDonald claimed they were the subject of a CRNZ campaign to "oust them from their coaching positions".

In so reporting, the *Herald on Sunday* maintained Mr McCully, as Minister for Sport and Recreation, was behind this campaign.

In a letter to the newspaper dated October 5, 2010 Mr McCully denied all the allegations leveled against him.

The Complaint

Mr McCully claimed that the *Herald on Sunday* piece failed to achieve the required standards of balance, impartiality and fairness required by Principle 1. Mr McCully referred particularly to: -

- the article headline "Minister Singles out Ferg";
- the statement that Mr Ferguson was "in Mr McCully's sights";
- the statement that "Murray McCully felt it was unconscionable" that Mr Ferguson was coaching his [Mr Ferguson's] son;
- the statement that "Mr McCully would cut the team's funding" if objection was taken to Ben Fuohy being included in the New Zealand canoeing team; and
- the statement that Mr McCully was trying to "cull" the old guard (at CRNZ).

Mr McCully said none of these statements was true. Mr McCully said the above statements were "expressed in a manner that was calculated to impugn the professionalism and integrity with which I discharge my ministerial duties". Mr McCully further complained that none of the statements and underlying propositions were put to him to for comment before the story was published.

Mr McCully, in response to the *Herald on Sunday* saying that Mr McCully had not engaged with it after the October 3 article, said he was not confident the newspaper would accurately take the correcting action he believed was required.

The Response

The *Herald on Sunday* responded, first by denying the claims in the story were calculated to cause damage to Mr McCully's reputation.

The newspaper, secondly, said the story was a significant one requiring urgent publication. The newspaper regarded the piece as a "major exclusive story". The newspaper said the article was not finished until late on October 2 (the day before publication). The reporter's conversation with Mr Ferguson, when Mr McCully's role was discussed, occurred on the Saturday evening precluding any approach to Mr McCully.

Thirdly, the newspaper had included in the story a denial by Paula Kearns that Mr McCully had made the statements attributed to him (Ms Kearns being the CRNZ chief executive). The *Herald on Sunday* maintained the Kearns' statement provided balance in the absence of any comment by the Minister.

Fourthly, the newspaper claimed Mr McCully had refused to provide his side of the story. The newspaper said the issue has been the subject of "10 stories and columns" over succeeding weeks. Mr McCully's position could have been explained in any of them had he chosen to engage.

The Decision

The Council has carefully considered the *Herald on Sunday* article. It agrees with Mr McCully in that the article is not fair and balanced.

The sections of the article directed at Mr McCully are based upon supposition and hearsay statements made by Mr Ferguson and allegedly Ms Kearns. The lead headline "Minister Singles out Ferg" clearly suggests this to be fact when it was little more than an unsubstantiated claim by Mr Ferguson.

The Council takes the view that no steps were taken to corroborate Mr Ferguson's allegations about Mr McCully via any third party apart from an enquiry about what Ms Kearns might have said.

On any objective view the allegations made against Mr McCully were serious given Mr McCully's position. They were sufficiently serious to require proper investigation before publication.

The Council finds the article as being unbalanced and unfair toward Mr McCully. Ms Kearns' denials, appearing as they did three quarters of the way through the article, do not in the Council's view redress matters.

The Council takes the view that neither the newspaper's view that publication was urgent, nor that the reporter involved had editorial responsibilities at the time, are factors justifying a departure from Principle 1.

In so far as the *Herald on Sunday's* reliance on Mr McCully's failing to engage is concerned, the Council notes Mr McCully's October 5 letter to the newspaper. The Council does not consider Mr McCully was required make any further statements beyond his bare denial. The Council does not consider the newspaper's failure to report Mr McCully's denials can be excused because Mr McCully refused to further engage.

The Council makes no determination as to Mr McCully's claim that the article was calculated to impugn his professionalism and integrity.

Subject to the immediately preceding paragraph, the complaint regarding breach of Principle 1 is upheld. The complaint as to breach of principle 11 is not upheld (Mr McCully in his communication with the paper limiting his comment to a denial of the allegations made against him).

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

Barry Paterson took no part in the consideration of this complaint.

CASE NO: 2162 – DAL MINOGUE AGAINST THE HAURAKI HERALD

Dal Minogue's complaint concerned the public distribution of an email he sent to the *Hauraki Herald* editor and Cc'd to a freelance contributor who wrote for the newspaper. Mr Minogue's email was in response to a story by the contributor, published in the *Hauraki Herald*, and said it misreported him during his bid for election in the recent local body elections. He said the story, and release of his subsequent email to the *Hauraki Herald*, detrimentally affected him in his campaign for re-election.

His Press Council complaint was that he emailed the editor and Cc'd the reporter, and the latter then publicly disseminated the email. Mr Minogue contended his email was confidential and that the reporter – who was not the main addressee – should not have breached that confidentiality.

The complaint was not upheld.

Background

A story concerning Mr Minogue was written by a freelance contributor and published on June 25, 2010. Mr Minogue objected to its contents, in an email sent to *Hauraki Herald* editor Clint Fletcher, on June 27. The email referred to a letter to the editor Mr Minogue had also sent, correcting what he said was "a whole series of errors" in the *Hauraki Herald* June 25 report. The Press Council has not seen this letter to the editor, and its contents are not the subject of this complaint. Nor is the original story.

The email was Cc'd to the reporter. It was not marked confidential by Mr Minogue. As the correspondent is an independent contractor to the *Hauraki Herald*, the Cc message was sent to her home email address.

The email was supplied to the Press Council by the *Hauraki Herald*. It was not sent to the Press Council by Mr Minogue. The Press Council must accept the newspaper's contention that the email was not protected by any attached confidentiality message from Mr Minogue. In any case, Mr Minogue has not referred to such protection of his email to the newspaper.

Complainant's View

Mr Minogue said the reporter had publicly disseminated the email during the local body election campaign, detrimentally affecting him. His complaint to the newspaper said "as my email was addressed to you as the editor of the *Hauraki Herald*, it must be regarded as official *Hauraki Herald* correspondence, subject to confidentiality".

He objected to the editor's contention that the freelance contributor was entitled to distribute it as she saw fit and that the email was not subject to Fairfax confidentiality obligations. Mr Minogue noted the standard clause at the bottom of Fairfax emails which protected the contents of Fairfax emails and said they were not to be given to anyone other than the intended recipient.

He also said as the complaint email was addressed to the editor, it should be regarded as official *Hauraki Herald* correspondence, and subject to confidentiality.

His November 1 email to the editor concluded: "Please regard this email as not for public use and as confidential to the management of the *Hauraki Herald*."

In correspondence with the editor, Mr Minogue said he had spent more than $5000 with the newspaper in his election campaign "which, as it turned out, was being effectively undermined from within" because of the reporter's dissemination of his email complaint.

Hauraki Herald View

Editor Clint Fletcher told Mr Minogue the original email was sent to himself and Cc'd to the reporter, who was entitled to forward it or print and distribute it to anyone she liked. He did not give her permission to do so and did not believe it was his right or responsibility to do so. The reporter was one of the original email's recipients. Her email address was also a private one, not a Fairfax one, which made any talk about Fairfax confidentiality clauses moot.

The amount Mr Minogue spent on advertising had absolutely no bearing on editorial decisions.

In later correspondence with the Press Council, Mr Fletcher said confidentiality clauses would have had a place in the debate "had Mr Minogue included his own confidentiality clause with his June 27 email."

He also noted as "puzzling" Mr Minogue's citing of Fairfax's confidentiality clause on its emails and said the clause in question was attached to emails *from* Fairfax, not emails sent *to* it. "Therefore it does not apply in this case."

Complainant's Reply

Mr Minogue said in a November 15 reply to the Press Council that it was difficult to believe Mr Fletcher's claim that such complaints were not subject to the standard confidentiality requirements of the media industry. If the editor's response became common practice, he asked who would be brave enough to complain about anything. He also said a reporter's "leaking" of internal correspondence did not comply with professional standards.

Discussion and Decision

Mr Minogue's contention was undermined by his failure to insert his own confidentiality clause, in his original email complaint to the editor (Cc'd to the freelance contributor). Fairfax protects its emails it sends out with such a clause. Emails sent in to Fairfax are not protected by that clause.

Mr Minogue is aggrieved by (a) the original story (which the Press Council has not seen) and (b) public dissemination of his email complaint to the editor by the freelance correspondent. His complaint to the Press Council, however, only concerns the dissemination of his email. However, the email was sent to the editor, with the freelance correspondent as a recipient, and was unprotected.

The email was not protected by confidentiality; the freelance correspondent was an addressee. Therefore the complaint is not upheld.

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

CASE NO: 2163 – DAL MINOGUE AGAINST THE INFORMER

Dal Minogue of Whitianga complained that *The Informer*, a Whitianga weekly, had deliberately and unfairly damaged his bid for re-election to the Thames-Coromandel District Council from the Mercury Bay ward. The complaint was not upheld.

On September 21, after voting papers had been distributed, *The Informer* reported that Mr Minogue had left out the last two paragraphs of an email from the council's chief executive when Mr Minogue distributed copies of the email at an election meeting in Whitianga nine days earlier.

Under the headline, "Cr Minogue's handout: what you didn't get", *The Informer* published the entire email and invited readers to decide whether the edited version was appropriate.

Mr Minogue complained that the report was full of innuendo, unsubstantiated assumptions and incorrect information that placed him in a bad light. It had wrongly accused him of underhand behaviour and led readers to believe he was dishonest. He said the article did him serious electoral damage and he was voted out of office.

Facts

As a member of the District Council Mr Minogue had asked its chief executive whether there was any truth in an assertion made in an earlier issue of *The Informer* that ratepayers faced a potential liability in excess of $20 million under a deed for a development relating to Whitianga Waterways if a public sports facility was established there.

The chief executive replied to Mr Minogue by email, saying the assertion showed "a lack of understanding of Council's Development Contributions Policy, the old Reserve Contribution Deed (Deed) and the law."

The email ran to five paragraphs and Mr Minogue forwarded it in full to the editor of *The Informer*, Gerry Church.

Three weeks later *The Informer* published it in response to Mr Minogue's edited version.

Its report, written by Mr Church, stated that when Mr Minogue was asked why he had omitted the final two paragraphs he maintained they didn't make any difference and said, "It was to make everything fit on one page..."

Mr Church reported that, "The handout has 8 linear centimetres of blank space, more than enough to include the excluded paragraphs." The final missing paragraph, he wrote, "would appear to be quite relevant to the ratepayer liability issue, especially the first sentence." (That sentence read: "Having noted the above it is fair to say that left unmanaged Council could have accumulated a reasonably significant liability.")

The Complaint

Mr Minogue complained to the editor that *The Informer*'s readers would not have been able to decide the issue

for themselves because the information provided was "peppered with editor's comments numbering seven in all, which were full of innuendo, unsubstantiated assumptions and snide remarks....."

As a result of the report, he said, local radio stations began running news items and comment claiming that he had "doctored", "altered" and "falsified" the chief executive's email. Mr Church had been interviewed on radio to give credence to those claims.

The Editor's Response

Mr Church replied that he had been fair to all candidates. "If any other candidate had done what you did I would have written about them as well," he told the complainant.

He said he had reported the facts given to him by the complainant, by the developer and the council chief executive.

He was "almost flattered" that Mr Minogue blamed his election loss on one article in *The Informer* but he cited several other issues that he believed explained voters' rejection of almost the entire previous council.

The Decision

Newspapers ought to be scrupulously fair to candidates at an election, especially when voting has begun in a postal ballot. But that does not preclude fair and accurate reports that may be damaging to a particular candidate.

We are unable to say whether the report may have been damaging to Mr Minogue's campaign, though we note that virtually the entire council was not re-elected. The email from the District Council chief executive was in sympathy with his view of the issue and it is a matter of opinion whether the final two paragraphs altered its thrust.

The chief executive believed a significant liability to ratepayers would not arise so long as the Whitianga Waterways deed was subject to "proactive and assertive management on the part of the council".

The issue pivoted on whether readers understood that phrase and believed it. Mr Church did not draw confidence from it and left his readers in no doubt of his view.

But he had given them an email exchange that they could read for themselves in full.

His report included Mr Minogue's explanation for editing the hand-out. It also mentioned that Mr Minogue's extract ended with an ellipsis, a fact that mitigates any implication of a dishonest intent.

The Informer's story was aggressive and probably confusing for readers not already familiar with the issue but the Press Council can find no breaches of accuracy or fairness.

The complaint is not upheld.

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

CASE NO: 2164 – ADA MCCALLUM AGAINST THE INFORMER

Ada McCallum of Whitianga complained about *The Informer*'s treatment of Dal Minogue, a member of the Thames-Coromandel District Council who stood unsuccessfully for the mayoralty and for re-election to his council seat this year. The complaint was not upheld.

The Complaint

The complainant cited a number of published items, the first of which was the subject of a complaint also from Mr Minogue, which the Press Council has not upheld.

It concerned *The Informer*'s September 21 report that the candidate had omitted two paragraphs from an email from the District Council's chief executive when he distributed copies of it at an election meeting in Whitianga. (See Case No 2163)

Ada McCallum complained secondly that *The Informer*'s issue of October 5, four days before postal voting closed, published a letter containing "a totally false suggestion that Mr Minogue had released information from a 'public excluded' session of the council several years ago".

Thirdly, she complained that the same issue contained a retraction of allegations made against a former district council member who was now standing for the regional council, Environment Waikato. "This late retraction was printed just before the voting period ended, during which time those earlier allegations had remained unanswered," she said.

Fourthly, she complained that *The Informer* did not give all candidates equal opportunity. Mr Minogue was the only candidate in the Mercury Bay ward not given a feature article.

Lastly, she complained that one of those articles had carried an editor's note that the candidate was supported by the Whangamata Ratepayers' Association when that decision had not been made by a full meeting of the association.

The second, fourth and last of those items were not included in her letter of complaint to the editor.

The Editor's Response

In a brief response to her, the editor stood by his September 21 story.

He said he would not be commenting to her or the Press Council on her second complaint because the statement published on October 5 was part of a confidential agreement.

He added a gratuitous reference to an incident between neighbours that the complainant had "come in to our office ranting about".

To the Press Council, the editor also commented on the points that had not been raised in the complainant's letter to him.

He said he could personally vouch for the accuracy of the accusation made in the letter published on October 5.

He omitted Mr Minogue from features on candidates, he said, because it was focused on new candidates to help

them raise their profile. He said that was explained to Mr Minogue who made no complaint.

He added that the Whangamata Ratepayers' Association endorsement had been announced by its president.

The Decision

The Press Council has considered each of the items of complaint in turn.

As previously decided on Dal Minogue's complaint, *The Informer*'s story on his edited hand-out was factual and included his explanation for excluding two paragraphs.

The letter alleging an improper release of council information, included a response from Mr Minogue, and he has not complained about it. The Press Council is not in the position to adjudicate on whether there was an improper release of information.

The Press Council accepts the editor's reason for making no response to the third item of Ms McCallum's complaint, the lateness of a retraction concerning a previous council member. Newspapers do not need to answer for settlements negotiated with complainants in confidence.

Mr Minogue's exclusion from *The Informer*'s profiles of new candidates was a result of a policy the paper applied generally and brought no complaint from the candidate.

The paper was entitled to mention the Whangamata Ratepayers Association's endorsement on the basis of its president's announcement.

The complaints are not upheld.

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

CASE NO:2165 – NEW ZEALAND TEACHERS COUNCIL AGAINST SUNDAY STAR-TIMES

The New Zealand Teachers Council (the Teachers Council) complained about an article in the *Sunday Star-Times* on August 29, 2010 and the placement of a letter from the director of the Teachers Council replying to that article. The complaints are not upheld.

There were three complaints:

i. A lack of fairness and balance in reporting on the process by which the Ombudsman resolved a dispute under the Official Information Act (the Act);

ii. Significant factual inaccuracies in the reporting on a case appealed to the District Court;

iii. Lack of fairness in the positioning and presentation of the Teachers Council's response to the article of August 29, 2010.

The Articles

The article of August 29 was a front page article which also referred to a fuller article on page 2. The front page article was headed:

"Criminals in our classrooms"

It contained a box column headed:

"The story the Teachers Council did not want told"

The boxed article stated that the search for the information to expose the criminals teaching children "ultimately needed the intervention of the Ombudsman"; the Teachers Council declined a request for information believing it was not in the public interest; requests were made under the Act seeking a range of information; the Teachers Council refused "primarily on the grounds it 'would require substantial collation and research'. It also said it wanted $3,277.12 to cover costs"; the Ombudsman reduced the charge to $760 which was paid; and the process of obtaining the information was just a day short of a year and had involved the Ombudsman consulting the Privacy Commissioner and Teachers Council officials plus reviewing various Teachers Council submissions.

On September 5 the newspaper published a letter from the director of the Teachers Council which stated that the article had misrepresented the way the Teachers Council responded to the request under the Act. It set out a chronology; noted that the Teachers Council had provided a breakdown of the costs totalling $3,277.12; that the newspaper had agreed to omit two fields from its request; the Ombudsman when reducing the cost to $760, did not have to consider these two fields; and that the Teachers Council did not control the timing for releasing information as it was reliant upon the Ombudsman's report. The letter also referred to an error in the report which is the substance of the allegation by the Teachers Council that there were significant factual inaccuracies in the report. This letter appeared alongside a follow-up article headed "Teachers point finger at criminal students".

In further correspondence the Teachers Council refers to a clarification published by the *Sunday Star-Times* on September 19, 2010. This was not part of the original complaint to the *Sunday Star-Times* nor was it part of the original complaint to the Press Council but it will be referred to in this decision.

The Complaint

The first complaint alleges that the original article failed to correctly report the way the Teachers Council responded to the Act. It is alleged that the reporting was misleading and inaccurate and designed to cast the Teachers Council in as bad a light as possible. It neglected to say that the initial estimate of costs covered a much broader request than was finally agreed as a result of the *Sunday Star-Times* voluntarily making a reduction in the extent of its requests and that "the reduction in cost to $760 reflected the reduction in information sought". The Teachers Council submitted that these omissions were intended to give the plain implication that the Teachers Council was seeking to overcharge the newspaper, presumably because it was a story the Teachers Council "did not want told". The Teachers Council also made the point that it was in no way controlling the timing of the release of information. It was reliant upon the Ombudsman's final report.

The Teachers Council's "significant factual inaccuracies" relate to the way in which a District Court

decision was reported in the page 2 article. It referred to a case where "a Judge criticised the Council for allowing a tutor who assaulted a student to remain teaching, saying that decision was wrong when hearing an appeal by the student's mother...". It referred to the Council's decision which said the case was not at the serious end of the scale and that it would be a loss to the profession if the man was banned. The inaccuracies were that the appeal was brought by the Complaints Assessment Committee of the Teachers Council and not by the student's mother; the decision was that of the New Zealand Teachers' Disciplinary Tribunal and not the Teachers Council; and that the Tribunal and the Teachers Council are not interchangeable. Thus the statements attributable to the Teachers Council were statements of the Tribunal.

The page 2 article stated that about 60% of the self-reported convictions are for drink driving. This was inaccurate because 65% of such convictions are for drink driving.

The complaint relating to the publishing of the letter from the director of the Teachers Council was that it was not given sufficient prominence in comparison to the front page attention given to the original article.

The Newspaper's Response

The *Sunday Star-Times* noted that the Teachers Council had not challenged the substance of the story. It did take approximately a year to have the information it sought released and the laborious process used to obtain the information would not have been necessary if the Teachers Council had engaged with it like a responsible public body; if it had so engaged, the information would have been released a lot earlier and the circumstances of its release entitled the *Sunday Star-Times* to say it was a story that the Teachers Council did not want to be told; and it did not accept that the gathering of the information was as costly as claimed by the Teachers Council when digital age information is easily gathered in efficient organisations.

Discussion

Neither party originally provided the correspondence or the decisions of the Ombudsman. These were relevant to the complaint and should have been provided.

The Ombudsman, either in his draft decision or his final decision

- Noted that the Teachers Council was now prepared to provide most of the information sought;
- Noted the decision to refuse to provide the information in the form preferred was made under the provisions of the Act designed to protect the privacy of natural persons;
- Together with the Privacy Commissioner, determined there was no privacy interest in the information requested and that in any event any privacy interest would likely have been outweighed by the public interest considerations
- Noted that the information was to be provided in the way preferred by the person requesting it, unless to do so would prejudice the interests of the persons referred to and there is no countervailing public interest;
- Expressed his provisional view that the Teachers Council was not entitled to refuse to supply the information in the form preferred by the applicant;
- Did not accept that the Teachers Council's time estimate to provide the information was reasonable;
- Noted that the Teachers Council had agreed to provide the information for no more than $760; previously noting it should have considered whether, in the public interest, it should have been imposing the charges.
- Did not ultimately rule on the Teachers Council's right to refuse to provide the information as by then the Teachers Council had agreed to provide it.

The Ombudsman process did take a very lengthy time and was a major factor in the delay in getting the information. It is the view of the Press Council that the Teachers Council should have engaged in meaningful discussions rather than have required the matter to be determined by the Ombudsman.

The Teachers Council may have felt that it was entitled to take the view it did in response to the request from the *Sunday Star-Times* but having done so, is not immune from the comments which the newspaper made. The article did state that the Teacher's Council's refusal was primarily on the grounds of cost. The Press Council accepts that there could have been a wrong inference drawn from the manner in which the Ombudsman's complaint was reported. However, the prompt publication of the director's letter on September 5 rectified the position. When it received a formal complaint, after publication of that letter, it published an appropriate clarification on September 19. In the circumstances the Press Council does not uphold the first complaint.

Neither is the complaint on the reporting the District Court appeal upheld. There were errors in the initial article but these were adequately corrected by the publication of the director's letter and the subsequent clarification.

Finally, the positioning and presentation of that letter was in the circumstances adequate. The letter did appear alongside a follow-up article which was supportive of teachers. However, the more important point is that the letter was published on the weekend of the Christchurch earthquake. It is understandable that other matters took priority in the circumstances. It appeared with other letters both for and against in a section headed "Feedback on teaching story". In these circumstances the positioning and presentation was adequate.

It is noted that some members of the Press Council do have some reservations relating to the *Sunday Star-Times* conduct. First, the initial request for information was expecting a lot of the Teachers Council. It was very broad. Secondly, the September 19 clarification could have been more explicit. Appearing three weeks after the original article, it could have provided more detail to identify the errors in that article. On balance those members determined that their reservations were not sufficient to uphold the complaint.

The grounds the Teachers Council used as reason for not providing the information in the form requested - privacy, lack of public interest and cost (both in time required and difficulty in accessing the information), were all found at some point to be of questionable validity by the Ombudsman's Office.

The Press Council would urge organisations to adhere to the spirit of the Official Information Act when information is requested.

Decision

For the above reasons the complaints are not upheld.

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

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

CASE NO: 2166 – GENEVIEVE O'HALLORAN AGAINST THE NEW ZEALAND HERALD

Genevieve O'Halloran complained to the Press Council that a photograph of the slain Auckland woman, Carmen Thomas, with her baby son published in the *New Zealand Herald* on October 11, 2010, breached the Council's principles on two grounds – privacy and dealing with children and young people.

The complaint is not upheld.

Background

Following a major search after Ms Thomas, who worked as an escort, was reported missing, the *New Zealand Herald* reported her remains were found set in concrete in plastic containers buried in the Waitakere Ranges near Auckland.

The nature of the disappearance and subsequent discovery resulted in much media coverage particularly after the father of the boy was charged with her murder.

On October 11, the *Herald* reported arrangements for Ms Thomas' funeral and, among other things, mentioned how the son, now five years old, was in the care of relatives.

The *Herald* published with the story a picture of Ms Thomas cuddling her son which it said had been posted on the social media site, Facebook. The picture bore a caption with the words: "Photo/supplied."

The Complaint

Ms O'Halloran complained to the *Herald* that the publication of the photograph was not justified by any significant public interest. The boy's circumstances meant he was "suffering from grief and trauma" and was deserving of special consideration as set out in the Council's Principle 2.

Further, as Brad Callaghan had been charged with Ms Thomas' murder, his son was a relative of a person accused of a crime and according to Principle 2, the *Herald* had a duty to exercise particular care and discretion when choosing whether to identify him.

Ms O'Halloran said she understood the continuing interest in the case but there was a difference between stories which are "of interest to the public" and those "in the public interest."

While the photograph was a number of years old, the boy was easily recognisable and was involuntarily in an extremely distressing situation. Publication of the photograph could only heighten that distress and expose him to further public scrutiny.

It was immaterial the picture was taken from a Facebook page as the person responsible for publication online was not capable of authorising publication on the boy's behalf.

The article did not demonstrate any exceptional public interest to justify over-riding his interests or invading his right to privacy.

The Newspaper's Initial Response

The deputy editor of the *Herald*, David Hastings, responded to Ms O'Halloran that the decision to publish the photograph was made after careful consideration, including Press Council principles.

The picture was one of a number of similar photographs but it was one described by Ms Thomas's aunt as her favourite. It seemed clear the message the family wanted to convey was that Ms Thomas was a loving mother.

The *Herald* had made a deliberate decision not to photograph or publish any contemporary picture of the son, and did not see how the toddler in the Facebook picture could be recognised as the schoolboy of today.

On balance, the *Herald* believed it was reasonable to publish the picture, given in its view the boy was not recognisable.

Ms O'Halloran disagreed and complained to the Press Council.

The Newspaper's Further Response

In his response to the Council, Mr Hastings said there was a great deal of public interest in the case, and the family made up of Carmen Thomas and Brad Callaghan and their child was an intrinsic part of the story.

The photograph had been taken some years before and contained nothing objectionable or out of the ordinary. It had been published on Facebook and had been available to the public for some time.

Mr Hastings quoted the litigation of *Hosking v Runting* and said the case bore some "striking similarities." It involved a recent photograph of children taken in a public place and was published as part of a story about a family. By a majority decision, the Court of Appeal had decided in *Hosking* there was a right to privacy capable of protection under the law but publishing a photograph taken in a public place was not capable of infringing any right to privacy.

A factor that influenced the Court of Appeal was that the parents of the children had participated in publication of images of them.

In this case, images of the boy had been published on Facebook by the family and had therefore been available to the public for some time.

The *Herald* understood Principle 2 protected privacy interests. "However, modern jurisprudence accepts that these interests have their source in human dignity. It is publications which impact on the integrity of the subject as a human being which infringe the principle."

Republication of images already published were unlikely to infringe, and it seemed to be accepted in this case that the image published could not be said to affect human dignity in the manner required for there to be a breach.

The *Herald* believed that republication of an image that was already in the public domain and which was free of any component which was objectionable or disturbing was not contrary to Principles 2 and 3.

Further Debate on the Issues

In her response, Ms O'Halloran said the duty of care under the two principles was more onerous.

She disagreed her complaint bore "striking similarities" to *Hosking* and said the deputy editor was factually incorrect when he said the Hoskings were unsuccessful partly because they had participated in the publication of images of their children. The couple had declined to allow photographs of their children from their birth.

The Hoskings were unsuccessful because the photographs were taken in a public place, they were people in high profile jobs, they had courted publicity about their personal life, including granting an interview about their fertility treatment, and the photographs depicted the children Christmas shopping with their mother, which the court believed did not disclose any highly offensive facts.

In the boy's case, the photograph was a personal family photo, not taken in a public place, neither parent had a high-profile job, nobody authorised participated in publication of the photograph on Facebook and the photograph clearly identified the boy as the son of a murdered escort and of a murder accused. Those were private facts, the disclosure of which would be considered highly offensive to an objective, reasonable person.

The photograph was available on a Facebook page set up as a support group and a memorial by family and friends of Ms Thomas. It was not intended for publication in a major newspaper.

The complainant said it was incorrect to say the boy was not identifiable. He was clearly recognisable.

The *Herald* had not demonstrated that particular care and discretion was exercised, or that any special consideration had been given to the boy as a child suffering from trauma and grief, as required by Principle 2.

Nor had it demonstrated that an exceptional public interest existed to override the interests of the boy, as required by Principle 3.

The deputy editor said Ms O'Halloran was drawing distinctions between the facts of *Hosking* and publication of photographs of the boy. While the photograph was not taken in a public place, it was published in one, namely Facebook. There was no material factual distinction weighing in favour of restricted republication of the photographs.

Ms O'Halloran had said that neither of the parents had courted publicity. Mr Hastings said that, in fact, Ms Thomas' family had gone to some lengths to court publicity and to portray her in certain ways, and the photographs of the boy on Facebook were an illustration of that. The family had not only sought publicity for Ms Thomas and her son, they had taken steps to procure it.

Ms O'Halloran had argued that nobody had authorised publication. But they had been voluntarily published on Facebook, and her point that there was a difference between publication on an open website and a claim to limited authority for republication was without merit. Publication on Facebook was publication.

Further, claims that knowledge that the boy's mother was an escort was not a private fact, it was widely known.

Ms O'Halloran had sought to limit the significance of *Hosking* by saying the Press Council's principles relating to privacy were more onerous. But *Hosking* was an authoritative discussion on community expectations of privacy, and it was not material that *Hosking* discussed an emerging tort of privacy while Press Council rules are a voluntary code.

Both dealt with legitimate expectations of privacy in the community and retention between them and free speech.

Discussion and Finding

There are several elements to the complaint: whether the boy's privacy has been breached as a consequence of the *Herald*'s publication of a photo of him as baby; whether sufficient consideration was given to the Children and Young Persons Principle; whether the Principle relating to identifying relatives of persons accused of crimes was invoked; whether the *Herald* was right to use a photo from a Facebook page.

On the first two points the Council notes that the photo was several years old. The Council believes that the boy is not identifiable from the photo of the baby/toddler and the Council could see no harm coming from this publication. This is contrasted with Case Nos 2150 – 2157 in which the Press Council has upheld a complaint concerning publication of a current photograph of the same boy.

The photograph had already been widely circulated on Facebook, making any argument about breach of privacy more difficult to sustain. The *Herald's* impact on the Auckland market is large, but it should also be remembered that the impact of Facebook on the same market is also likely to be huge, given that, if Facebook members represented a country, they would be the third largest country in the world, and recent events in New Zealand indicate that tens of thousands of Facebook members sign up to such pages in high-profile cases.

The Principle relating to identifying relatives of persons convicted or accused of crimes is not applicable here. Over the course of this story both the police and the family have made public the identities of various family members, including this child. Indeed, the *Herald* has argued the family courted publicity, which is understandable in a case where a young woman has disappeared and who, without attempts to maintain both public and media pressure, might simply have become another missing person statistic.

Ms O'Halloran does not pursue with any vigour the issue of whether the *Herald* had permission to publish the photograph from the Facebook page. The *Herald* itself

does not answer that question, although the caption on the web version says the picture was "supplied"

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

Ms O'Halloran also argues that even the person who published the photograph on Facebook was not capable of authorising it on the boy's behalf.

This is speculation because the person who took the picture and their relationship to the boy is not known. This is a third-person complaint and who authorised the picture on Facebook, or more importantly who might have objected on the son's behalf, is not known.

The case of *Hosking* offers some insight into the still-developing tort of privacy but the Council prefers to make its decisions based on its own principles. However the Press Council's view is that the publication did not infringe the Hosking principles.

The complaint is not upheld.

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

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

CASE NO: 2167 – COMPLAINT AGAINST THE BAY OF PLENTY TIMES

The Press Council has not upheld a complaint against the *Bay of Plenty Times* over the publication of a story in late March 2010 about private encroachments on public land along the Papamoa coastline.

Background

The front-page story in the *Bay of Plenty Times* covered a dispute involving a Papamoa beachfront property owner, a neighbour [the complainant] and the Tauranga City Council over claims that the property owner was encroaching on reserve land.

The complainant had written to the Council objecting to the encroachment and had also supplied information to the newspaper. The complainant was not named in the article but his address was published.

The complainant took issue with the newspaper publishing his address, because he had been given a written undertaking by the deputy chief reporter that they would not do so. He said as a result people in the area had been able to identify him.

Attempts to resolve the complaint with the deputy chief reporter over several months failed and, in June, *Bay of Plenty Times* editor Scott Inglis became involved. He apologised to the complainant and offered a second article about the seaside reserve land encroachment issues. This attempt at resolution failed and the complaint was referred to the Press Council

The Complaint

The complaint is that the newspaper has breached an undertaking of confidentiality and the complainant's privacy by publishing his address.

The complainant's concern with the article was that it focused on personalities and took as its angle a dispute between neighbours. The complainant had wanted the article to focus instead on the issues and the Tauranga City Council's failure to enforce its rules relating to the reserve.

The complainant said he had been referred to as an 'annoyed' neighbour eight times in the article and, with the publication of his address, people in the area were able to identify him as the neighbour who complained.

The Newspaper's Response

Newspaper editor Scott Inglis accepted that a staff member had, in February, given the complainant an undertaking that his name and address would not be published. Publication of his address in the March story had been inadvertent after the beach encroachment issue was raised in public at a Tauranga City Council meeting and the follow-up story had been covered by another reporter. This reporter was not the same staff member who gave the original undertaking.

Mr Inglis said any published correction and apology would have only drawn more attention to the original article and the complainant's address.

After further discussion, Mr Inglis offered the complainant a written personal apology and a further article exploring the issue of beach encroachments, written in consultation with the complainant – an attempt which ultimately failed.

Discussion

There was a delay of some months before *Bay of Plenty Times* editor Scott Inglis became involved in the attempt to resolve this complaint. When he did, he apologised to the complainant for breaching the undertaking of privacy that had been given and tried to work with the complainant on a follow-up article.

But the complainant had a number of concerns about the way the newspaper wanted to tell the story – particularly over any attempt to personalise the issues – and he was unhappy about what he believed was a junior reporter being assigned to the story.

The newspaper did not agree to the complainant's requirements for changes to the story.

Newspapers from time to time agree not to reveal the identity of their sources. In this case the complainant sees himself as a whistleblower about issues that are wider than his own dispute with his neighbour.

However this privacy undertaking became problematic when the issue and the complaint was dealt with in a public meeting of the Tauranga City Council and the reporter covering the story revealed the address of the complainant.

Breaching the complainant's confidentiality was a mistake, and the Council accepts it was an inadvertent mistake and one that the newspaper apologised for. The complainant accepted the apology, but was not happy with the proposed article. The March article was a fair report about encroachments – as was the second proposed article, which was never to see the light of day.

The Press Council does not uphold the complaint.

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

CASE NO:2168 – WAIKATO DISTRICT HEALTH BOARD AGAINST WAIKATO TIMES

The Waikato District Health Board complained to the Press Council about a front page lead story published in the *Waikato Times* on October 1, 2010 under the headline Couple left 'disgusted'. The standfirst read: "An outraged father says he was kept waiting for hours alone at Waikato Hospital after his wife gave birth and then found himself effectively accused of beating her".

The complaint is not upheld.

Background

The story which included a lot of direct comments from a Waihi farmer, Bill Cox, outlined the events which had occurred during and after the time that his wife, Thai born Nayana, gave birth to the couple's daughter.

Mrs Cox had a long and arduous birthing experience, after which she was taken to surgery, the newly born infant was taken to the neo-natal unit, and Mr Cox was left alone for five hours. Mr Cox said he had no idea where they had been taken to. After those five anxious hours he went looking for information, and was finally taken to a ward to see his wife and newborn baby.

The story reports him as saying that the baby was left unfed for nine hours, and that he was accused of beating his wife.

The hospital said that they needed to investigate bruises on his wife's body to ensure she was not the victim of domestic abuse, but Mr Cox claimed that the bruises on Mrs Cox's arms were the results of hospital procedures and the bruises on her back occurred during the birthing. He said that Mrs Cox, who has a blood condition known as thalassemia, is known to bruise easily

A spokeswoman for the hospital said that it would be irresponsible for hospital staff to ignore unexplained bruising. Language difficulties made it difficult for staff to get an answer [from Mrs Cox] so a social worker and interpreter were called in.

The couple's midwife said she was surprised by the allegations and said there was no bruising on Mrs Cox when she changed her nightdress during the first stage of labour. She had spent a lot of time with the Coxes – "there has never been any cause for concern".

Mrs Cox is quoted as saying that her husband did not hit her – "he loves me".

The hospital apologized for leaving Mr Cox alone, and not communicating with him about what was happening to his wife and daughter.

In rebuttal of Mr Cox's claims that his daughter had not been fed for nine hours, the spokeswoman said that hospital records showed the baby had been fed at 3.45 am – Mr Cox said that this was not recorded when he saw the notes in the night.

In the final paragraph of the story, Mr Cox said "he would rather die" than return to Waikato Hospital. The couple were devastated by their "nightmare" experience after what should have been a "joyous" time in their lives.

The Complaint

The DHB stated that *Waikato Times* e-mailed six questions to the Waikato DHB on Monday, September 27. All questions were answered on the following day.

The DHB complained that the billboard advertising the story (on 1 October) "New dad accused of wife beating" was unnecessarily alarmist, as the staff at the hospital had acted quite properly and within Ministry of Health violence screening guidelines.

The DHB also complained that the claim that the baby had been left unfed was mischievous and alarmist, the hospital notes showing that this was not the case.

The DHB had responded to several other allegations made by Mr Cox, but these had not been published in the story.

The DHB stated that there is overwhelming evidence that health care providers have a key role to play in the early intervention and prevention of family violence.

The complaint states that the story as published lacked balance, context, and was unnecessarily critical of staff who were following national guidelines. The DHB had offered to present an article on the role of hospitals and health care workers in identifying family violence, but the editor had refused to publish. The paper had failed to put the story in the wider context of the role of health workers in identifying and reporting family violence.

The Editor's Response

The editor stated that the newspaper had been approached by the couple who expressed their concerns about what had happened to them.

Although the DHB had stated that the story as published was inaccurate, unfair and unbalanced, he rejected that view, as the DHB was given every opportunity to address the couple's concerns.

Essentially, the editor said that the facts are indisputable; an anxious father was left unattended for five hours and when he was finally united with his wife he learned she had been questioned by a social worker about apparently unexplained bruising. The hospital did not speak to the couple's midwife, but made assumptions about Mr Cox being violent to his wife.

The editor maintained that the hospital had an opportunity to put further facts in front of the newspaper during the Q and A "interview" when the story was being researched.

Further, as a new editor, it was not his policy to provide the DHB editorial space for columns to appease the communications director. The spokesperson for the DHB could have written a letter to the editor, but did not choose to do so.

The editor stated firmly that he stands by the story.

Discussion

It is not surprising that the newspaper gave this story prominence; as presented on the front page, it has strong reader appeal – a long and difficult labour, a new baby, a hospital seeming to fail in its duty to an anxious husband, the lack of communication, and what was viewed as an abuse of duty in questions about possible family violence.

The newspaper had sought information from the DHB and, significantly, the midwife who had attended the birth.

Mr Cox was quoted as saying that the hospital had called in Women's Refuge when in fact it was a social worker who talked with Mrs Cox. This was indeed an error, but the newspaper reported directly what Mr Cox had said.

The Press Council does not uphold this complaint. However it does consider the editor might later have provided a follow-up on the role of health professionals in the prevention of family violence.

There are occasions when health professionals are in the position to identify possible abuse, and Ministry of Health guidelines have been developed to assist in this. These guidelines have adopted by all 20 DHBs.

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

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

Statement of Principles

Preamble

The New Zealand Press Council was established as an industry selfregulatory body in 1972. Its main objective is to provide the public with an independent forum for resolving complaints involving the press. The Council is also concerned with promoting press freedom and maintaining the press in accordance with the highest professional standards.

Its scope applies to published material in newspapers, magazines and their websites, including audio and video streams.

An independent press plays a vital role in a democracy. The proper fulfilment of that role requires a fundamental responsibility for the press to maintain high standards of accuracy, fairness and balance and public faith in those standards.

Freedom of expression and freedom of the media are inextricably bound. There is no more important principle in a democracy than freedom of expression. The print media is jealous in guarding freedom of expression, not just for publishers' sake but, more importantly, in the public interest. In dealing with complaints, the Council will give primary consideration to freedom of expression and the public interest. (See Footnote 3)

The distinctions between fact, on the one hand, and conjecture, opinions or comment, on the other hand, must be maintained. This does not prevent rigorous analysis. Nor does it interfere with a publication's right to adopt a forthright stance or to advocate on any issue. Further, the Council acknowledges that the genre or purpose of a publication or article, for example, satire or gossip, calls for special consideration in any complaint.

The Press Council endorses the principles and spirit of the Treaty of Waitangi and NZ Bill of Rights Act, without sacrificing the imperative of publishing news and reports that are in the public interest.

Editors have the ultimate responsibility for what appears in their publications, and to the standards of ethical journalism which the Council upholds. In dealing with complaints, the Council seeks the co-operation of editors and publishers.

The following principles may be used by complainants when they wish to point the Council to the core of their complaint. However, a complainant may nominate other ethical grounds for consideration.

1. Accuracy, Fairness and Balance

Publications should be bound at all times by accuracy, fairness and balance, and should not deliberately mislead or misinform readers by commission or omission. In articles of controversy or disagreement, a fair voice must be given to the opposition view.

Exceptions may apply for long-running issues where every side cannot reasonably be repeated on every occasion and in reportage of proceedings where balance is to be judged on a number of stories, rather than a single report.

2. Privacy

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

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

Those suffering from trauma or grief call for special consideration.

3. Children and Young People

In cases involving children and young people editors must demonstrate an exceptional public interest to override the interests of the child or young person.

4. Comment and Fact

A clear distinction should be drawn between factual information and comment or opinion. An article that is essentially comment or opinion should be clearly presented as such. Cartoons are understood to be opinion.

5. Headlines and Captions

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

6. Discrimination and Diversity

Issues of gender, religion, minority groups, sexual orientation, age, race, colour or physical or mental disability are legitimate subjects for discussion where they are relevant and in the public interest, and publications may report and express opinions in these areas. Publications should not, however, place gratuitous emphasis on any such category in their reporting.

7. Confidentiality

Editors have a strong obligation to protect against disclosure of the identity of confidential sources. They also have a duty to take reasonable steps to satisfy themselves that such sources are well informed and that the information they provide is reliable. Care should be taken to ensure both source and publication agrees over what has been meant by "off-the-record".

8. Subterfuge

The use of deceit and subterfuge can only be condoned in cases when the information sought is in the public interest and cannot be obtained by any other means.

9. Conflicts of Interest

To fulfil their proper watchdog role, publications must be independent and free of obligations to their news sources. They should avoid any situations that might compromise such independence. Where a story is enabled by sponsorship, gift or financial inducement, that sponsorship, gift or financial inducement should be declared.

Where an author's link to a subject is deemed to be justified, the relationship of author to subject should be declared.

10. Photographs and Graphics

Editors should take care in photographic and image selection and treatment. Any technical manipulation that could mislead readers should be noted and explained.

Photographs showing distressing or shocking situations should be handled with special consideration for those affected.

11. Corrections

A publication's willingness to correct errors enhances its credibility and, often, defuses complaint. Significant errors should be admitted and promptly corrected, giving the correction fair prominence. In some circumstances it will be appropriate to offer an apology and a right of reply to an affected person or persons.

Footnotes

1. Letters to the Editor: Selection and treatment of letters for publication are the prerogative of editors who are to be guided by fairness, balance, and public interest in the correspondents' views. Abridgement is acceptable but should not distort meaning.

2. Council adjudications: Editors are obliged to publish with due prominence the substance of Council adjudications that uphold a complaint.

3. Public interest is defined as involving a matter capable of affecting the people at large so that they might be legitimately interested in, or concerned about, what is going on, or what may happen to them or to others.

4. The following organisations have agreed to abide by these principles and provide financial support to the Press Council:

Metropolitan
The New Zealand Herald
The Dominion Post
The Press
Otago Daily Times

Provincial
Ashburton Guardian
Bay of Plenty Times
The Daily Post
Dannevirke Evening News
The Gisborne Herald
The Greymouth Evening Star
Hawkes Bay Today
Horowhenua Kapiti Chronicle
Manawatu Standard
The Marlborough Express
The Nelson Mail
The Northern Advocate
The Oamaru Mail
The Southland Times
Taranaki Daily News
The Timaru Herald
Waikato Times
Wairarapa Times-Age
Wanganui Chronicle
The Westport News
Northern News
The Wairoa Star

Sunday
Herald on Sunday
Sunday Star-Times
Sunday News

Community
APN Community Newspapers
Fairfax NZ Community Newspapers
Community Newspaper Association of New Zealand member newspapers

Business Weekly
The Independent
National Business Review*

Magazines
New Zealand Magazines (APN)
Fairfax Magazines
Magazine Publishers' Association

* Accepts jurisdiction but does not contribute financially

Complaints procedure

1. A person bringing a complaint against a publication (namely newspapers, magazines and periodicals in public circulation, together with their websites) must, unless exempted by the Executive Director of the Council, first lodge the complaint in writing with the editor of the publication.

2. The complaint (which should be clearly marked as a letter of complaint) is to be made to the editor within the following time limits, time being of the essence:

(a) A complaint about a particular article: within one calendar month of the date of publication of the article.

(b) A complaint arising from a series of articles: within one calendar month of the earlier of the date from which the substance of the complaint would have been reasonably apparent to the complainant, or the publication of the last article in the series.

(c) A complaint concerning non-publication of any material: within two calendar months of the date on which the request to publish was received by the publication.

(d) A complaint arising from matters other than publication: within one month of the incident giving rise to the complaint.

3. If the complainant is not satisfied by the editor's response or receives no response from the editor within a period of 10 working days from the date on which the editor received the complaint, the complainant may then complain to the Council. In the case of the complainant not being satisfied by the editor's response, such complaint shall be forwarded to the Council within ten working days of the complainant receiving the editor's letter.

4. Complainants are requested where possible to use the online complaint form appearing on the Council's website (www.presscouncil.org.nz) or on a form provided by the Council. The Council will however accept complaints by letter. Whether the complaint be on the online complaint form or in writing, it must be accompanied by the material complained against and copies of the correspondence with the editor. The main thrust of the complaint is to be summarised in approximately 300 words. Any other supporting material may be supplied. Legal submissions are not required.

5. The time limits which will apply on receipt of a complaint are:

(a) The Council refers the complaint to the editor of the publication and the editor has 10 working days from receipt of that complaint to reply.

(b) On receipt of the editor's reply the Press Council will refer the reply to the complainant. The complainant may within 10 working days of receiving that reply, briefly in approximately 150 words, reply to any new matters raised by the editor in the reply. The complainant should not repeat submissions or material contained in the original complaint.

6. The Executive Director of the Council has the power to extend time limits but will not extend those time limits which are of the essence unless there are exceptional circumstances.

7. In appropriate circumstances, the Council may request further information from one or both of the parties. In obtaining further information the Press Council will adhere to the rules of natural justice.

8. Once submissions have been exchanged in accordance with the above timetable, the Press Council will at its next meeting consider and usually determine the complaint. Most complaints are determined on the papers. However, if a complainant wishes to make personal submissions, the complainant may apply to the Executive Director of the Council for approval to attend and make such submissions. If approval is given, the editor, or a representative of the editor, will also be invited to attend the hearing. No new material may be submitted at the hearing, without the leave of the Council.

9. If a complaint is upheld the publication must publish the adjudication, giving it fair prominence. If the decision is lengthy the Press Council will provide a shortened version for this purpose. If the complaint is not upheld the publication may determine whether to publish the decision.

10. If the complained-about article has been further published on the publication's website, or distributed to other media through NZPA or syndication, the Council requires that:

(a) in the instance of a website, the article is flagged as being subject to a ruling by the Press Council and a link to the decision at www.presscouncil.org.nz is to be provided.

(b) in the case of further distribution to hard-copy media, the Council will provide a short statement to be published in each publication known to have published the original item.

11. All decisions will also be available on the Council's website and published in its relevant annual report, unless the Council on its own volition or the request of a party agrees to non-publication. Non-publication will only be agreed to in exceptional circumstances.

12. In those cases where the circumstances suggest that the complainant may have a legally actionable issue, the complainant will be required to provide a written undertaking that s/he will not take or continue proceedings against the publication or journalist concerned.

13. The Council may consider a third party complaint (i.e. from a person who is not personally aggrieved) relating to a published item. However, if the circumstances appear to the Council to require the consent of an individual involved or referred to in the article, it reserves the right to require from such an individual his or her consent in writing to the Council's adjudication on the issue of the complaint.

14. The above procedure will apply to all complaints.

15. No provision has been made for publications to complain because such complaints are so rare. Complaints will still be considered but each will be dealt with on an individual basis.

New Zealand Press Council
Statement of Financial Performance
For the year ended 31 December 2010

	2010 $	2009 $
Revenue		
Union	2,700	2,700
NPA Contribution	220,000	220,000
Community Newspapers	5,474	5,000
Magazines Contribution	8,875	8,875
Interest	1,444	1,162
Total operating revenue	**238,493**	**237,737**
Expenses		
ACC levy	627	471
Accounting	907	907
Advertising & Promotion	-	1,210
Audit Fees	750	1,060
Bank fees	48	92
Cleaning	751	627
Computer	1,690	1,530
Depreciation	743	927
General Expenses & Subscriptions	6,062	7,440
Insurance	2,850	2,730
Internet	399	880
Legal (Constitution revision)	-	6,935
Postage & Couriers	2,252	2,538
Power & Telephone	3,227	3,196
Printing & Stationery	9,386	9,392
Reception	2,298	2,311
Rent & Carparking	14,556	14,400
Salaries & Board Fees	154,427	157,322
Training (Review implementation)	-	14,866
Travel & Accommodation	16,728	16,230
Website Development	-	5,000
Holiday Pay Accrual	3,380	6,615
Total operating expenses	**221,081**	**256,679**
Net surplus / deficit for the year	**17,412**	**(18,942)**

The notes on page 86 form an integral part of the financial statements.

New Zealand Press Council
Statement of Financial Position
As at 31 December 2010

	2010 $	2009 $
Assets		
Current assets		
BNZ Current Account	7,761	6,412
BNZ Call Account	52,172	32,285
Accruals and Receivables	644	-
	60,577	38,697
Non-current assets		
Fixed assets	5,035	5,778
Total Assets	**65,612**	**44,475**
Liabilities		
Accounts payable	5,648	1,218
PAYE payable	2,305	3,432
GST payable	7,983	3,827
Accrued Expenses	3,380	7,115
Total liabilities	**19,316**	**15,592**
Net Assets	**46,296**	**28,883**
Equity		
Opening Balance	28,884	47,826
Net surplus / deficit for the year	17,412	(18,942)
Closing Balance	**46,296**	**28,884**

The notes on page 86 form an integral part of the financial statements.

New Zealand Press Council
Notes to the Financial Statements
For the year ended 31 December 2010

1. Statement of accounting policies

Reporting Entity
The New Zealand Press Council is an unincorporated body.
The financial statements have been prepared in accordance with Generally Accepted Accounting Practice.

Differential Reporting
The New Zealand Press Council qualifies for differential reporting as it is not publicly accountable and it is not large as defined in the framework for differential reporting. The organisation has taken advantage of all available differential reporting except for that of GST. The financial statements have been prepared on a GST exclusive basis.

Measurement Base
The accounting principles recognised as appropriate for the measurement and reporting of earnings and financial position on a historical cost basis have been followed.

Specific Accounting Policies
The following specific accounting policies which materially affect the measurement of financial performance and position have been applied:

Taxable Income
The only taxable Non Member income is interest.

Accounts Receivable
Accounts Receivable are stated at their estimated realisable value.

Fixed Assets
All fixed assets are recorded at cost.
Depreciation has been calculated using a diminishing value basis as follows:

Furniture and fittings	4-18%
Office Equipment	36%-60%

Changes in Accounting Policies
There have been no changes in accounting policies in the year under review. All policies have been applied on bases consistent with those used in previous years.

2. Fixed Assets

	Net Book Value 2010 $	2009 $
Office equipment	43	103
Furniture and fittings	454	553
Office Fit out	4,538	5,122
	5,035	**5,778**

There were no acquisitions of Fixed Assets during the year ending 31 December 2010.

3. Commitments and contingencies
There were no known commitments and contingencies at 31 December 2010 (2009: $ Nil).

CHARTERED ACCOUNTANTS

PARSONS RODDICK & CO

INDEPENDENT AUDITOR'S REPORT

To the Members of the New Zealand Press Council

Report on the Financial Statements

We have audited the financial statements of the New Zealand Press Council on pages 1 to 5, which comprise the statement of financial position as at December 31, 2010, and the statement of financial performance for the year then ended, and a summary of significant accounting policies and other explanatory information.

Officers' Responsibility for the Financial Statements

The officers are responsible for the preparation of financial statements in accordance with generally accepted accounting practice in New Zealand and that give a true and fair view of the matters to which they relate, and for such internal control as the officers determine is necessary to enable the preparation of financial statements that are free from material misstatement, whether due to fraud or error.

Auditor's Responsibility

Our responsibility is to express an opinion on these financial statements based on our audit. We conducted our audit in accordance with International Standards on Auditing (New Zealand). Those standards require that we comply with ethical requirements and plan and perform the audit to obtain reasonable assurance about whether the financial statements are free from material misstatement.

An audit involves performing procedures to obtain audit evidence about the amounts and disclosures in the financial statements. The procedures selected depend on the auditor's judgement, including the assessment of the risks of material misstatement of the financial statements, whether due to fraud or error. In making those risk assessments, the auditor considers internal control relevant to the entity's preparation of financial statements that give a true and fair view of the matters to which they relate in order to design audit procedures that are appropriate in the circumstances, but not for the purpose of expressing an opinion on the effectiveness of the entity's internal control. An audit also includes evaluating the appropriateness of accounting policies used and the reasonableness of accounting estimates, as well as evaluating the presentation of the financial statements.

We believe that the audit evidence we have obtained is sufficient and appropriate to provide a basis for our audit opinion.

Other than in our capacity as auditor we have no relationship with, or interests in, the New Zealand Press Council.

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PRINCIPAL: ALLAN J EVANS, C.A.

Opinion

In our opinion, the financial statements on pages 1 to 5:

- comply with generally accepted accounting practice in New Zealand;
- give a true and fair view of the financial position of the New Zealand Press Council as at December 31, 2010 and its financial performance for the year ended on that date.

Report on Other Legal and Regulatory Requirements

In accordance with the Financial Reporting Act 1993, we report that:

- We have obtained all the information and explanations that we have required.
- In our opinion proper accounting records have been kept by the New Zealand Press Council as far as appears from an examination of those records.

22nd March 2011

UPPER HUTT

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