

B311 BASILE, J.A. The Press Council...

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**THE PRESS COUNCIL: IS IT AN EFFECTIVE
CONTROL ON NEW ZEALAND PRINT MEDIA**

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ABSTRACT

This paper seeks to determine whether the New Zealand Press Council is effective in its current form and if not, how it could be changed to increase its effectiveness. To do this, a benchmark is established which outlines the essential qualities of an effective Press Council. These qualities are independence, credibility, accessibility, consistency, clarity and the ability to make the print media accountable. The last quality – the support and respect of the print media and the public – flows from the other qualities. The New Zealand Press Council is examined to establish if it has each of these qualities. The Press Council's structure ensures that it is independent and the complaints procedure ensures the process is simple and cheap. This paper makes an in-depth analysis of the Press Council's adjudications. It examines statistical averages of complaints and chances of success. The adjudications are concluded to be more accessible than in the past because they are now printed in full in the Annual Reports. This analysis shows that the Press Council occasionally demonstrates good reasoning but often lacks in its explanation to the public. The Statement of Principles provide a good opportunity for the Press Council to improve this explanation and eliminate the risk of inconsistency which is illustrated. Also canvassed is the Press Council's use of precedents and how it deals with dissents and unresolvable issues. Areas where the Press Council lacks effectiveness are outlined and conclusions made as to how these can be overcome. Lack of enforcement and the problems with jurisdiction can be overcome by ensuring the respect and support of the industry – a statute is not needed. Introducing a fine will solve the problem of ineffective sanctions. The arguments for and against the legal wavier are outlined and the conclusion is that it should be abandoned if a fine is not introduced. The funding of the Press Council and its objectives are discussed to determine if the Press Council is actually independent. Increasing public awareness of the Press Council's existence is the last area outlined. This paper concludes that the recommendations made, combined with the current effective aspects that the Press Council, will lead to an even more effective Press Council.

Word Length

The text of the paper (excluding contents page, footnotes and annexures) comprises approximately 14852 words.

I INTRODUCTION

The New Zealand Press Council is the only mechanism in place for complaints about print media in New Zealand. This paper discusses whether the New Zealand Press Council is effective in its current form and how it could be changed to make it more effective.

Part II of this paper establishes a benchmark of the essential qualities an effective Press Council must have. An effective Press Council must be independent, credible, accessible, consistent, clear and have the ability to make the print media accountable. This paper seeks to find out if the New Zealand Press Council has each of these qualities and if not, what it should do to get them. The last important quality an effective Press Council must have is the support and respect of the print media and the public, which flows from a Press Council that has the above mentioned qualities.

Before examining whether the New Zealand Press Council is effective, Part III backgrounds the Press Council, outlining how it was established and its structure. It will become apparent that the Press Council's structure ensures that it is independent. The Press Council's objectives and jurisdiction will be explained, along with the newly established Statement of Principles. The complaints procedure is outlined and concluded that it is effective because it is simple and cheap.

Part IV takes an in-depth look at the Press Council's adjudications, beginning with statistical averages of the number of complaints, who gets complained about, the number of adjudications and a complainant's statistical chances of success. The adjudications themselves are considered, starting with the way they are reported.

The conclusion is that full reporting in the Annual Reports that has been undertaken since 1992 makes the Press Council more accessible than they were in the past. The Press Council's reasoning in its adjudications is examined and used to show that the Press Council occasionally demonstrates good reasoning but is often lacking in its explanations to the public. The added clarity that the Statement of Principles has given to complainants, and therefore adjudications, will be demonstrated and it is suggested that reference should be made to the Statement of Principles in adjudications to ensure consistency and improve the Press Council's explanations to the public. The Press Council's use of precedents will be shown, as will the risk of inconsistency and how the Press Council deals with unresolvable issues and dissents.

Part V addresses areas where the Press Council lacks effectiveness, beginning with its lack of enforcement powers and its jurisdiction. It concludes that although self-regulation inherently has these dangers, this is preferable to government control as the Press Council remains independent and the way to overcome this danger is through the Press Council having the respect and support of the industry.

The second area is the Press Council's only sanction of printing the adjudications in the print media concerned. It is concluded that although there is an embarrassment factor, the Press Council should obtain industry cooperation and introduce a fine like that in Sweden or Denmark. Damages are also an option for people directly affected.

The legal waiver is the third area, which the Press Council makes a complainant sign if there may be a legally actionable issue. The arguments for and against this waiver are canvassed, along with the likely outcome if it was tested in court. The conclusion is that it is unjustified and should be abandoned, unless a fine is

introduced, as in those circumstances there will be double jeopardy.

An in-depth look at the objectives and the way the Press Council is funded is the fourth area discussed, to establish whether the Press Council is actually independent. The Statement of Principles are discussed in more detail to establish that to turn them into a substantive document further guidelines must be made for them to be accessible, clear and ensure consistency.

The lack of public knowledge about the Press Council is the last area outlined and the conclusion is that something must be done. Suggestions are put forward as to how to increase public knowledge as this will lead to greater respect for the Press Council.

Part VI, the conclusion of this paper, outlines recommendations as to what should remain and what changes should be made to bring the New Zealand Press Council into line with the established benchmark of an effective Press Council. The Press Council's structure, the complaints process and its reporting of adjudications should remain. It concludes that the Press Council should produce strong adjudications as the respect of the industry will flow from that which solves the enforcement problem. The Press Council should further develop the Statement of Principles with guidelines to make them a more substantive document. A fine should be introduced to increase the sanctioning ability of the Press Council, but if it is not introduced then the legal waiver should be abandoned. The last recommendation is that the Press Council increase public knowledge of its existence.

II ESSENTIAL FEATURES OF A PRESS COUNCIL

The New Zealand Press Council aims to provide the public with a forum for complaints against the press, while at the same time promote freedom of the press and maintain the press in accordance with the highest professional standards.¹

To achieve these goals, and achieve them effectively, the Press Council must be independent and credible in making the print media accountable. It must be accessible, flexible, consistent and have clarity. The support of the print media and the public flows from a Press Council with these qualities, which leads to an effective Press Council. Formal legal backing, through a statute, is not an essential aspect of an effective Press Council as the qualities outlined can be implemented through self-regulation, as will be shown.

An effective Press Council is essential because otherwise it is a façade. An effective Press Council is one which is prompt and cheap because a simple, cheap complaints mechanism is essential so as not to deter prospective complainants² as it is a forum for complaint for all the public. Self-regulation is cheaper than government control because the industry funds the cost of enforcement.³ This provides the public with cheaper complaints mechanism. An effective Press Council must have support from the industry who commit enough resources to make the body effective and enforce adequate sanctions.⁴

¹ The New Zealand Press Council *The New Zealand Press Council Information Pamphlet* [NZ Press Council Information Pamphlet].

² Karl du Fresne *Free Press Free Society* (Newspaper Publishers Association, Wellington, 1994) 25 [du Fresne].

³ Angela J Campbell "Self-Regulation and the Media" (1999) 51 Fed Comm LJ 711, 716 [Campbell].

⁴ Campbell, above n 3, 718.

Independence is essential because to have public confidence, the Press Council must be independent from government and from the print industry.⁵ The Press Council must be independent from the government because it protects free speech, a fundamental human right. Independence also protects the public from a self-serving industry that may use the body to increase their profits⁶ or by acting as a champion for the press instead of a watchdog for the public.⁷ A Press Council seen as a self-serving body, protecting the press leads to the conclusion again that it is a façade.

The Press Council must be able to make the print media accountable because an important public interest is served by a limited number of institutions who should have to “demonstrate that their activities are justified”.⁸ “Claims of free speech and editorial independence still have to be ranged against the demands of quality and accountability”⁹ because the print media are a public resource.¹⁰

The Press Council must be flexible so that it can adapt to changing public standards and expectations. Self-regulation is more flexible and responsive to the public than other forms of regulation because rule changes and other adjustments can be more easily carried out in a self-regulatory environment.¹¹

The Press Council must also be accessible to the public so that complaints can be easily made. Lack of cost increases accessibility, as does promptness and public knowledge that the

⁵ Professor O R McGregor *Royal Commission on Press Final Report* (Her Majesty's Stationery Office, London, 1977) 196 [McGregor].

⁶ Campbell, above n 3, 717.

⁷ Sir David Calcutt *Report of the Committee on Privacy and Related Matters* (HMSO, London, 1990), 59 [Calcutt].

⁸ Thomas Gibbons *Regulating the Media* (Sweet & Maxwell, London, 1991) 139 [Gibbons].

⁹ Gibbons, above n 8, 3.

¹⁰ Gibbons, above n 8, 13.

¹¹ Colin Munro “Self-regulation in the Media” [1997] Public Law 6, 15.

body exists. The standards of the Press Council must also be accessible so that the public and the press know what the Press Council considers important.

A Press Council's adjudications must be consistent, otherwise it will lack respect from both the public and the print media. A set of standards or principles has to exist to ensure consistency and predictability in the adjudications. The adjudications must also have clarity so both the print media and the public understand what is and is not acceptable.

In essence, a successful Press Council is dependent on the cooperation of editors and on being taken seriously by the press and the public.¹² Without this, it will be destined to fail.¹³

III THE NEW ZEALAND PRESS COUNCIL

A Background

The idea of a Press Council was first raised in the New Zealand Parliament because of public pressure from sources including the National Council of Women and the United Nations Association.¹⁴ In the public's eyes, the reason for setting up a Press Council was the fact that injustice may be done by the press. A journal article that stated, "surely...the logical alternative to a controlled press is a press that controls itself"¹⁵ gave expression to the public's disquiet about the print media.¹⁶

¹² George Murray *The Press and the Public The Story of the British Press Council* (Southern Illinois University Press, United States of America 1972) 72 [Murray].

¹³ Campbell, above n 3, 748.

¹⁴ Stuart Perry *The New Zealand Press Council Establishment and Early Years 1972-1982* (The New Zealand Press Council, Wellington, 1982) 6 [Perry].

¹⁵ Alexia J Page "On being in Truth: the Need for a Press Council" (1966) 13 No 6 J1 NZ Post Primary Teachers' Journalists' Union in Perry, above n 14, 5.

But the industry was equally aware of the encroachment on their rights. The President of the New Zealand Journalists' Association (NZJA) at the time stated that a statutory Press Council would "make life exceedingly difficult for newspapers and probably also for journalists".¹⁷ The press were "united in [their] opposition and resistance to statutory control, the very negation of freedom of the [p]ress".¹⁸ Due to reports in 1968 that the Labour Party intended to establish a statutory Press Council if it became Government,¹⁹ the NZJA decided to establish a Press Council.²⁰

The Press Council was established in 1972 as a joint venture between the NZJA and the Newspapers Publishers Association of New Zealand (NPA), principally funded by the latter.²¹ It was established to provide the public with an independent forum for resolution of complaints against the press. As had happened in Britain in 1953, it enabled the industry to "lay a virtuous hand on a virtuous heart and declare that 'something is being done'".²²

When deciding what form the Press Council should take, the industry sought advice from Sir Thaddeus McCarthy, then a member of the New Zealand Court of Appeal, to survey the scene in Britain.²³ Sir McCarthy reported back to New Zealand praising the British counterpart and therefore the New Zealand Press Council was formed on the lines of a non-statutory, self-regulatory body funded entirely by the print media, giving the public a body to which it can complain of unethical behaviour, and at the same

¹⁶ Perry, above n 14, 5.

¹⁷ Perry, above n 14, 7.

¹⁸ H Phillip Levy *The Press Council History, Procedure and Cases* (Macmillan, London, 1967) 10. [Levy].

¹⁹ Benedict Kingsbury "Complaints Against the Media-A Comparative Study" (1981) 1 *Canta LR* 155, 157 [Kingsbury].

²⁰ Perry, above n 14, 6.

²¹ Kingsbury, above n 19, 157.

²² Murray, above n 12, 214.

²³ Perry, above n 14, 8.

time providing the industry with a disciplinary tribunal.²⁴ It is ironic that the British Press Council was changed in 1991 to the Press Complaints Commission after three Royal Commissions of inquiry and a report by David Calcutt outlined its failings,²⁵ although the significant differences in the British media structure and behaviour, particularly the tabloids, that does not exist in New Zealand to the same extent, would have influenced the views of the British Press Council. The British Press Council was viewed as little more than a public relations agency for the press industry;²⁶ described as ineffective and not well known.²⁷

B Structure

The New Zealand Press Council has an independent chair, currently Sir John Jeffries.²⁸ The chair has so far always been a retired judge, which adds to the respect and credence of the Press Council's decisions and the belief that the chair *is* independent and not working in the interests of the press.

The industry members number six: two representing the NPA, one representing magazine publishers and two working journalists who are appointed by their organisation the New Zealand Engineering, Printing and Manufacturing Union Inc. (EMPU).²⁹ There are five representatives of the public. A committee comprised of the Chairman, the Chief Ombudsman and two representatives from the NPA and the EPMU chooses the public members. Placing advertisements in all the main newspapers in New Zealand

²⁴ Perry, above n 14, 10.

²⁵ Sir David Calcutt *Report of the Committee on Privacy and Related Matters* (HMSO, London, 1990) [Calcutt].

²⁶ James Curran and Jean Seaton *Power Without Responsibility The Press and Broadcasting in Britain* (3 ed, Routledge, London, 1988) 255 [Curran].

²⁷ Calcutt, above n 7, 63.

²⁸ Since 1 July 1997. The other chairmen have been Sir Alfred North, Sir Thaddeus McCarthy and Sir Joseph Ongley.

²⁹ NZ Press Council Information Pamphlet, above n 1.

inviting the public to apply filled the most recent vacancy. A shortlist was made and from that a member chosen. The Press Council also employs a secretary.

Therefore the make-up is equal between the industry and the public - five to five – and an independent chair. The structure of the New Zealand Press Council is superior to that of many overseas Press Councils for the simple reason that it has an equal number of lay members and industry members. Therefore it is possible that the chair and the representatives of the public could outvote the industry representatives on any complaint.³⁰ In the Alberta Press Council the number of industry members far outweighs the number of lay members and the same situation arises in Finland, Iceland, Norway³¹ and Quebec. In Germany, Luxembourg, Austria and Belgium there are no lay members.³²

The point of having public members is that they look at complaints from a non-industry angle and challenge the industry member's assertions and desires. It also gives the public the perception of balance, which increases effectiveness, as the Press Council looks independent. Although this is not to say that industry members will be bias. In fact it has been reported that the lay members of the New Zealand Press Council say that the industry representatives are usually harsher judges when assessing the behaviour of their peers.³³ The industry member has to be someone who is willing to reprimand members of the industry and the industry must respect that it is part of the industry member's job to reprimand.

³⁰ Perry, above n 14, 14.

³¹ Claude-Jean Bertrand, Table: data about European Press Councils, cjbertrand@noos.fr.

³² Bertrand, above n 31.

³³ du Fresne, above n 2, 28.

C Objectives

The Press Council has three principal objectives:³⁴

- a) To consider complaints against newspapers and other publications. Such complaints must be directed at editorial content – a separate body deals with complaints against advertising. The Council may also consider complaints by a newspaper about the conduct of persons and organisations towards the press;
- b) To preserve the established freedom of the New Zealand Press; and
- c) To maintain the character of the New Zealand press in accordance with the highest professional standards.

It also has other important objectives, which are stated in its Constitution. These objectives will be discussed in more detail in Part V.

The Press Council is an ethical body, not seeking to supersede or supplement the administration of legal justice. Therefore it does not seek monetary recompense for complaints.³⁵ It has no power to insist a newspaper follow any set course.³⁶ Its only sanction is to require an offending publication to publish the essence of any decision which goes against that newspaper or magazine, giving it fair prominence. Publications that have a decision made in their favour may publish a shortened version of the adjudication.³⁷ The decisions are also sent the New Zealand Press Association (NZPA) so that competitors are free to publish the adjudications.

Therefore if a complainant wants damages they must go to court. But where there may be a legal actionable issue the Press Council

³⁴ NZ Press Council Information Pamphlet, above n 1.

³⁵ NZ Press Council Information Pamphlet, above n 1.

³⁶ NZ Press Council Information Pamphlet, above n 1.

³⁷ NZ Press Council Information Pamphlet, above n 1.

requires the complainant to sign a legal waiver that they will not take proceedings against the print media concerned. The implications of this are discussed in Part V.

D Jurisdiction

A newspaper's membership and acceptance of the Press Council's jurisdiction is voluntary. All members of the NPA are members of the Press Council – this includes all paid daily and Sunday newspapers and many community newspapers.³⁸ In 1997 the Press Council began a review of its jurisdiction to ensure it was serving the public properly³⁹ and decided to extend its jurisdiction and invited magazines to become members. The two major magazine companies in New Zealand, New Zealand Magazines and Independent Newspapers Limited Magazines (INL) agreed to their titles coming under the Press Council's jurisdiction. Australian Consolidated Press (ACP) did not. The anomaly with ACP is that it agrees to come under the Australian Press Council (APC) but will not allow its New Zealand based publications, North & South, Metro and the New Zealand Woman's Day, to come under the New Zealand Press Council.⁴⁰ The implications of this are discussed in Part V.

The Press Council also states that it has expanded its role not only to cover magazines but it will also look at complaints "relating to

³⁸ The Community Newspapers Association has dissolved, therefore a community newspaper's acceptance of the Press Council now depends on its ownership. There are over 100 community newspapers in New Zealand that now may or may not come within the Press Council's jurisdiction.

³⁹ "Peters Has Partial Victory" *The Evening Post*, Wellington, New Zealand, 17 December 1999, 17.

⁴⁰ "Peters Has Partial Victory" *The Evening Post*, Wellington, New Zealand, 17 December 1999, 17.

news published on the internet here".⁴¹ The Press Council states that the web site owned by INL - www.stuff.co.nz is covered.⁴²

E Statement of Principles

The Press Council also took the opportunity in 1997, its 25th anniversary, to prepare a Statement of Principles, which act as a guide to the public and the print media.⁴³ During 1998 this was one of the Press Council's main activities and the Statement of Principles (reproduced in the Appendix) was released to the public in August 1999.

For its first 25 years, the Press Council provided no guidance of details of the complainant system.⁴⁴ When the Press Council was established it had two models to choose from. First, a model that can be described as loose, where the Council is given broad powers to work out, through the exercise of its own jurisdiction, the framework of how it will act.⁴⁵ This is similar to common law development of precedents emerging from its adjudications. This is the model that the Press Council adopted. The other model is to provide a strict code more akin to a statute.

After 25 years of experience the Press Council came to the conclusion that it should provide the public and the print industry with a set of principles to guide them in their understanding of the complaints process. It is envisaged by the Press Council that the Statement of Principles will give greater particularity for users of the Press Council, will help the Council itself fulfil its three objectives and provide guidance to editors of publications as to

⁴¹ "Web Sites Be Warned" *Independent News Weekly*, Auckland, New Zealand, 24 May 2000.

⁴² Interview with Sir John Jeffries, 2 August 2000.

⁴³ *The Press and the Public* The Twenty-Sixth Report of the New Zealand Press Council 1998, 4 [1998 Annual Report].

⁴⁴ 1998 Annual Report, above n 43, 8.

how and where the Council will place emphasis in its mission.⁴⁶ The basis for the establishment of the Statement of Principles was that complaints to the Press Council and media commentators suggested that the Council's own credibility and effectiveness have been impaired by the absence of a firm statement of principles to which it was committed and of the criteria whereby it judges complaints.⁴⁷ Also, on a world scale the New Zealand Press Council was exceptional in its lack of written guidance.⁴⁸ A Statement of Principles makes it clearer to see what the Press Council stands for, which makes it more effective.

Apart from the Statement of Principles, the print media also have their own ethical standards. For example INL have an ethical code and the EPMU has a Journalist Code of Ethics that all members of the Union must abide by. A breach of this code is a breach of the Unions Rules and may give rise to disciplinary procedures under the Rules.⁴⁹

F Complaints Procedure

Under the Press Council's rules, if you have a complaint about the print media you must first complain in writing to the editor. The Press Council states that this will then "acquaint the editor with the nature of the complaint and allow them the opportunity to deal with the complaint at first hand".⁵⁰ Presumably this is so the Press Council does not get a large amount of complaints that editors could deal with themselves.

⁴⁵ 1998 Annual Report, above n 43, 8.

⁴⁶ 1998 Annual Report, above n 43, 8.

⁴⁷ *New Zealand Press Council* The Twenty-Seventh Report of the New Zealand Press Council 1999, 6 [1999 Annual Report].

⁴⁸ 1999 Annual Report, above n 47, 6.

⁴⁹ The New Zealand Amalgamated Engineering Printing and Manufacturing Union Incorporated Rules as of 1 January 2000, 60.

⁵⁰ NZ Press Council Information Pamphlet, above n 1.

If you are not satisfied with the response you receive from the editor then you may complain to the Press Council. This must be done within three months of the publication, or if the complaint is about non-publication, three months starting from the date that it ought to have been published.⁵¹

The Council accepts “complaints made in good faith by third parties not directly aggrieved”.⁵² Therefore anyone who reads a piece and decides they wish to make a complaint can, provided that they have complained directly to the newspaper first. In the Netherlands, you may only complain if you are directly affected; not everyone can complain.⁵³ New Zealand is superior in this regard because anyone may make a complaint as the complaints forum is open to all, therefore the New Zealand Press Council is effective because it is accessible to all and flexible because it is willing to consider complaints from anyone.

When you complain to the Press Council, you must send to the Secretary a statement of your complaint in general terms; which of the Statement of Principles you think is contravened;⁵⁴ copies of your correspondence with the editor; a copy of the suspected offending piece that was published and any other relevant supporting evidence.⁵⁵ Once you have done this, the Press Council will send copies of the complaint to the editor who is given 14 days to respond. A copy of the response is then sent to you and you may respond to this if it is your desire, within 14 days. This is a clear and simple complaints process for the public

⁵¹ NZ Press Council Information Pamphlet, above n 1.

⁵² NZ Press Council Information Pamphlet, above n 1.

⁵³ Raad voor de Journalistiek, The Netherlands (Dutch Press Council); raad@rvdj.nl.

⁵⁴ This is optional and may be used by complainants to point more precisely to the nature of their complaint. A complainant may use other words, expressions and nominate grounds not expressly stated in the Statement of Principles. Source: NZ Press Council Information Pamphlet, above n 1.

⁵⁵ NZ Press Council Information Pamphlet, above n 1.

to undertake if they wish to complain, which is essential so that complainants are not put off by a complex process.

Once that process has been undertaken, the complaint enters what can be described as the adjudication stage. Each member of the Press Council is supplied with a copy of the full complaints file and it is considered at their next meeting. The Press Council has meetings about every six weeks.⁵⁶ Once the Council has made an adjudication, it is communicated to the parties and print media concerned undertakes that when accepting the Press Council's jurisdiction, they will print the essence of the adjudication made, giving it fair prominence. If the adjudication is in the newspaper's favour, they only have to publish a shortened version.⁵⁷ Again, this is a simple and cheap process, which is accessible to all members of the public and therefore effective.

IV ADJUDICATIONS OF THE NEW ZEALAND PRESS COUNCIL

A Statistics

The statistics below show the number of complaints and adjudications the Press Council has made since 1992 and the types of print media that complaints were made against.

⁵⁶ NZ Press Council Information Pamphlet, above n 1.

⁵⁷ NZ Press Council Information Pamphlet, above n 1.

Table 1

	1992	1993	1994	1995	1996	1997	1998	1999
Number of Complaints	71	77	90	70	82	82	85	75
Adjudications	39	38	32	36	41	42	39	46
Held Over	3	7	4	4	6	1	15	7
Withdrawn	1	2	1	1	7	7	5	5
Lapsed*	27	30	7	25	-	4	2	5
Mediated	-	-	-	4	-	4	2	5
Did not go beyond initial inquiry	-	-	15	-	28	17	16	9
No jurisdiction	1	1	8	-	-	7	6	-
Not accepted**	-	-	-	-	-	-	4	1
No address supplied	-	-	-	-	-	-	-	1

*A complaint must be within three months of the publication (or non-publication).

** In 1998 the complaints were not accepted because one was an employment issue. One was a broad-brush complaint not followed up by a specific complaint. One was rejected because it was in abusive terms and made threats to an editor and one was rejected on the grounds that there was no breach of journalistic ethics involved. In 1999 one complaint was rejected because it was about material in a radio broadcast.

The trends in Table 1 show that the number of complaints that the Press Council receive in a year is on average 79 and on average 35 of these are adjudicated. Therefore approximately 44 per cent of complaints follow through to adjudications every year. In comparison, the Broadcasting Standards Authority (BSA) received 204 formal complaints and issued 184 decisions in the 1998/1999 year,⁵⁸ almost three times the Press Council, suggesting that the BSA is better known or that the broadcast media is worse than print media.

⁵⁸ Broadcasting Standards Authority Annual Report, for the year ended 30 June 1999, 7 [BSA Annual Report 1999].

8	1999
	75
	46
	7
	5
	5
	5
	9
	-
	1
	1

Table 2

	Weekly	Metropolitan	Provincial	Community	Sunday	Magazines	NZPA
1992	No Statistics						
1993	1	23		9	4	-	1
1994	No Statistics						
1995	2	21		9	4	-	-
1996	-	27		7	7	-	1
1997	-	23	13	4	2	-	-
1998	-	21	10	5	3	-	-
1999	2	14	14	10	1	5	-

Table 2 shows that most complaints are made against Metropolitan newspapers, with Provincial newspapers close behind. Community newspapers follow this and then Sunday newspapers. It will be interesting to look at the same statistics in five years time when magazines will have been under the Press Council's jurisdiction for some time because the five complaints in 1999 suggests that this will become the third or fourth largest area of complaints.

Table 3

	Adjudications	Upheld	Part Upheld	Not Upheld
1992	39	10	2	27
1993	38	10	4	23
1994	32	5	5	19
1995	36	9	1	26
1996	41	4	1	36
1997	42	7	1	34
1998	39	2	4	33
1999	46	8	5	33*

*Includes a recorded dissent

Table 3 shows that on average, of the 35 adjudications each year, 6 of these will be upheld, 3 will be partly upheld and 26 will not be upheld. Therefore you have a 17 per cent chance of being successful, a 9 per cent chance of being partly successful and a 74 per cent change of not succeeding. The numbers suggest that it is very difficult to get a successful adjudication from the Press Council. This could be for a number of reasons. First, the cynics view is that the Press Council is not independent and they protect

the industry and therefore it is simply a complaints process in name only and they only uphold those complaints that are really bad. The other view is that due to the substance of complaints they are less likely to be upheld because the majority of complaints that are made simply do not breach the ethical standards and the Press Council does uphold the ones that do. In comparison, the BSA upheld in full or in part 22 per cent of its cases.⁵⁹ Therefore the outcomes are similar, suggesting that the Press Council is independent and making its decisions properly.

The complaints that the Press Council deals with the most concern letters to the editor. In 1999 13 complaints were received in this area⁶⁰ and are a common occurrence in almost every year; in 1994 there were 8. People complain because their letter was not printed or that the second letter that the person wrote in relation to a subject was not printed or that the letter was abridged.

The other area that the Press Council deals with often is that of errors. People complain that there have been errors of fact in an article about them or another person. In 1999, there were 5 complaints about errors,⁶¹ and in 1994 there were 3 complaints.

Other areas that the Press Council deals with are lack of balance, unfairness, misleading, inaccuracy and bias. These words make up the third largest majority of complaints in 1999 and similar numbers exist for 1998 and 1994.⁶²

⁵⁹ BSA Annual Report 1999, 7.

⁶⁰ Some complaints cover more than one area, so these 13 complaints may have also included other areas such as unfairness or inaccuracies.

⁶¹ Some complaints cover more than one area, so these 5 complaints may have also included other areas such as unfairness or inaccuracies.

⁶² 1999: inaccuracy: 3; lack of balance: 7; bias: 5; misleading: 3; unfairness: 6. 1998: bias: 2; misleading: 1; false: 1; unfair: 1. 1994: misrepresentation: 2; bias: 2; unfairness: 2; unbalanced: 3; misleading: 1; inaccurate: 2.

The Press Council also deals with other areas such as breaking of embargos, breaches of court orders, breach of privacy, unethical practices and racism, but often there are only one or two of these complaints in a year.

The effect that the Statement of Principles will have in the areas of complaint and substance of complaints will become clearer in the future.

B The Adjudications

A number of observations can be made about the adjudications, the first of which is the way the Press Council reports them.

Before 1992, the Annual Reports only contained a synopsis of the adjudications made, but did mention in some detail the important adjudications for the year, for instance in 1976 Case No 82 *Martin v Auckland Star*.⁶³ An index of adjudications (not full adjudications) up until 1990 is available at all public libraries, although the index itself states that some adjudications have been lost.

The adjudications have only been printed in full since 1992⁶⁴ with the exception of 1997 and 1998. In 1997 and 1998, only those adjudications which were "keynote"⁶⁵ were reported in full and a brief summary of all others were given in a couple of short paragraphs. In 1999 there has been a reversion back to full reporting of all adjudications. Copies of the Annual Reports "The

⁶³ Case No 82 *Martin v Auckland Star*. Complaint that report, correcting an earlier one, was in itself inadequate, inaccurate. DISMISSED 6/12/76. Source: Index of Adjudications Press Council Wellington Public Library.

⁶⁴ *The Press and the Public* The Twentieth Report of the New Zealand Press Council 1992.

⁶⁵ *The Press and the Public* The Twenty-Seventh Report of the New Zealand Press Council 1997, 10.

People and The Press”⁶⁶ since 1992 are available at all public libraries, the parliamentary library, university libraries and the national library.⁶⁷

Therefore, pre 1992, there was not very much public accessibility to adjudications, and therefore the Press Council way of thinking. But since 1992, accessibility to adjudications has increased considerably; this is evidenced not only through the Annual Reports, but also through the author’s experience in research. Therefore the public and the press now have little difficulty in finding out the Press Council’s views on matters which is a positive improvement and makes the Press Council a more accessible body for the public and the press, an essential feature of any Press Council.

The adjudications themselves are, in the main, necessarily short, to facilitate the newspapers printing them in full.⁶⁸ When a contentious issue is being adjudicated, the Press Council will often produce a longer report, fully explaining its reasoning, which add clarity to these contentious adjudications and therefore the Press Council’s views. One example is Case No 758 *The probabilities of suicide methods under fire*⁶⁹ where a complaint against the printing of a controversial school exam question was considered.⁷⁰

Some adjudications, such as Case No 757 *Three little words omitted*,⁷¹ which considered whether the words “New Zealand” and “system” changed the meaning of a letter, can be described as straightforward. Whilst omitting adjudications such as this, the effect of short adjudications is a trade off in the quality of the

⁶⁶ This title was omitted from the 1999 Annual Report.

⁶⁷ Graeme Jenkins, Secretary of the New Zealand Press Council.

⁶⁸ Geoffrey Robertson *People Against the Press An Enquiry into the Press Council* (Quartet Books, London, 1983) 70 [Robertson].

⁶⁹ 1999 Annual Report, above n 47, 61.

⁷⁰ This was not upheld.

⁷¹ 1999 Annual Report, above n 47, 61.

adjudications, which are often lacking in what can be described as the Press Council's reasoning. The lack of reasoning even occurs in some of the longer adjudications. This trade off leads to a lack of clarity in adjudications as they are too brief to contain a sufficient explanation of how the Press Council came to its decisions.

Adjudications contain a thorough recitation of the facts and arguments that each side made in relation to the complaint and in every instance this took up at least half of the adjudication itself. In many, only a quarter of the report is dedicated to reasoning. Evidence of this can be seen in adjudications such as Case No 735 *A charge of 'blatant political bias'*,⁷² Case No 748 *Miss Z's name was suppressed*,⁷³ and Case No 756 *'A mother's son' article offended*.⁷⁴ In the worst of such cases the Press Council did not even seem to give a reason – Case No 562 *One New Zealand Foundation at odds*,⁷⁵ where the Press Council stated “The Council finds there is no reason, however to uphold Mrs Reid's second complaint” with no explanation. The Press Council is a forum for complaint for the public. It is doing the public a disservice by not properly explaining why the decision has been made a particular way. Therefore, leading to confusion and lack of clarity as to how it came to the decision it did.

Reasoning such as this is notable in complaints that the Press Council does not uphold. In circumstances where it upholds a complaint against the print media, the Press Council provides excellent explanation for the print media as to why they are upholding this complaint, as shown in adjudications such as Case

⁷² 1999 Annual Report, above n 47, 33.

⁷³ 1999 Annual Report, above n 47, 47.

⁷⁴ 1999 Annual Report, above n 47, 60.

⁷⁵ *The Press and the Public* The Twenty-Second Report of the New Zealand Press Council 1994, 8 [1994 Annual Report].

No 747 *Paper broke news embargo*,⁷⁶ Case No 727 *Complaint over letter upheld*,⁷⁷ and Case No 726 *Councillor's income under scrutiny*.⁷⁸ For example, Case No 726 fully explained that it is important for newspapers to bring matters of public spending to attention in a fair and balanced way to allow the public to make an informed decision. This reasoning is effective because it upholds the Press Council's objective that it maintains the character of the press to the highest professional standards.

This reasoning provides clarity for both the public and the print media about what the print media are not allowed to do. But the majority of the time the same is not provided in the other direction. Another example is Case No 749 *A case of misplaced humour*⁷⁹ where the council stated "parts of the column were gratuitous and in poor taste, but it did not meet the council's threshold of being completely unacceptable",⁸⁰ but the Press Council did not continue to explain what this threshold is. Again, the effect of this is lack of clarity as to how the Press Council makes its decisions.

The Press Council may argue that the reason is that these issues have been addressed in earlier adjudications and written about then, or are contained in the Statement of Principles, or as a discussion in an Annual Report. This may be so, but it still is not fair on the complainant whose complaint was important enough to get an adjudication, but not important enough to get a comprehensive explanation of the reasons why their complaint was not upheld. Instead of a simple assertion of what the Council believes, a reference to the appropriate Statement of Principle, Annual Report or adjudication where it was discussed would be

⁷⁶ 1999 Annual Report, above n 47, 46.

⁷⁷ 1999 Annual Report, above n 47, 24.

⁷⁸ 1999 Annual Report, above n 47, 23.

⁷⁹ 1999 Annual Report, above n 47, 48.

⁸⁰ 1999 Annual Report, above n 47, 49.

more appropriate. This would add clarity to its adjudications and enhance the Press Council's position of independence.

C *Statement of Principles*

The introduction of the Statement of Principles gives the Press Council the opportunity to start providing clearer reasons to the public as to why adjudications were not upheld and the ability to then produce further guidelines like those in Australia, as will be discussed under Part V. This will transform the Statement of Principles from a vague set of standards to a set of standards that have substance.

The Statement of Principles has added an enormous amount of clarity in the public's framing of complaints. During the recitation of the complaint in the adjudication, the public complaints are easier to understand. For instance, in 1999 Case Nos 725 *Lack of balance in court report*,⁸¹ 726 *Councillor's income under scrutiny*,⁸² and 738 *MP complains article unfair and unbalanced*⁸³ the complaints all refer to the adjectives misleading, accurate and unfair, the adjectives used in Statement of Principle One. Therefore making it clearer for the public, the press, the Press Council and prospective complainants to understand what is being complained of.

In contrast, in earlier years, the adjudications recited the arguments and then the decisions, but were not as clear at the beginning of the adjudication of what was actually being complained of, often because the complainants have not expressed themselves clearly.

⁸¹ 1999 Annual Report, above n 47, 22.

⁸² 1999 Annual Report, above n 47, 23.

⁸³ 1999 Annual Report, above n 47, 36.

For instance, in Case No 531 *University Staff and Students Unite*⁸⁴ it is not until you read that the Press Council thought the article could have been more balanced and that it did not agree that the report was not objective that it becomes apparent what was actually being complained of. Even in 1999 this problem still arose in a minority of complaints because the Statement of Principles does not have to be referred to when making a complaint. For instance, Case No 722 *Fire was the burning issue*⁸⁵ the complainant described an error and therefore implied that there was an error made, but never clearly stated that the grounds for complaint was that there was an error in the article.

In essence, the Statement of Principles had increased the clarity of the majority of complaints because the complainant can be succinct since they are now aware of what the Press Council considers important. Therefore the Statement of Principles has made the Press Council more effective.

The Statement of Principles will change the reasons why people complain to the Press Council. The Statement of Principles provides the public and the press with clarity as to what areas it considers important. For instance, Statement of Principle 12 "Letters" states: "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".⁸⁶ Therefore in future, complaints about letters should decrease as the public will be aware, by reading the Statement of Principles, that it is the editor's prerogative, and that they have to overcome this and establish that the abridgment led to unfairness and imbalance. The same can be said for each Statement of Principle. The public can see if their complaint fits into one of these and structure it in this

⁸⁴ 1994 Annual Report, above n 75, 29. Other examples include Case Nos 561, 559, 535, 546, 496, 621, 462, 498, 510.

⁸⁵ 1999 Annual Report, above n 47, 20.

way to their advantage. This has already been demonstrated in 1999 with the reasons for complaint being much clearer than they have been in other years.

The Statement of Principles positions itself, not as a code but as a set of standards and therefore provides the public and the Press Council the flexibility that is required in an effective Press Council. It gives the public the option of framing their complaint in these terms but if the public does not complain in the specific terms of the Statement of Principles the Press Council is flexible and the complaint will still be considered just as important.

D Consistency?

In the majority of adjudications the Press Council is consistent. Broad principles, such as editorial discretion in the printing of letters and abridgement of letters are always decided consistently.

The Press Council is constantly reiterating the point that it is editorial discretion as to what letters are printed, such as in Case No 745 *A right smack in the gob*⁸⁷ where the Press Council stated, "editors [have] a prerogative as to which letters to the editor they [choose] for publication".⁸⁸ Other adjudications where this same issue has been addressed are Case No 562 *One New Zealand Foundation at odds*⁸⁹ and Case No 560 *Editor's selection policy upheld*.⁹⁰ The Press Council has also made reference to past adjudications, for instance in Case No 736 *Non selection of letter for publication*.⁹¹ All these adjudications came to the same result thus are evidence that the Press Council offers consistency.

⁸⁶ 1999 Annual Report, above n 47, 17.

⁸⁷ 1999 Annual Report, above n 47, 44.

⁸⁸ 1999 Annual Report, above n 47, 45.

⁸⁹ 1994 Annual Report, above n 75, 8.

⁹⁰ 1994 Annual Report, above n 75, 16.

⁹¹ 1999 Annual Report, above n 47, 34.

Statement of Principle 12 "Letters" reflects this consistency as it acknowledges the Press Council's previous practice. Therefore when a complainant considers complaining about the non-printing of their letter they will be able to predict the result.

Also in relation to the abridgement of letters, it is within editorial discretion so long as the meaning of the letter is not changed. For example, Case Nos 545 *Abridgement of Letters*⁹² and 541 *Omission of Important Words Claimed*⁹³ followed this principle and this principle was still followed in 1999 in adjudications such as Case No 763 *Sub editing of letter to the editor*.⁹⁴

In adjudications that do not arise very often the Press Council does use their precedents. In Case No 732 *Unethical behaviour over election coverage*⁹⁵ the Press Council made reference to a similar complaint made in 1992. Both complaints covered local body election candidates having to pay for coverage in the respective newspapers. In 1992 the Council described this conduct as "unethical and a breach of good journalistic practice"⁹⁶ and that "the Franklin County News completely abrogated its responsibility to provide full and fair coverage of an important local event".⁹⁷ The Press Council applied this reasoning to Case No 732 and upheld the complaint against Wainuiomata News.

In Case No 747 *Paper broke news embargo*⁹⁸ the Press Council made reference to its "strict support of the embargo"⁹⁹ and made reference to a 1979 case¹⁰⁰ where the Union Steamship Company complained about three newspapers who broke embargos. The

⁹² 1994 Annual Report, above n 75, 33.

⁹³ 1994 Annual Report, above n 75, 35.

⁹⁴ 1999 Annual Report, above n 47, 61.

⁹⁵ 1999 Annual Report, above n 47, 29.

⁹⁶ 1999 Annual Report, above n 47, 30.

⁹⁷ 1999 Annual Report, above n 47, 30.

⁹⁸ 1999 Annual Report, above n 47, 46.

⁹⁹ 1999 Annual Report, above n 47, 47.

¹⁰⁰ 1999 Annual Report, above n 47, 47.

Press Council in that case reminded editors of the importance of release times being observed. Case No 747 then made reference to the Press Council's agreement with the Postmaster-General that embargos were "a long-standing practice and newspapers should reasonably be expected to adhere them".¹⁰¹ The Press Council followed this line of reasoning that it had used in the past and upheld the complaint against the Waikato Times. Therefore the Press Council does use their precedents in appropriate adjudications.

The chairman and the secretary do the researching of the precedents. Because there is no formal researcher and because some issues do not arise very often, there is a risk of providing inconsistent adjudications. As a private tribunal it is not bound by law to obey the rules of natural justice, and no appeal lies from its findings to any higher court,¹⁰² therefore there is nothing a complainant can do if the Press Council produces inconsistent adjudications. For instance in 1999 in Case No 734 *Cot death campaigner v Consumer* (the Dr Sprott case)¹⁰³, Dr T J Sprott complained, among other things, that the headline in a Consumer magazine making a statement of its views on the cot death arguments. The Press Council made the following statement "[t]he New Fowler's Modern English Usage...contains an interesting essay...which..states: 'Readers simply regard headlines as blackboard pointers: the real message lies below'"¹⁰⁴ and concluded that "the interpretation of the headline cannot be isolated from the article itself".¹⁰⁵

¹⁰¹ 1999 Annual Report, above n 47, 47.

¹⁰² Robertson, above n 68, 31.

¹⁰³ 1999 Annual Report, above n 47, 31.

¹⁰⁴ 1999 Annual Report, above n 47, 32.

¹⁰⁵ 1999 Annual Report, above n 47, 32.

But in other cases concerning headlines the Press Council has not made the same distinct findings. In Case No 742 *Secondary headline gave wrong impression* (Mr Makaore's case)¹⁰⁶ the headline "Asleep as the wheel, Now it's jail for man who killed friends"¹⁰⁷ was complained about. The Press Council said that "the Council upholds the part of the complaint that the secondary headline gave an inaccurate impression that Mr Makaore had already been sentenced to prison" when in fact the judge had said to the complainant "you are only 18 years old and you are looking at prison".¹⁰⁸ It is submitted that this was the correct conclusion for the Press Council to come to in this case but it does not sit well with the reasoning they gave in the earlier case because in the earlier case the headline was just a pointer but in this case the headline was considered to be something more.

The adjudications can be distinguished on the grounds that the Dr Sprott case concerned whether it was the views of the magazine that were being communicated and Mr Makaore's case concerned events relating to, and therefore the reputation of, a member of the public. But reasoning of what a headline means should not be used in some respects and not others. The headlines in both articles were factually correct but in one case a headline is just a pointer to the rest of the article and in the other case it means much more.

Case 572 *Headline Upsets Muslim Association*¹⁰⁹ concerned a complaint by Mr Zaman about the headline "Fanatic Islam" over a letter the New Zealand Herald published. The Press Council stated that:¹¹⁰

¹⁰⁶ 1999 Annual Report, above n 47, 41.

¹⁰⁷ 1999 Annual Report, above n 47, 41.

¹⁰⁸ 1999 Annual Report, above n 47, 41.

¹⁰⁹ *The Press and the Public* The Twenty-Third Report of the New Zealand Press Council 1995, 27 [1995 Annual Report].

[i]n compiling columns...where readers...can give their opinions, it must be expected that a newspaper's staff will seek to put into a heading a concise summary of the context of the letter. It would be unfair to suggest that such headings are intended to convey expressions of editorial opinion.

This complaint was not upheld for the same reason as the Dr Sprott case – that a headline was a summary of the letter and that this is not to convey the views of the print media. But this runs contrary to Mr Makaore's case, where Mr Makaore was upset about the implications in the headline against him personally. This was the same for Mr Zaman, who was upset about the implications of the headline on him and his religion, but the reasoning in the Dr Sprott case was used.

Case No 518 *Headline was Misleading*¹¹¹ where the headline "Australian Fiascos Prove FPP Systems's Value" was complained about as "totally inappropriate".¹¹² The Press Council found that the headline missed the point and was totally misleading and that there was nothing in the article that related positively to the headline.¹¹³ Although this adjudication is earlier than the Dr Sprott case, it has similar reasoning because it states that a headline must relate to the article and is a pointer to the message below it. The two cases came to different conclusions because in the Dr Sprott case the headline did point to the article, but in Case No 518 the headline did not point to or relate to anything in the article.

The APC's adjudications are similar in format to New Zealand, with a recitation of the facts then often a short explanation of what

¹¹⁰ 1995 Annual Report, above n 109, 27.

¹¹¹ *The Press and the Public* The Twenty-First Report of the New Zealand Press Council 1993, 43 [1993 Annual Report].

¹¹² 1993 Annual Report, above n 111, 44.

¹¹³ 1993 Annual Report, above n 111, 44.

the APC found. In Adjudication No 1044¹¹⁴ the APC considered a complaint about the headline "Landlady accuses tenant of stalking"¹¹⁵ where the complainant (the tenant) did not consider that that was what had occurred. The APC stated that the headline was a reasonable reflection of what was alleged in court that day, therefore saying that the headline reflected what was reported in the article. This is aligned with the reasoning in New Zealand that the headline is a pointer to the article. But again, the New Zealand adjudications which held that there was bad implications in the headline flows against all the adjudications that suggest that the headline is a pointer to the substantial message that lies below it.

Therefore there is a risk that the Press Council can be inconsistent in its adjudications. This risk needs to be carefully monitored to ensure that it does not happen so that the Press Council is consistent and therefore effective.

E Unresolvable

The Press Council cannot not resolve some complaints and therefore do not uphold them. The instances where a complaint is not resolved is where neither version of what occurred is disbelieved. Case No 737 *80 year old mystery death*¹¹⁶ is one such case, where part of the complaint was not upheld. The complaint concerned the arrangements and terms of an interview that Mrs Lumsden agreed to with a journalist from the New Truth. The Press Council did not just state that this complaint could not be resolved because of conflicting stories, it went one step further and stated that therefore that part of the complaint was not upheld. Whilst this is the natural inference of a complaint being

¹¹⁴ Australian Press Council Adjudication 1044 (August 1999). Source: <http://www.austlii.edu.au/au/other/apc/1044.html>.

¹¹⁵ Australian Press Council Adjudication 1044 (August 1999). Source: <http://www.austlii.edu.au/au/other/apc/1044.html>.

unresolvable, the effect of the added statement of the complaint not being upheld is that the newspaper is successful when in fact that is not what was said. The Press Council should create a new category of "unresolvable" adjudications for circumstances where the Press Council cannot resolve the issue. This has the advantage of stating the fact that it was unresolvable and there is no inference that the print media were successful.

In Case No 751 *No story was written but unethical behaviour claimed*,¹¹⁷ concerned the behaviour of journalists from the Otago Daily Times. The Press Council dealt with the unresolvable issue by stating in the adjudication's final sentence "the Press Council is unable to make a decision on this aspect of the dispute, which means neither side is disbelieved".¹¹⁸ Then on a single line at the bottom, as they do in each adjudication, is the sentence "the complaint is not upheld".¹¹⁹ In this instance it is quite clear to the reader that the issue was unresolvable because neither side was disbelieved and therefore the natural inference was the complaint could not be upheld. If the Press Council does not want to create a new category of adjudications then it should use this form of explanation when an issue is unresolvable rather than that in Case No 737 because it contains less of an inference that the print media were successful.¹²⁰

F Dissents

There have only been two recorded dissents in the Press Council's adjudications since 1992, in 1998 and 1999. In 1998, Case No 686 *Council dissent*¹²¹ concerned a complaint that an editorial

¹¹⁶ 1999 Annual Report, above n 47, 35.

¹¹⁷ 1999 Annual Report, above n 47, 51.

¹¹⁸ 1999 Annual Report, above n 47, 53.

¹¹⁹ 1999 Annual Report, above n 47, 53.

¹²⁰ 1999 Annual Report, above n 47, 35.

¹²¹ 1998 Annual Report, above n 43, 14.

overstepped the mark by placing a Gore District Councillor's name in an editorial concerning making male circumcision a tourist attraction (as advocated by the Minister of Tourism in Malaysia).¹²² The majority stated that the reference to the Councillor was gratuitous and included a "highly questionable innuendo"¹²³ but upheld an editor's right to express him or herself using robust language and therefore the majority did not uphold the complaint. The dissent was only acknowledged in the final paragraph of the adjudication, which stated "[t]he Chairman, and two other members of the Council, differed from the result and would have upheld the complaint".¹²⁴ The adjudication did not give any explanation as to what basis the dissent was on, therefore making it unclear what points that they differed upon. By not doing this the public and the print media cannot see what issues would change the decision, reducing the Press Council's clarity and accessibility to the public and the press as they do not know what the borderline issues were in this complaint.

In 1999, the Press Council made a significant improvement in making themselves more accessible and the borderline issues more clear for the public and the print media. In Case No 768 *Council minority writes dissenting opinion*, as the title suggests, the minority wrote a dissent which was printed after the majority decision. Again, the majority upheld the complaint but the public and the press can look and know what the borderline issues were and perhaps in a similar case it could swing the other way if the minority points in Case 768 are stronger in another case.

This printing of dissent also makes the Press Council more effective because it is seen as more independent in terms of member's views. The Press Council obviously respects each

¹²² 1998 Annual Report, above n 43, 14.

¹²³ 1998 Annual Report, above n 43, 14.

¹²⁴ 1998 Annual Report, above n 43, 14.

members view. The Press Council's flexibility is also demonstrated as it showed its adaptability to the print media and public requirements as 1999 was the first time it printed a dissent.

V AREAS OF THE NEW ZEALAND PRESS COUNCIL LACKING EFFECTIVENESS

A Enforcement

Because the Press Council has no legislative backing and is a purely voluntary organisation it has no legally enforceable punitive powers.¹²⁵ It assumes the mantle of courts in deciding cases against the New Zealand press, hears evidence and then records a judgment,¹²⁶ but it lacks the powers of a court.¹²⁷ There is nothing that the Press Council can do if a member of the print media does not wish to come under its jurisdiction or decides it no longer wants to come under its jurisdiction. The Press Council relies on the print media respecting their membership agreements. The Secretary of the Press Council states that no member of the print media has ever declined to publish an adjudication.¹²⁸ Therefore, editors do seem to respect the Press Council in this regard and this increases the credibility and effectiveness of the New Zealand Press Council.

But there is a risk that exists because these actions of the past do not necessarily mean that a newspaper will not refuse to print an adjudication in the future. Before the British Press Council was reformed there were several instances of the print media writing what they thought of an adjudication. For instance, The Sun derided an adjudication with a front-page editorial which

¹²⁵ John Burrows and Ursula Cheer *Media Law in New Zealand* (4 ed Oxford University Press, Auckland) 452.

¹²⁶ Robertson, above n 68, 6.

¹²⁷ Robertson, above n 68, 31.

¹²⁸ As at 11 September 2000.

continued for a further full column on page two entitled "Paper they can't gag"¹²⁹ This has never happened in New Zealand and would be the ultimate in disrespect and would undermine public confidence as the Press Council would be shown to be toothless. "A Press Council which cannot protect itself from distortion and inaccuracies is unlikely to be able to provide adequate protection for complainants".¹³⁰ These risks make the accountability of the print media and therefore the effectiveness of the Press Council waiver in the public eye. It can only be over come if voluntariness is supported by respect.

The membership agreement of the Press Council has never been tested in a court under contract law. As Sir David Calcutt stated:¹³¹

If journalists, editors or proprietors risked having to obey a court order to comply with a Press Council adjudication, they would be likely to insist on all the procedural safeguards of a legal system. Investigation of complaints might well become increasingly formalised. The process might well become lengthier, legalistic and costly, not least because the Press Council would need to employ staff to carry out the enforcement procedure.

These disadvantages would decrease the effectiveness of the Press Council in terms of its cost, speed and simplicity.¹³²

The voluntary acceptance of the Press Council leads to problems with its jurisdiction. As stated earlier, ACP declined to agree to come under its jurisdiction. This means that members of the public who feel aggrieved by the New Zealand Woman's Weekly, owned by INL, have an avenue for complaint but this is not the

¹²⁹ Robertson, above n 68, 67.

¹³⁰ Robertson, above n 68, 68.

¹³¹ Calcutt, above n 7, 68.

¹³² Calcutt, above n 7, 68.

same for people who wish to complain about the ACP-owned Woman's Day.¹³³ Other major New Zealand newspapers that do not accept the Press Council's jurisdiction are the Independent Business Weekly and the National Business Review.

The Press Council "may consider complaints against other publications provided there is an agreement that the publisher accepts adjudication".¹³⁴ This makes the Press Council accessible to the public as they can complain about any print media, whether or not that print media accepts their jurisdiction. The difficulty comes when considering the complaint because the print media must accept the Press Council's jurisdiction. By allowing the compliant, the Press Council leaves open the possibility that print media that do not come under its jurisdiction may be able to be adjudicated upon. An example of this is Case No 734 *Cot death campaigner v Consumer*,¹³⁵ where Consumer magazine (who were not under the Press Council's jurisdiction at the time the article was published) agreed to being adjudicated upon. When the Press Council receives complaints that may not be able to be adjudicated upon it also makes them aware of what practices are being undertaken by journalists, thus increasing their ability to achieve their objective of maintaining the character of the New Zealand press in accordance with the highest professional standards.

But in fact non-acceptance has not stopped the Press Council adjudicating. In 1999 it considered a complaint against North & South,¹³⁶ which it partly upheld, and in 2000 it considered a complaint against Craccum,¹³⁷ a student magazine, where different

¹³³ "Press Freedom Versus Regulation" New Zealand Herald, Auckland, New Zealand, 4 January 2000.

¹³⁴ NZ Press Council Information Pamphlet, above n 1.

¹³⁵ 1999 Annual Report, above n 47, 31.

¹³⁶ 1999 Annual Report, above n 47, Case No 764 *Politician's complaint part upheld*, 68.

¹³⁷ Case Nos 783-787 *Five Complaints Against Craccum* and Case No 787a *Abstract of the Decisions Reached in Complaints Against Craccum*. June 2000. Source: www.presscouncil.org.nz.

aspects were upheld and not upheld. Sir John Jeffries states that the Press Council decided that it would no longer be held to ransom against ACP¹³⁸ and because of the widespread public notice, Craccum had moved into general public interest and reached mainstream press.¹³⁹ Therefore the Press Council, as an avenue for the public to complain to, seem willing, in limited circumstances including public interest, to consider any complaints the public brings that have some substance. This makes the Press Council more effective because it is more accessible to the public and it also makes the print media more accountable. The Press Council is also viewed as an independent and credible body willing to take on the print media. But the print media who are adjudicated upon here have no requirement to print these adjudications.

To solve this enforcement issue and eliminate the risks of self-regulation, there is the option of statutory enforcement. A statute would “transform the Press Council into a publicly funded institution, with the legal authority to call for evidence and require publication of its judgements in offending publications”.¹⁴⁰ It would also have the ability to provide greater sanctions and there would also be the right of appeal. The Press Council would be independent from the print media, although at the expense of no longer being independent from government. To have public confidence in the press, the Press Council must be independent from government and from the print industry itself¹⁴¹ because a Press Council that is perceived as influenced by the government leads to the perception that the press itself is influenced by the government. The perception from the print media is that self-regulation “protects the...industry from legislation which would

¹³⁸ Interview with Sir John Jeffries, 2 August 2000.

¹³⁹ Case Nos 783-787 *Five Complaints Against Craccum*. Source: www.presscouncil.org.nz.

¹⁴⁰ Curran, above n 26, 298.

¹⁴¹ McGregor, above n 5, 196.

curb its freedom and its powers".¹⁴² A statute would also have the effect of being less flexible and losing its promptness. Self-regulation is cheaper for the government than government control because the industry develops and seeks to enforce the rules, therefore providing a cheaper complaints mechanism.¹⁴³ There is also more respect for the Press Council under self-regulation because the rules are made by the industry for the industry and therefore more likely to be perceived as reasonable, therefore increasing the effectiveness of the Press Council.¹⁴⁴

The first option of statutory reform is a statute based on the Broadcasting Standards Act 1989, which created the BSA. A Press Complaints Tribunal could be established that would be wholly independent of government.¹⁴⁵ A tribunal would mean that the complaints avenue would remain accessible to those of limited means and procedures would be simple and speedy.¹⁴⁶ There is also the option of making a Statutory Code of Practice, which all print media would have to abide by.¹⁴⁷ The Broadcasting Standards Act 1989 sets out statutory requirements to ensure that broadcasters maintain high ethical standards. Section 21(1)(e) gives the BSA authority to develop codes of practice appropriate to the types of broadcasting undertaken. The formal complaints are appealable to the High Court.¹⁴⁸ The history's of the print and broadcast media have meant that they are regulated differently¹⁴⁹ and broadcast media is perceived as much more pervasive than print media. While this paper does not seek to justify the reasons for the difference in regulation or whether it should remain different, if self-regulation is working then it is preferable because

¹⁴² Robertson, above n 68, 1.

¹⁴³ Campbell, above n 3, 716.

¹⁴⁴ Campbell, above n 3, 716.

¹⁴⁵ Calcutt, above n 7, 75.

¹⁴⁶ Calcutt, above n 7, 75.

¹⁴⁷ Jelf Myles "Not with a Bang but a Whimper? A Right to Privacy and the End of Voluntary Self-regulation of the Press" (1999) 10(8) Ent LR 244, 246.

¹⁴⁸ BSA Annual Report 1999, 5.

¹⁴⁹ Kingsbury, above n 19, 159-160.

it ensures independence from the government, otherwise it is at the risk of being subject to government controls and a government authority. If self-regulation failed, a statutory tribunal is the next best option as the BSA demonstrates that a regulatory body can be successful.

In Denmark, The Media Liability Act 1991 (the Denmark Act) regulates both print and broadcast media. For the purposes of this paper only those parts of the statute that regulate print media are considered. Part 7 of the Denmark Act establishes the Danish Press Council and the Act applies to “national, periodical publications, including pictures and similar representations printed or in any other way duplicated”.¹⁵⁰ Therefore all print media are regulated by law to conform with Denmark’s Press Ethical Rules and are bound by the Danish Press Council’s rulings. Therefore the Denmark Press Council has much stronger enforcement powers than the New Zealand Press Council at the expense of no longer being independent from the government.

Creating a Press Ombudsman based on the New Zealand Office of the Ombudsman or the Swedish Press Ombudsman, which does not have a statutory base and is funded by media organisations¹⁵¹ would overcome the jurisdictional problems that the New Zealand Press Council has because all print media would automatically come within its jurisdiction, therefore making the print media more accountable. The term “Ombudsman” is protected by section 28A of the Ombudsman Act 1975, therefore before creating a Press Ombudsman the industry would have to get the consent of the Chief Ombudsman.

Although a Press Ombudsman would solve the jurisdictional problem, the disadvantage of creating an Ombudsman is that an

¹⁵⁰ The Media Liability Act 1991 Denmark, section 1 (1).

Ombudsman's powers are only recommendatory. But the term "Ombudsman" has high status in New Zealand because of the history of the Office of the Ombudsman and the respect that that office is shown. The Banking Ombudsman is one such office that has been created along the lines of the Office of the Ombudsman and its members are bound by their membership agreement, thus solving the enforcement problem. Therefore a Press Ombudsman would have to be respected so that print media follow its recommendations and the Press Ombudsman would enforce the recommendations through the membership agreements. This is essentially what the Press Council itself needs to do now, therefore while changing to an Ombudsman would solve the jurisdiction issue, it would not solve the enforcement issue. As discussed above, the Press Council is taking the jurisdiction issue into its own hands and solving that problem itself.

To achieve an effective Press Council, it is in the print media's best interests to respect the rules that the Press Council sets forth because otherwise they will be defeating the purpose of the body that they set up. Disrespect will lead to attention from the government, which would lead to statutory regulation – the last thing that the print media wants. The print media must publicly commit itself to observing all the procedures and adjudications of the Press Council to strengthen the effectiveness of the Press Council.¹⁵²

B Sanctions/Remedies

The only sanction the Press Council imposes is a direction that the paper concerned prints the Press Council's adjudication. This can only deter the print media if it causes "serious, albeit retrospective

¹⁵¹ *Fact Sheets on Sweden* (Swedish Institute, June 1996), 4.

¹⁵² Calcutt, above n 7, 68.

embarrassment".¹⁵³ The theory is that the most effective sanction which can be used against journalists is publicity and condemnation¹⁵⁴ and¹⁵⁵

if the print media prints the adjudication prominently and in sufficient detail for readers to appreciate the nature of the lapse from professional standards, and rival newspapers give the adjudication sufficient publicity, the principles will remain in the consciousness of editors and journalists in the future. They will become part of press lore, if not press law. Nobody likes being criticised...and hence everybody will take care to avoid attracting similar criticism in future.

Therefore the onus is on the Press Council to make their adjudications strong so they have the intended effect of public embarrassment for the newspaper concerned. As shown under Part IV, the Press Council does go to great lengths when an adjudication is against the Press to explain what happened and why there are reprimands.

This sanction affects editors because it is their newspaper that is being adjudicated upon. Therefore this may reflect that they do not have control over their journalists or that they have bad journalistic integrity as they had the editorial discretion as to whether the story was run. It also has effects on the newspaper's reputation and therefore possibly sales.

An upheld complaint is against the newspaper itself, and while no action is actually taken by the Press Council against the journalist who wrote the story, this does not stop the print media using internal mechanisms to discipline the journalist. An upheld complaint is taken very seriously by the journalist who wrote the

¹⁵³ Robertson, above n 68, 63.

¹⁵⁴ McGregor, above n 5, 210.

¹⁵⁵ Robertson, above n 68, 63.

story because of the indirect effects it has on their reputation in the industry.¹⁵⁶

The Press Council also displays their adjudications on their web site, which is a significant development as any person can read what the Press Council adjudicated without any newspaper having to print it.

One way to increase the sanction is to print the adjudications in journalism reviews or media magazines to provide media criticism and analysis for industry insiders.¹⁵⁷ This would increase the embarrassment felt by the print media and the journalist concerned. The Netherlands Press Council sends its adjudications to a magazine for journalists, to the national newsagency and to the rest of the media.¹⁵⁸

Currently there are no penalties or damages awarded to affected parties. Sir John Jeffries states that printing the adjudications is enough because often the public do not necessarily want any monetary compensation, just having a complaint mechanism is enough.¹⁵⁹ While this may be true enough in some circumstances and although printing the adjudications does have the above effects, this is ineffective¹⁶⁰ because public criticism is inadequate and only a fine or suspension can make a real difference to the conduct of journalists¹⁶¹ because it has an immediate and direct effect on the journalist involved.

¹⁵⁶ Sue Gifford, former industry member.

¹⁵⁷ Everette E Dennis "Self-regulation and the American Media" (1995) 13 *Cardozo Arts & Ent LJ* 697, 701.

¹⁵⁸ Raad voor de Journalistiek, The Netherlands (Dutch Press Council); raad@rvdj.nl.

¹⁵⁹ Interview with Sir John Jeffries, 2 August 2000.

¹⁶⁰ Calcutt, above n 7, 60.

¹⁶¹ McGregor, above n 5, 210.

The Press Council should have the authority to award monetary damages or a type of penalty or fine as well as the requirement of printing the adjudication. There is a distinction as to when damages and penalties should be awarded. In circumstances where a complainant has been directly affected, then damages could be considered. Where a member of the public has complained about an article in a general sense, for example bad taste, then damages would not be an option, only a form of penalty payable to the Press Council. Therefore, while damages would go to the person affected, penalties could be an extra form of funding for the Press Council.

For instance, the Swedish Press Council punish for a breach of the code of ethics and newspapers must publish the decision and pay a fine of \$3000,¹⁶² much stronger than the New Zealand Press Council. Whilst both the New Zealand and Swedish systems suffer from the same problem of being unable to enforce the requirement to publish, the Swedish Press Council has the added strength of the fine, which they keep. The New Zealand Press Council could look at implementing a standard fine such as this. There is also the option of imposing a variable fine, which in Denmark is fixed by taking account of the nature and seriousness of the offence, the distribution and the profit made.¹⁶³ These elements could be used in New Zealand to decide the amount of variable fines. The difficulty with imposing a fine is that this would have to be agreed upon by the print media themselves first, so as to allow the Press Council to implement it. These fines should be mandatory in any adjudication upheld to increase the Press Council's effectiveness as a complaints body and increase the accountability of the print media.

¹⁶² Steven Price "Ombudsman To the Swedes" (1998) *American Journalism Review* 46, 47.

¹⁶³ The Media Liability Act 1991 Denmark, section 26(2).

The Denmark Act imposes liability for damages and costs.¹⁶⁴ The publisher pays these damages in the first instance,¹⁶⁵ even though they may be because of the author or editor. This is presumably on top of the fine that may have been imposed. As stated above, New Zealand should consider awarding damages where a complainant has been directly affected to compensate the complainant for the invasion or harm that they felt from the printing of the article.

The Denmark Act also states that criminal liability can be imposed on the author of an article in a national, periodical publication and on the editor and publisher, with the offence being punishable "by imprisonment for six years or more".¹⁶⁶ Although where the author or publisher is a legal entity, the punishment is in the form of a fine.¹⁶⁷ This is a severe sanction with no equivalent in New Zealand. The impact on a journalist for acting outside ethical boundaries is huge and a punishment like that would hinder free speech because journalists would be afraid to express themselves freely, therefore this type of criminal liability should not be considered in New Zealand.

Italy has an "Order of Journalists",¹⁶⁸ which designates journalism as a profession. They have the "officially recognised prerogative to identify, write, update, uphold and enforce the ethical standard of the...profession".¹⁶⁹ The "Order of Journalists" has the ability to enforce disciplinary actions against journalists who fail to abide to the rules of ethical and professional conduct.¹⁷⁰ This is similar

¹⁶⁴ The Media Liability Act 1991 Denmark, section 29 and 30. There is nothing in the Act to suggest how this is worked out.

¹⁶⁵ The Media Liability Act 1991 Denmark, section 30.

¹⁶⁶ The Media Liability Act 1991 Denmark, section 25.

¹⁶⁷ The Media Liability Act 1991 Denmark, sections 5 and 15(2).

¹⁶⁸ An 'Order' is an official institution which groups together those who exercise a particular vocation and profession considered to be of general public interest. - Italy's Order of Journalists.

¹⁶⁹ Italy's Order of Journalists, femasel@tin.it, 1.

¹⁷⁰ Italy's Order of Journalists, femasel@tin.it, 3.

to the New Zealand Law Society's ability to discipline members of the profession who are mandatorily part of the society when admitted to the bar. The Order of Journalists authorised disciplinary actions are:¹⁷¹

- a) verbal warning;
- b) written reprimand;
- c) suspension from the profession for a period ranging from two months to a year;
- d) revocation of the right to exercise the profession by expulsion from the rolls.

This is much more forceful than the New Zealand Press Council's ability to sanction journalists. But 'any system of approved or registered publications and journalists is clearly incompatible with freedom of the press'¹⁷² because it withdraws the fundamental right of freedom of expression from a minority of journalists.¹⁷³ Also, the Press Council in New Zealand does not focus on the journalist involved, its focus is on the newspaper who printed the article¹⁷⁴ because the Press Council acknowledges that it is up to the editor to ensure that its pieces are ethical. Therefore such a profession should not be created.

C Legal Waiver

When the Press Council considers that a complaint may concern a legally actionable issue the Press Council requires the complainant to sign a waiver of legal action.¹⁷⁵

The arguments as to why a legal waiver should be in place are that it stops some members of the public from using the Press Council as a trial run to litigation or citing a favourable adjudication if the

¹⁷¹ Italy's Order of Journalists, femasel@tin.it, 3-4.

¹⁷² Calcutt, above n 7, 67.

¹⁷³ Curran, above n 26, 298.

¹⁷⁴ Interview with Sir John Jeffries, 2 August 2000.

case went to court.¹⁷⁶ There is also the argument that the legal waiver prevents exposure to double jeopardy¹⁷⁷ and that without it, newspapers might refuse to co-operate with the Press Council.¹⁷⁸ The last argument in favour of the legal waiver is that without it the print media might be obliged to disclose to the Press Council its defence to the legal action.¹⁷⁹

Through the legal waiver the Press Council is unjustifiably restricting access to the courts and it gives the impression that the Press Council is protecting the press from the public¹⁸⁰ rather than raising the standards in the interests of the public.¹⁸¹ The double jeopardy argument does not stand because of the Press Council's inconsistent practice that those who have succeeded in the courts are free to complain to the Press Council afterwards.¹⁸² Therefore it does not see itself as providing similar sanctions to the courts. Also if a third party complains, who would not be in anyway related to the legal proceedings, they are not expected to sign the legal waiver.¹⁸³ Therefore a potential plaintiff just has to persuade a third party to complain to avoid the waiver.¹⁸⁴

There is no double jeopardy in a meaningful sense because the Press Council has no legal powers.¹⁸⁵ Its role is not to provide a alternative means of obtaining a civil remedy, but as a body that maintains ethical standards. Therefore the legal waiver is unjustified.

¹⁷⁵ NZ Press Council Information Pamphlet, above n 1.

¹⁷⁶ Calcutt, above n 7, 70.

¹⁷⁷ Gibbons, above n 8, 161.

¹⁷⁸ Calcutt, above n 7, 70.

¹⁷⁹ McGregor, above n 5, 206.

¹⁸⁰ Gibbons, above n 8, 161.

¹⁸¹ Calcutt, above n 7, 60.

¹⁸² McGregor, above n 5, 206.

¹⁸³ Graeme Jenkins, Secretary of the New Zealand Press Council.

¹⁸⁴ McGregor, above n 5, 206.

¹⁸⁵ Gibbons, above n 8, 161.

For the print media to argue that they would have to disclose their defence early is meaningless because in litigation the trend is to “expose one’s hand for the sake of speed and lower costs”.¹⁸⁶ If the newspaper has a good defence then the complainant might drop their case and save all the parties money.¹⁸⁷

These arguments of trial run litigation and newspapers being unwilling to cooperate assume that going to court is a realistic option for most complainants. In reality it is not and therefore the legal waiver is not an issue. A person who can afford litigation and has a strong argument will go to court over the Press Council because there is a chance that they will win and get damages and the publicity involved will have the same effect as printing an adjudication in the newspaper. A poor person has no such option. The Press Council is their only form of redress. If they have a successful adjudication they do not get damages, there is only an adjudication printed. But this is an argument not for removing the waiver but for providing better access to the courts.¹⁸⁸

Putting the arguments for and against the legal waiver aside, there is a further issue of whether the legal waiver is legally enforceable as it has never been tested in the courts.¹⁸⁹ The common law states that agreements purporting to oust the jurisdiction of the Courts entirely and destroy the rights of the parties to submit to questions of law are illegal and void on grounds of public policy.¹⁹⁰ But an agreement which states that questions of law and fact shall be decided by a private tribunal, is not on the face of it a contract to oust the jurisdiction of the courts, therefore is valid and

¹⁸⁶ Calcutt, above n 7, 71.

¹⁸⁷ Calcutt, above n 7, 71.

¹⁸⁸ Gibbons, above n 8, 161.

¹⁸⁹ Interview with Sir John Jeffries, 2 August 2000.

¹⁹⁰ *Scott v Avery* (1856) 5 HL Cas 811; 10 ER 1121; [1843-60] All ER Rep 1. See also *Re Waite* [1927] GLR 469.

enforceable.¹⁹¹ The rules governing a domestic tribunal may make it the final arbiter on questions of fact but cannot make it the final arbiter on questions of law.¹⁹² If a complainant did bring court proceedings against the newspaper then the courts would strike out the contract on the grounds that it is illegal because it is against public policy and the Press Council cannot be the final arbiter on questions of law.

From an academic viewpoint the knowledge that the legal waiver will not be enforceable is great. But for the general public who have no understanding of the intricacies of the law this looks like a binding waiver. Leaving aside the issue of whether much of the general public could afford to bring legal action, the unequal bargaining power between the Press Council and the majority of the public leaves the public in a position of believing they have no more alternatives.

If the legal waiver is abandoned, the Press Council will seem more independent from the print media in the public's eyes. Abandoning the legal waiver may be a make or break issue for self-regulation as the newspapers may be unwilling to cooperate with the Press Council.¹⁹³ Therefore, the Press Council should establish a form of fine and damages, because then the double jeopardy argument arises and it would be fair for the complainant to elect between the two means of redress.¹⁹⁴ Therefore the Press Council would not be seen to be protecting the print media in a way that means it is not independent, just protecting the print media from double jeopardy.

¹⁹¹ J F Burrows, J Finn and S Todd *Law of Contract in New Zealand* (8 ed, Butterworths, Wellington, 1997) 380.

¹⁹² *Tucker v Auckland Racing Club* [1956] NZLR 1.

¹⁹³ Calcutt, above n 7, 71.

¹⁹⁴ Calcutt, above n 7, 71.

D Independence

1 Objectives

As stated earlier the Press Council has three principal objectives, which it considers rank equally:¹⁹⁵

- a) To consider complaints against newspapers and other publications....
- b) To preserve the established freedom of the New Zealand Press;
and
- c) To maintain the character of the New Zealand press in accordance with the highest professional standards.

Sir David Calcutt suggested that there is an inherent conflict between its roles as a defender of and lobbyist for press freedom and as an impartial adjudicator in disputes.¹⁹⁶ This inherent conflict has the ability to undermine the independence of the Press Council because the two functions are distinct and sit uneasily together.¹⁹⁷

But freedom of the press is not absolute and carries with it responsibilities¹⁹⁸ because “the support of public opinion, by which the freedom of the [p]ress is maintained, depends on the observance by the [p]ress of ethical standards”.¹⁹⁹ The objectives are consistent because the most effective way of ensuring press freedom is to ensure that it is not abused²⁰⁰ and therefore keeping the issue of complaints away from the courts and from government intervention.

¹⁹⁵ NZ Press Council Information Pamphlet, above n1.

¹⁹⁶ Calcutt, above n 7, 63.

¹⁹⁷ Calcutt, above n 7, 66.

¹⁹⁸ Calcutt, above n 7, 66.

¹⁹⁹ Levy, above n 18, 20.

²⁰⁰ du Fresne, above n 2, 25.

The Press Council has not let its lobbying role compromise its position as a complaints body, but the public perception is what is important and it is easy to see why the public would not see the Press Council as being independent.

The Peruvian Press Council does not itself deal with complaints but has a sub body called the Ethics Tribunal, which is autonomous from the Press Council itself.²⁰¹ Other Press Councils that do not consider press freedom as one of their missions are Cyprus, Denmark, the Netherlands, Spain and Sweden.²⁰² The autonomy of the complaints aspect with the aspect that deals with press freedom is something that New Zealand could consider if this becomes a problem in terms of public perception of independence.

2 *Funding*

The Press Council is funded entirely by the industry itself, therefore the print media are "providing an outlet for some public complaints which might otherwise result in legal action".²⁰³ Therefore the source of funding can be seen as self-serving because the public perception is that the Press Council could then act in the industry's interests.

The print media are protecting themselves from legal action by funding a less powerful body than the courts that stops any other form of legal action by legal waiver. The print media are also protecting themselves from government intervention. If the government regulated the print industry then the extreme possibility is that the print industry could lose their independence

²⁰¹ *El Consejo De La Prensa Peruana*, postmast@consejopp.org.pe.

²⁰² Bertrand, above n 31.

²⁰³ Robertson, above n 68, 31.

and be manipulated by the government. Funding its own body is the lesser of two evils. Either they provide their own body to be reprimanded or they succumb to government regulation.

The source of funding is effective because within their resources the Press Council is managing to provide a prompt and cheap complaints forum for the public. The source of funding does not make the Press Council look very independent to the public, therefore the Press Council must demonstrate through its adjudications that despite the source of funding they are independent.

The source of funding can be criticised but what other alternatives are there? Who would fund it if the industry did not do it themselves? The method of funding is critical to the Press Council's ability to reform. One option is to introduce fines as a form of sanction which are paid straight to the Press Council to increase its funding and make it more independent.

E Statement of Principles

When a member of the public complains to the Press Council, they have the option of referring to the Statement of Principles, but it is not an essential component of the complaints process, so a complainant does not have to. The Statement of Principles states in its preamble that it is not a rigid code and the Council seeks the cooperation of editors and publishers to adhere to it.

The standards in the Statement of Principles are vague and often establish a high threshold that a complaint must overcome before they can be successful. For example, in Principle Two, for mistakes to be corrected, the published information must be *materially* incorrect and only in *appropriate circumstances* does a

publication have to accompany the correction with an apology. This Principle begs the question, what is material and what are appropriate circumstances? Whilst this does leave the Council with discretion to make what it considers an appropriate decision, it does not provide the public with much guidance except that when an error is printed you may complain. That is not enough and there should be guidelines as to what types of circumstances are appropriate and what the Press Council means by materially incorrect. The majority of the 13 Principles contain the same problems. Another example is Principle Five, which is very vague, stating "Editors should have particular care and consideration for reporting on and about children and young people". This provides the complainant and editors a minimal amount of guidance as to what the Press Council expects.

The APC does not have a document titled Statement of Principles but makes General Press Releases (GPRs), which are guidelines, not prescriptive instructions, as to how the Press should report certain matters. These guidelines are on various topics that come to light and are more detailed than the New Zealand Statement of Principles. New Zealand should look at this example to compliment and further develop its Statement of Principles from a vague document to a more purposeful and directive document.

The British Complaints Commission established a Code of Practice, which is longer and more detailed than the New Zealand Statement of Principles. It is submitted that New Zealand does not need such a detailed and pre-emptive document to direct the print media in New Zealand because we do not have the same problems as the British press does with tabloid journalism, although with the magazines coming under the Press Council's jurisdiction there may be more complaints in this area.

A prescriptive and rigid document takes away the flexibility that the Statement of Principles gives the Press Council. This flexibility is essential to an effective Press Council and what the Press Council needs to do is issue further guidelines like the APC to give the Statement of Principles more substance and therefore add more clarity and consistency to the Press Council and its adjudications.

F Public Knowledge

The Press Council's existence is not widely known,²⁰⁴ therefore the public currently lack sufficient knowledge to make proper use of the Press Council. There has never been any research done into public knowledge of the Press Council's existence.²⁰⁵ It may be for this reason that the Press Council's resources and abilities have never really been tested.

The Press Council does little to promote itself²⁰⁶ and relies on the strength and publicity of its adjudications and newspapers advertising that there is a complaints body in existence. The editor of *The Evening Post*, Suzanne Carty, an industry representative on the Press Council, is leading by example and taking some responsibility for widening public knowledge by printing the following at least every 2 weeks:²⁰⁷

Readers are reminded that should they wish to make a complaint to the New Zealand Press Council, the council requires that they first put that complaint in writing to the editor of the newspaper concerned. If they are not satisfied with the reply they receive, they should then write to: The Secretary, New Zealand Press Council, Box 10879, The Terrace,

²⁰⁴ Calcutt, above n 7, 63.

²⁰⁵ Graeme Jenkins, Secretary of the New Zealand Press Council.

²⁰⁶ Calcutt, above n 7, 63.

Wellington. The complaint must be accompanied by a clipping of the article complained of, and a copy of any correspondence with the editor.

In Britain, there were 3000 complaints last year out of a population of approximately 57 million.²⁰⁸ That is 0.0052 per cent. In New Zealand in 1999, there were 75 complaints out of a population of 3.8 million.²⁰⁹ This is 0.0019 per cent. Although these percentages are small, there are a smaller number of complaints in New Zealand. The reason for this could be the difference in the media environment when you take into account the British tabloids which New Zealand does not have to the same extent. But, there were 204 complaints to the BSA, which is 0.0054 per cent, again showing the Press Council takes a smaller number of complaints. The statistics show that the Press Council is not over worked in terms of what it potentially could be doing.

To make the Press Council more effective there needs to be increased public knowledge that it exists. The print media should conduct a campaign of public awareness, or increase industry funding so the Press Council can do this. The British Press Complaints Commission has a free phone number and in May 1999 the BSA established an 0800 number to make themselves more accessible.²¹⁰ The BSA also has a search engine on its web site allowing searches of its decisions on key words. These are things that the Press Council could look at implementing as one option to make themselves more accessible and more known to the public. Perhaps then there would be more complaints but perhaps the reason why there are so few complaints is that those who do know about the Press Council are generally happy with the way the print media act and do not need to complain. In any event,

²⁰⁷ "Press Council" *The Evening Post*, Wellington, New Zealand 3 July 2000, 2. The average between January and July 2000 is two weeks.

²⁰⁸ The British Council, Wellington, New Zealand.

²⁰⁹ Statistics New Zealand, Wellington, New Zealand.

greater public awareness will lead to a more effective Press Council because the public perception is that the print media are accountable.

The industry may be unwilling to increase awareness because it may lead to more complaints. This would lead to the industry having to increase funding as the Press Council's resources would be stretched tremendously and the Press Council may be unable to quickly and efficiently adjudicate. This may lead to the government taking a closer look at the regulation of the print media and decide that it is inadequate. Therefore increased public awareness may lead to greater effectiveness in other ways as the Press Council would have to concentrate on making sure that they remained cheap, prompt, independent and flexible and therefore credible.

Also more public awareness that the Press Council exists means that adjudications would have more impact because more people would know what this meant. That would be effective because there would be a greater impact on the newspaper itself, the editor and the journalist involved. This would lead to even higher journalistic practices and the perception of the Press Council as an independent and effective complaints forum.

VI CONCLUSION – RECOMMENDATIONS FOR THE NEW ZEALAND PRESS COUNCIL

For the Press Council to be effective, it must satisfy each of the adjectives outlined at the beginning of this paper – independence, credibility, make the print media accountable, flexibility, accessibility, consistence and clarity. The support of the print

²¹⁰ BSA Annual Report 1999, 5.

media and the public flow from a Press Council with these qualities leading, to an effective Press Council.

Apart from the areas where the Press Council is lacking in effectiveness, it is currently doing a good job. As the only print media complaints body in New Zealand it carries a lot of weight on its shoulders ensuring the print media do not abuse their position. The Press Council should remain self-regulated because the print media are not in such a state that government intervention is required. The Press Council has sufficient control over the print media at the moment to justify non-intervention. Self-regulation is cheap and ensures press freedom.

But if the print media want to remain self-regulated they must publicly commit themselves to observing all procedures and adjudications of the Press Council.²¹¹ If the Press Council continues to issue strong adjudications and has the respect from the industry this will solve the problem of lack of enforcement because the flow on effect from industry respect is the respect and a belief in credibility from the public, therefore increasing the Press Council's effectiveness.

The Press Council's structure should remain as it is currently because its structure means it is independent from the print media's desires. The public perception is that it is credible as an independent complaints process and therefore effective.

The complaints process should also remain the same as it is currently because it is simple and cheap and therefore effective. The Press Council should also continue to print all its adjudications in full, and any dissents, in its Annual Reports as this ensures accessibility for the public.

²¹¹ Calcutt, above n 7, 68.

The Statement of Principles is an excellent development that the Press Council has made in recent times. As it was only released to the public in August 1999 it is too early to say if it will work well. But it is clear that it is providing clarity and accessibility for the public, demonstrated in the improvement of the framing of complaints. It remains to be seen what it offers the print media itself.

The Press Council should make reference and show the application of the Statement of Principles in its adjudications, as the Statement of Principles provides the Press Council with the opportunity to ensure consistency, increase accountability of the print media, show its independence and add clarity to its decisions.

The Statement of Principles should remain a set of standards and not a code to ensure that flexibility remains in the Press Council but the Press Council should also issue guidelines like the APC's General Press Releases as a further guide to the print media and the public and to ensure that the Statement of Principles is purposive and directional rather than a vague set of standards. This will increase the Statement of Principles, and therefore the Press Council's, effectiveness even more as it provides even more clarity. This development of the Statement of Principles will lead to a better functioning print media who know what the Press Council expects.

To increase its independence and to ensure that the print media are accountable the Press Council should introduce a fine that it keeps, like Sweden. This fine should be mandatory when a complaint is upheld but the amount variable – taking account of the nature and seriousness of the offence, the distribution and profit make, as in Denmark. The Press Council can use the fine as a source of funding thus being more independent and therefore effective. The

Press Council should also consider awarding damages where people are directly affected.

How a fine and damages would be introduced is an issue because the Press Council would need to implement this with the permission of its members who may not want to add this aspect.

If a fine was introduced then the legal waiver should not be abandoned as double jeopardy does arise and it is fair that complainants choose between their avenues of redress. If a fine cannot be introduced because the industry will not cooperate then the legal waiver should be abandoned. This is because it is unfair that a body who positions itself as an ethical body can stop someone seeking legal redress. The perception of the legal waiver protecting the print media is not conducive to the Press Council's independence and it is not fair that the Press Council should be allowed to deceive members of the public who do not know that it may not be legally enforceable.

The last recommendation, and perhaps the most important, is that the Press Council must increase public awareness of its existence. This would increase effectiveness as more people would know to complain and understand the meaning of the adjudications and therefore the impact of adjudications on the industry would be greater. This could be done through a Press Council campaign, funded by the industry or by simply increasing awareness through the print media. The Press Council should also set up a free phone number and a search engine on its web site to increase public accessibility and knowledge.

The lack of public knowledge is a severe weakness and more public knowledge can only lead to improvement of not only the Press Council itself but also the print media because more public knowledge will mean more complaints. Therefore the Press

Council will have to ensure that they remain effective, which may be a test for them and further reform may then be needed. But more complaints means that the print media will have to be even more careful than they currently are and their standards will improve. Greater public knowledge has flow on effects because the public will be aware of the Press Council, the respect that the print media have publicly given it and this creates public respect.

As stated at the beginning of this paper a Press Council with the cooperation of editors and taken seriously by the press and the public will be effective. These recommendations, combined with the current effective aspects that the Press Council has, will lead to an even more effective Press Council that has greater support and respect of the print media and the public, which has the further effects of a more ethical print media and a satisfied public.

APPENDIX

NEW ZEALAND PRESS COUNCIL – STATEMENT OF PRINCIPLES

1 Accuracy

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

2 Corrections

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

3 Privacy

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

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

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

4 Confidentiality

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

5 *Children and Young People*

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

6 *Comment and Fact*

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

7 *Advocacy*

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

8 *Discrimination*

Publications should not place gratuitous emphasis on gender, religion, minority groups, sexual orientation, race, colour or physical or mental disability unless the description is in the public interest.

9 *Subterfuge*

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

10 *Headlines and Captions*

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

11 *Photographs*

Editors should take care in photographic and image selection and treatment. They should not publish photographs or images which have been manipulated without informing readers of the fact and, where significant, the nature and purpose of the manipulation.

Those involving situations of grief and shock are to be handled with special consideration for the sensibilities of those affected.

12 *Letters*

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

13 *Council Adjudications*

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

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