

**CHRISTIAN PROBST**

**THE NEW ZEALAND  
PRESS COUNCIL'S ADJUDICATIONS:  
ACCORDING TO THE RULES?**

**LLM RESEARCH PAPER  
LAWS 582 – MASTERS LEGAL WRITING**

**LAW FACULTY  
VICTORIA UNIVERSITY OF WELLINGTON**

**2004**

P962 PROBST, c. The New Zealand Press Council's adjudications...

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## **ABSTRACT**

This research paper deals with the decisions of the New Zealand Press Council on balance, fairness and accuracy. The adjudications are supposed to define and underscore the principles set out to determine and uphold good journalistic practice. The New Zealand Press Council construes most cases according to the rules established and hence makes a number of good decisions. However, where the principles of balance, accuracy and fairness are concerned, the Council occasionally gives adjudications that do not seem promote the highest level of journalistic practice in New Zealand. Therefore, after giving a characterisation of the New Zealand Press Council and its adjudications, the author suggests the New Zealand Press Council should make better justified and more stringent adjudications to redress the media consumer's needs. Upholding high journalistic standards should not be sacrificed in favour of indefinable exceptions to the established rules. Approaches that are untraceable and inconsistent do not give guidance for future adjudications but lead to insecurity for complainants and the media wanting to complain about the content of a printed article. After existing for more than 30 years this style will in the end weaken the well-established position the New Zealand Press Council bears at the moment.

## **STATEMENT ON WORD LENGTH**

The text of this paper (excluding abstract, table of contents, footnotes, bibliography and appendices) comprises approximately 13,147 words.

<sup>1</sup> For example *Ye-Juan College v Herald's Day Herald Tribune* (19 February 1995) New Zealand Press Council Case 683.

<sup>2</sup> *Fisk & Game v G. Bryon Johnson v Rural News* (18 February 2002) New Zealand Press Council Case 903.

## I INTRODUCTION

The press industry prints a myriad of publications all over the world. Every country has its major newspapers covering national news. In addition, the print industry produces financial, sport, local and many different other publications tailored to specific customer needs. In New Zealand there are countless newspapers through which information is disseminated to people all over the country. In order to be marketable, the stories of the paper must appeal to the readers and be distinct from those of other competitors. In the pursuit for exciting news, it seems to be likely that not all articles are written with due diligence. It will be shown in this paper that newspaper deadlines are sometimes too tight to research the facts well enough or to inquire another party's view to get both sides of the story.<sup>1</sup> In one case, the news was deliberately skewed to make someone appear in a bad light.<sup>2</sup> Almost every paper reports unfairly every now and then. For the persons affected by bad press it is important that they are able to seek redress. Excluding legal action, the opportunities range from a mere correction by the paper, to a letter to the editor, and finally, to a formal complaint to the Press Council, the body that upholds the standards for published media in New Zealand. The Press Council is equipped with the strongest form of redress: a formal reprimand which the paper has to publish. Over the last years, a number of principles have emerged from the cases of the Press Council that define what is and what is not acceptable in the print industry.

This research paper scrutinises some of the most important principles of the Press Council. It examines the usefulness of the principles for people who have had bad media coverage and seek reliable redress. People adversely affected by poor reporting deserve a formal decision against the perpetrator of a media offence by an independent regulatory body such as the Press Council. The power of the Authority to decide disputes is important because it reminds the press industry to adhere to high standards of journalistic practice when reporting in

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<sup>1</sup> For example *Te Aute College v Hawke's Bay Herald Tribune* (19 February 1998) New Zealand Press Council Case 685.

<sup>2</sup> *Fish & Game NZ, Bryce Johnson v Rural News* (18 February 2002) New Zealand Press Council Case 863.



order to provide the customers with reliable news. If high standards are observed then society benefits from the reliable information the media provides.

The following chapter describes the characteristics of the Press Council including a description of the development and objectives as well as the complaints procedure. In chapter three adjudications since 1998 will be scrutinised concerning the matters of balance, fairness and accuracy. This chapter is split into two sections dealing with procedural and substantial observations. In the first subsection, remarks concerning the general and procedural composition of a decision of the Press Council are made. In the other subsection, the adjudications dealing with the three principles of balance, fairness and accuracy are investigated. After examining what each principle means irregularities will be addressed. Finally, the conclusion points out that the Press Council should be more consistent in its adjudications for it's own benefit, and that of the public and the media.

It was a journal article of a teacher<sup>2</sup> expressing dissatisfaction with a newspaper reporting on her, which brought the establishment of the Press Council into the realm of politics.

The call for a regulatory body was sustained by the increasing public fear of injustice perpetrated by the press. The public was no longer willing to accept that matters that made them feel aggrieved, were dealt with by non-transparent and non-independent resolution bodies.<sup>3</sup> In addition, the industry itself was also well aware of its vulnerability to impairment of their rights and functions by the government. The president of the New Zealand Journalists' Association issued a warning stating that the Labour Party intended to put forward the founding of a statutory based Press Council if it became the government in 1969.<sup>4</sup> The newspaper industry then realised that it was better to set up its own voluntary organisation than to be governed by an imposed council, possibly consisting of

<sup>2</sup> Stuart Perry *The New Zealand Press Council: Establishment and Early Years 1972 - 1982* (New Zealand Press Council, Wellington, 1982) 5.

<sup>3</sup> Perry, *ibid.*, 6.

<sup>4</sup> Alexis J Page "On being in Trouble: the need for a Press Council" (1969) 13 to 611 PPTA.

<sup>5</sup> New Zealand Press Council *The Press and the Public: The Twenty-Fifth Report of the New Zealand Press Council* (Wellington, 1997) 3.

<sup>6</sup> Stuart Perry *The New Zealand Press Council: Establishment and Early Years 1972 - 1982* (New Zealand Press Council, Wellington, 1982) 7.

## II THE NEW ZEALAND PRESS COUNCIL

This chapter will explore the characteristics of the Press Council. After giving a brief overview of the history of its establishment, the body and functions of this print media institution will be presented. Finally, the Press Council's complaints procedure, its main task, is described.

### A Establishment

The press in New Zealand had been able to maintain high standards from the beginning of the country's settlement by imposing adequate discipline upon itself.<sup>3</sup> In the late 1960s the public demanded a press council. The establishment of the Press Council was suggested by the National Council of Women, the Post-Primary Teachers' Association, as well as the United Nations Association.<sup>4</sup> However, it was a journal article of a teacher<sup>5</sup> expressing dissatisfaction with a newspaper reporting on her, which brought the establishment of the Press Council into the realm of politics.

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<sup>3</sup> Stuart Perry *The New Zealand Press Council, Establishment and Early Years 1972 - 1982* (New Zealand Press Council, Wellington, 1982) 5.

<sup>4</sup> Perry, above, 6.

<sup>5</sup> Alexia J Page "On being in Truth; the need for a Press Council" (1966) 13 no 6J1 PPTA.

<sup>6</sup> New Zealand Press Council *The Press and the Public: The Twenty-Fifth Report of the New Zealand Press Council* (Wellington, 1997) 5.

<sup>7</sup> Stuart Perry *The New Zealand Press Council, Establishment and Early Years 1972 - 1982* (New Zealand Press Council, Wellington, 1982) 7.

members not familiar with the press industry.<sup>8</sup> Anticipating the intrusion of government control in the news industry, as well as the encroachment on the freedom of the press by statutory intervention, the press industry was united and determined to set up its own organisation.<sup>9</sup> This move was instigated by the view that statutory control over the media would negate freedom of the press.<sup>10</sup>

At the time, the Ombudsman Act established the only alternative dispute resolution institution in New Zealand but was confined to offer relief for grievances against the government.<sup>11</sup> Due to limited experience with alternative dispute settlement bodies, information on setting up such an institution had to be sought from overseas. Since the United Kingdom established the first press council in the world in 1953, New Zealand turned to the British model<sup>12</sup> to form its own Press Council.<sup>13</sup> Therefore, the New Zealand Press Council was established similarly to the British scheme as a self-regulating, non-statutory institution.<sup>14</sup> The Newspaper Publishers' Association of New Zealand Inc (NPA) and the New Zealand Journalists' Association, now titled the New Zealand Amalgamated Engineering Printing and Manufacturing Union (EPMU), signed the constitution of the Press Council on 20 September 1972.<sup>15</sup> The NPA contributes the main share to the Press Council's funds whereas the EPMU, the Community Newspapers, and the Magazine Publishers' Association make smaller

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<sup>8</sup> Perry, above, 8.

<sup>9</sup> Perry, above, 7.

<sup>10</sup> Herman Phillip Levy *The Press Council, History, Procedure and Cases* (Macmillan, London, 1967) 10.

<sup>11</sup> New Zealand Press Council *The Press and the Public: The Twenty-Fifth Report of the New Zealand Press Council* (Wellington, 1997) 5.

<sup>12</sup> Nowadays, the Press Complaints Commission - in 1991 the British Press Council was renamed and modified as studies found it had failed (David Calcutt *Report of the Committee on Privacy and Related Matters* (HMSO, London, 1990) - differs from the system maintained in New Zealand. The British have established a strict set of statutes (Code of Practice), which have to be breached in order for a complaint to be established. See generally Press Complaints Commission <<http://www.pcc.org.uk/cop/intro.html>> (last accessed 30 January 2004).

<sup>13</sup> Stuart Perry *The New Zealand Press Council, Establishment and Early Years 1972 - 1982* (New Zealand Press Council, Wellington, 1982) 8.

<sup>14</sup> New Zealand Press Council *The 30th Report of the New Zealand Press Council* (Wellington, 2002) 6.

<sup>15</sup> Perry, above, 14.

payments to the Council.<sup>16</sup> The Council's establishment has given the public the desired competent and independent institution for the settlement of grievances against the press and provided the print industry with a tribunal that is capable of upholding professional principles.<sup>17</sup> With this undertaking the industry was able to forestall imposition of a government constituted statutory body.

## **B Structure**

The Press Council began its work with four members in 1972;<sup>18</sup> today it consists of a total number of 11 members. Since the beginning, an independent chairperson, who has always been a retired judge, has presided over the Council. The non-media related background of the chair makes sure that authority and respect inhere in the Council's decisions, and contributes to the independence of the body.

On the Press Council, six persons are appointees of the public, including the chairperson, and five derive from the news industry. An appointment panel comprised of the current chair, the Chief Ombudsman, and nominees of the NPA and the EMPU selects the public members.<sup>19</sup> The NPA and the EMPU each appoint two of the industry members, while the Magazine Publishers' Association chooses a person for the remaining position.<sup>20</sup> Pursuant to article 7(1) of the New Zealand Press Council Constitution,<sup>21</sup> members of the Press Council serve a four-year term, whereas chairpersons serve five-year terms, and are eligible for one reappointment.

A full time secretary carries out the Press Council's administration.<sup>22</sup>

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<sup>16</sup> New Zealand Press Council Constitution, s 16(1); New Zealand Press Council *The 30th Report of the New Zealand Press Council* (Wellington, 2002) 106.

<sup>17</sup> Perry, above, 10.

<sup>18</sup> See generally for the early constitution of the Press Council: Perry, above, 13.

<sup>19</sup> New Zealand Press Council Constitution, art 6(1)(a), (b) and 6(2).

<sup>20</sup> New Zealand Press Council Constitution, art 6(1)(c), (d) and (e).

<sup>21</sup> The Constitution cannot be found on the website of the Press Council. However, it is attached in the appendices of this paper.

<sup>22</sup> New Zealand Press Council Constitution, art 9.

### C Objectives

The Press Council's principal objectives comprise three limbs, as stated in section 4(1)(a), (b) and (c) of the New Zealand Press Council's Constitution. The Press Council's primary and core function, and the most prominent to the public, is its complaint resolution work. Through this function, the Press Council considers grievances about the conduct of the press, as well as complaints by the press about the conduct of persons and organisations towards the press. The second limb describes the promotion of freedom of speech of the press. Such freedom ensures that information and opinion can be fearlessly delivered to the public by newspapers. The maintenance of the New Zealand press in accordance with the highest professional standards is the final purpose of the Press Council.

### D Jurisdiction

The Press Council exercises jurisdiction for complaints against newspapers, magazines and periodicals in public circulation in New Zealand including their websites in accordance with article 5 of its Constitution. Unlike the British or Australian press standard bodies which have monitored magazines for a long time, magazines came under the supervision of the New Zealand Press Council just after 1997.<sup>23</sup> Only one magazine company still refuses to put its titles under the Press Council's jurisdiction. Although this is acceptable due to the voluntary character of the Press Council in New Zealand, the Australian-based company did agree to supervision under the Australian Press Council for the magazines it published in Australia.<sup>24</sup> Despite the Australian company's refusal to accept the New Zealand Press Council's jurisdiction, the Council adjudicated upon a dispute with the magazine in 1999 because it found that the public should not be deprived of the right to complain about a publication.<sup>25</sup> With the formal exception of jurisdiction of that magazine, the Council's jurisdiction is exercised over the

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<sup>23</sup> New Zealand Press Council *The Press and the Public: The Twenty-Sixth Report of the New Zealand Press Council* (Wellington, 1998) 7.

<sup>24</sup> New Zealand Press Council *The Twenty-Seventh Report of the New Zealand Press Council* (Wellington, 1999) 7.

<sup>25</sup> *W Peters v North & South* (17 December 1999) New Zealand Press Council Case 764.

entire print media. Exceptions apply to publications with a limited readership.<sup>26</sup> However, complaints will be considered against these publications if they receive major public attention. A complaint about a publication with limited readership, and therefore not under the Council's jurisdiction, was addressed by the Council because the publication had received widespread public notice due to extended media coverage.<sup>27</sup>

### *E Statement of Principles*

The New Zealand Press Council began its work without formulating a code of conduct that would provide a set of standards against which the performance of the press could be measured. Instead, for the first 27 years, the Council followed the model of the British Press Council by relying upon precedents emerging from its adjudications in order to give guidance to the press and the public.<sup>28</sup> Eventually, the institution recognised the need for a new approach in order to ensure fair dealings with both the press and the public.<sup>29</sup>

The main critique of the Council was that it lacked commitment to a firm statement of rules by which it judged complaints. This led to the perceived loss of credibility and effectiveness of the Press Council. In addition, the Press Council was one of the remaining institutions of its kind in the world without such guidance.<sup>30</sup> In response to the criticism, the Council decided to develop a Statement of Principles in 1998 under the leadership of the chairperson, which was finally promulgated in August 1999.<sup>31</sup> The Council objected to the implementation of a rigid and stiff code, but favoured a solution that was flexible enough to help the Press Council fulfil its three objectives. The set of rules it

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<sup>26</sup> New Zealand Press Council Constitution, art 5.

<sup>27</sup> *Mental Health Foundation, Ministry of Health, A Beautrais, Health Waikato, S J Nicol v Craccum* (4 July 2000) New Zealand Press Council Cases 783 – 787.

<sup>28</sup> New Zealand Press Council *The Twenty-Seventh Report of the New Zealand Press Council* (Wellington 1999) 6.

<sup>29</sup> New Zealand Press Council *The Press and the Public: The Twenty-Fifth Report of the New Zealand Press Council* (Wellington 1997) 6.

<sup>30</sup> New Zealand Press Council *The Twenty-Seventh Report of the New Zealand Press Council* (Wellington 1999) 6.

<sup>31</sup> New Zealand Press Council *The Twenty-Seventh Report of the New Zealand Press Council* (Wellington 1999) 6.

adopted gives greater particularity for users of the institution and provides guidance to the public, the industry, and the Council in dealing with complaints.<sup>32</sup>

The Statement of Principles consists of twelve rules.<sup>33</sup> They are not all-embracing, because they are not the only ground for complaints, but they express some fundamental standards of journalism on which the Council places particular emphasis, and have been at the heart of the complaints over time.<sup>34</sup> The Statement also points out the significance of freedom of expression and provides a guide to the way the principles should be interpreted as well as put into practice.<sup>35</sup>

## **F Complaints Procedure**

The following depicts the complaints procedure of the Press Council which is open to anyone, is informal and is free of charge.<sup>36</sup>

### *1 Procedure*

Under the Council's complaints procedure, a person who is aggrieved by the release of a publication is entitled to make a complaint. Third parties not directly affected by the publication are also able to make a complaint in good faith.<sup>37</sup> This broad accessibility of the grievances service substantiates the intention of the print media to be open to scrutiny by the people. A reader may complain about anything he or she is dissatisfied with in a newspaper or magazine, whether it is the content of an article or pictures displayed in the paper.

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<sup>32</sup> New Zealand Press Council *The Press and the Public: The Twenty-Sixth Report of the New Zealand Press Council* (Wellington 1998) 8.

<sup>33</sup> New Zealand Press Council <<http://www.presscouncil.org.nz>> (last accessed 30 January 2004). The Statement of Principles can also be found in the appendix of this paper.

<sup>34</sup> New Zealand Press Council *The Twenty-Seventh Report of the New Zealand Press Council* (Wellington 1999) 7.

<sup>35</sup> New Zealand Press Council *The Twenty-Seventh Report of the New Zealand Press Council* (Wellington 1999) 6.

<sup>36</sup> New Zealand Press Council *The Press and the Public: The Twenty-Fifth Report of the New Zealand Press Council* (Wellington 1997) 22.

<sup>37</sup> New Zealand Press Council *The 30th Report of the New Zealand Press Council* (Wellington, 2002) 105.

If a person wants to complain about a publication, the first step is to address the grievance in writing to the editor within three months of the date of publication. For complaints about material not being published the same time frame applies, beginning with the anticipated date of publication. This procedure notifies the editor of the matter and enables the parties to resolve the dispute between them quickly.<sup>38</sup>

If the complainant is not satisfied with the reaction of the editor, the Press Council may be asked to adjudicate the complaint. In such a case, the person seeking redress should specify the nature of the complaint and supply the material complained about to the Press Council. In most situations, complainants bring forward their grievance without being represented but sometimes counsel acts on behalf of the party.<sup>39</sup> Occasionally, people present their case in person before the Authority.<sup>40</sup>

To fortify the complaint the complainant needs to present reasons for their dissatisfaction. Allegations against a publication can stem from any sort of commission or omission. The complaint will be accepted if "it is possible to spell out a genuine grievance upon a credible ground".<sup>41</sup> The Press Council uses ethical guidelines to consider a ground for a complaint and is alert to any unfair behaviour of the press.<sup>42</sup> Since the introduction of the Statement of Principles, complainants are encouraged to state the particular Principle that is allegedly contravened. However, as the Principles are not deemed to be a rigid code, the

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<sup>38</sup> New Zealand Press Council *The 30th Report of the New Zealand Press Council* (Wellington, 2002) 104.

<sup>39</sup> For example *University of Otago & G Fogelberg v The Dominion* (5 July 2001) New Zealand Press Council Case 830; *SPCA/B Kerridge v New Zealand Listener* (30 November 2001) New Zealand Press Council Case 850.

<sup>40</sup> For example *Patrick McEntee v Hawke's Bay Today* (25 September 2002) New Zealand Press Council Case 898.

<sup>41</sup> New Zealand Press Council *The Press and the Public: The Twenty-Fifth Report of the New Zealand Press Council* (Wellington 1997) 3.

<sup>42</sup> New Zealand Press Council *The Press and the Public: The Twenty-Fifth Report of the New Zealand Press Council* (Wellington 1997) 4.



complainant is not obliged to adhere to them, and is entitled to nominate grounds for complaint not expressly mentioned in the Statement of Principles.<sup>43</sup>

In dealing with complaints the Council is confronted with a number of allegations and facts made by the claimant. In order to decide the matter, the Authority summarises the issues and ascertains which Principles have been contravened.<sup>44</sup> After filtering the main issues, the root of the complaint can be tackled. Hence, a complainant may raise the principles he or she thinks are contravened, but the Press Council decides which key issues are at stake.<sup>45</sup> This procedure is necessary to arrange the grievances for a solid resolution.

After the grievance has been filed to the Press Council it will be forwarded to the editor who has 14 days to respond. Following the editor's response, the complainant has the opportunity to make a submission to the Council on the editor's reply within the same period of time. If this occurs, the editor again receives the chance to answer back to the Council on the complainant's second comments. This allows a fair balance as the parties make two statements each.<sup>46</sup>

The Council then considers the complaint at one of its meetings, which occur approximately every six weeks. After discussing the case at the meeting, the Council adjudicates on the dispute. Decisions are determined by a majority vote, where in a case of equal votes, the chairperson has the casting vote.<sup>47</sup> The Press Council always states when one of its members did not take part in the decision because of the member's involvement with the newspaper.<sup>48</sup>

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<sup>43</sup> New Zealand Press Council <<http://www.presscouncil.org.nz/principles.htm>> (last accessed 30 January 2004).

<sup>44</sup> For example *A Cooper v The Press* (2 July 2002) New Zealand Press Council Case 888; *R L Clough v Otago Daily Times* (25 May 2000) New Zealand Press Council Case 780.

<sup>45</sup> For example *M Chambers v Evening Post* (10 February 2000) New Zealand Press Council Case 770; *A Cooper v The Press* (2 July 2002) New Zealand Press Council Case 888.

<sup>46</sup> New Zealand Press Council *The Twenty-Seventh Report of the New Zealand Press Council* (Wellington 1999) 7.

<sup>47</sup> New Zealand Press Council Constitution, art 10(1)(b).

<sup>48</sup> For example *J Gamby v The New Zealand Herald* (22 February 2001) New Zealand Press Council Case 814.

## 2 Sanctions

If the complaint is upheld, the decision's substance must be printed prominently in the publication. On the other hand, if the complaint is dismissed, the publication concerned is free to print an abridged version of the Council's decision but is not obliged to do so. In addition, all adjudications are published on the Council's website and in its annual report in order to give the public independent access to them. The Press Council cannot award compensation. Complainants should not take legal proceedings against the other party when referring a dispute to the Press Council.<sup>49</sup>

The lack of power to grant punitive damages may make this set of sanctions appear rather inadequate. However, in the Press Council's view the press seems to be very sensible when it is shown to be at fault.<sup>50</sup> Journalists can be sanctioned effectively by using publicity and condemnation.<sup>51</sup> For the responsible reporter reputation and professionalism is at stake, which are very important factors in the journalism business.<sup>52</sup> Poor journalism can also make the particular reporter subject to an internal disciplinary mechanism. In addition, the adjudication has ramifications for the editor, as he or she bears the responsibility for the article as well as the effects on the newspaper's reputation, and possibly its sales. Due to the serious effects of an adverse decision for the media, there is a greater chance that there will be no recurrence of the matter.<sup>53</sup>

## 3 Appeal

The adjudications of the Press Council are final, as no appeal is possible. The lack of an appeals process is in line with the Council's premise of informality and the desire to minimise costs for members of the public. However, if the

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<sup>49</sup> New Zealand Press Council *The 30th Report of the New Zealand Press Council* (Wellington, 2002) 105.

<sup>50</sup> New Zealand Press Council *The 29th Report of the New Zealand Press Council* (Wellington, 2001) 22.

<sup>51</sup> Oliver Ross McGregor *Final Report* (HMSO, London, 1977) 210.

<sup>52</sup> New Zealand Press Council *The Press and the Public: The Twenty-Fifth Report of the New Zealand Press Council* (Wellington 1997) 6

<sup>53</sup> New Zealand Press Council *The Press and the Public: The Twenty-Fifth Report of the New Zealand Press Council* (Wellington 1997) 6.

decision rendered was based on a factual error or new material became available, a new examination of the case by the Press Council itself would be undertaken.<sup>54</sup>

## G Statistics

The Press Council receives a different number of grievances each year. Table 1 gives an overview over the complaints received by the Press Council during the recent past.

Table 1: Overview of complaints adjudicated by the New Zealand Press Council from 1996 - 2002<sup>55</sup>

	1996	1997	1998	1999	2000	2001	2002	Average <sup>56</sup>
Total Complaints	82	82	85	75	75	106	87	85
Adjudicated	41	42	39	46	45	47	48	44
Upheld	4	7	2	8	9	1	8	6
Partly Upheld	1	1	4	5	9	3	2	4
Not Upheld	36	34	33	33	27	43	38	35

In the period from 1996 - 2002, the Press Council received approximately 85 complaints each year. However, only about half of the complaints proceeded to adjudication. The remaining cases did not advance due to a number of different reasons. For example, complainants do not always follow through their initial complaint to the editor, they withdraw the grievance, or the conflict is resolved before the Council gives its adjudication.

On average, only six grievances have been fully upheld which equals 13 per cent of the total number of adjudications a year, respectively four are partly upheld which equals nine per cent. The vast majority of the complaints is not

<sup>54</sup> New Zealand Press Council *The Press and the Public: The Twenty-Sixth Report of the New Zealand Press Council* (Wellington 1998) 6.

<sup>55</sup> Data collected from the Press Council's respective Annual Report.

<sup>56</sup> Figures are rounded.

upheld (35 complaints or 79 per cent).<sup>57</sup> This means that only every fifth complaint has the chance to succeed.

### III ADJUDICATIONS OF THE NEW ZEALAND PRESS COUNCIL

The following chapter will examine the adjudications made by the Press Council since 1998 concerning the topics of balance, accuracy and fairness.<sup>58</sup>

#### A *Procedural Setting*

The first part of this chapter deals with the formal, non-content related, observations that can be made considering the Press Council's decisions.

##### 1 *General Composition of a Decision*

The basic principles and the corresponding critique are dealt with on the following pages.

##### (a) Basic structure of a decision

The Press Council's decisions follow a consistent structure throughout most of the decisions.<sup>59</sup> Generally, the adjudications open with one or two short paragraphs stating the parties in dispute, the piece of journalism that forms the reason of the complaint, and the outcome of the case. Subsequently, the reason for which the complainant feels aggrieved will be briefly set out. After that, the background of the complaint will be presented by outlining the original assertion of the complainant and the response from the editor of the paper to the complainant. Then, both parties' submissions to the Press Council are outlined. Finally, the Council decides on the dispute and gives the reasons leading to the decision. Usually, the Press Council splits up the complaints according to issue

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<sup>57</sup> Percentage not reaching 100 due to rounding.

<sup>58</sup> All rulings of the Press Council can be found on its website at: New Zealand Press Council <<http://www.presscouncil.org.nz>> (last accessed 30 January 2004).

<sup>59</sup> A typical example *M Talley v Westport News* (13 November 2000) New Zealand Press Council Case 803.

and deals with them in separate paragraphs.<sup>60</sup> On average, the cases are one to two pages long.

#### (b) Criticism

Occasionally, the opening paragraphs of decisions differ; either the result of the case is only mentioned at the end<sup>61</sup> or the principles in question are given up front instead of later in the decision.<sup>62</sup> If the outcome of the adjudication is not mentioned in the beginning, it can be confusing and hard to assess the arguments made while reading the case because it is often unclear whether or not they are made in favour of the complainant. Identification of the subject of the complaint at the beginning<sup>63</sup> enables immediate classification of the complaint and reduces uncertainty regarding the subject of the Council's decision. It would clarify the judgements if key information was displayed at the beginning of the adjudication.

In contrast to the Press Council's decision format is the Broadcasting Standards Authority's (BSA) approach.<sup>64</sup> In general, the adjudications made by the BSA are structured very clearly and look like a verdict of a court. The headnote of a decision shows the date and case number as well as the parties in dispute and the adjudicators deciding the dispute. Furthermore, keywords of the complaint and of the findings of the BSA are provided. Although that headnote does not form part of the official decision it is of great help as it clarifies the issues and gives a brief overview over the subsequent decision. It is also noteworthy that each paragraph of the decision is provided with a number which enables readers to precisely point out a certain section of a decision. The general formal structure of the decision also is very well organised. The BSA uses

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<sup>60</sup> For example *R Ridley-Smith v New Zealand Listener* (28 May 1999) New Zealand Press Council Case 744; *M Ogg v Southland Times* (17 February 2000) New Zealand Press Council Case 774.

<sup>61</sup> For example *Fish & Game NZ, Bryce Johnson v Rural News* (18 February 2002) New Zealand Press Council Case 863.

<sup>62</sup> For example *M Newman v Whangarei Leader* (5 April 1999) New Zealand Press Council Case 738.

<sup>63</sup> For example *R Ridley-Smith v NZ Listener* (28 May 1999) New Zealand Press Council Case 744; *T Booker, C Davidson, S Webb v Manawatu Evening Standard* (17 December 2001) New Zealand Press Council Cases 855 - 857.

<sup>64</sup> See for example *Ron Jenkins v Television New Zealand Ltd* (23 May 2002) Broadcasting Standards Authority <<http://209.150.157.196/decisions/2002/2002-062.html>> (last accessed 30 January 2004).

headings to structure all areas of a complaint. These measures help clarify, among other things, what the complaint is about, what provision is contravened, what the correspondence was and, of course, the Authority's determination of the complaint.

As the Press Council presents the facts of the case in the adjudication as a summary of the claimant's and respondent's actions, the assessment whether the Council's decision is justified depends on the reported facts.<sup>65</sup> If the information is displayed in a version favourable to the present outcome of the decision, a neutral and objective assessment of the case is difficult. Due to the Council's short and compact decisions, original information is not reproduced; rather a summary of the submission is given. Although it provides the facts received by the claimants in its decisions, the Press Council also presents the conclusions it draws from them. In such cases, it is difficult for the reader to assess whether the information presented suggests the Council's result.

A good illustration of the difficulties involved with assessing the Council's decisions is case 920 for which the Council first provides some history of the case and then states that it was "provided with considerable written evidence from both parties, evidence that in the Council's view showed that in essence, a simple breakdown in communication had been responsible for the serious difference of opinion".<sup>66</sup> Unfortunately, the evidence itself was not disclosed; only the inferences of the Council. In case 920 it cannot be explored whether the evidence really proved the Council's findings. In an extreme example, the Press Council did not give any information submitted by the parties, but stated that the respondent had breached the principles in question.<sup>67</sup> In that situation neither the public nor other newspapers can assess whether the assertions made are right or wrong. A body as important as the Press Council should be aware of its credibility, which is jeopardised if a review of its work is impossible.

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<sup>65</sup> For example *Southland District Health Board v Mountain Scene* (March 2003) New Zealand Press Council Case 920.

<sup>66</sup> *Southland District Health Board v Mountain Scene* (March 2003) New Zealand Press Council Case 920; see also *M McCully v New Zealand Herald* (21 August 1999) New Zealand Press Council Case 752.

<sup>67</sup> *D v Wainuiomata News* (September 2003) New Zealand Press Council Case 941.

Sometimes, the Press Council does not deal with all the complaints raised by the claimant but instead picks the ones seeming important. For example, in case 745 the Council states that the complainant accuses the *New Zealand Herald* of bias and imbalance "among other things".<sup>68</sup> Such cases give the impression that the Council only deals with issues it wants to deal with. This does not seem to be the best approach for a self-regulatory body initiated for dealing with complaints of the people. The Council could better serve its function by stating all objections raised and considering them systematically. Otherwise, the impression emerges that the Council does not treat the complaints fully and fairly, but instead measures them with its own undisclosed scale. Unfortunately, it is only infrequently that the Council proves that it can publish an exemplary decision where all points of concern are clearly arranged and addressed. An example of such good practice is the case *Hutt City v Wainuiomata News*.<sup>69</sup> In a case decided shortly thereafter, however, the Press Council again failed to clearly separate the issues.<sup>70</sup> In another instance, the Press Council asserts "[t]here were more detailed complaints than the two main themes identified earlier but they have been mostly dealt with elsewhere in this adjudication".<sup>71</sup> This statement, hidden somewhere in the middle of the complaint, makes it hard to identify the relevant issues referred to and discloses at a very late stage that other issues are of major interest.

In several instances, the Council refers to its previous decisions as the authority supporting the position represented.<sup>72</sup> In a couple of situations, the Authority refers to a former decision but, unfortunately, does not provide a

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<sup>68</sup> *M Stewart v New Zealand Herald* (21 June 1999) New Zealand Press Council Case 745.

<sup>69</sup> *Hutt City Council v Wainuiomata News* (19 December 2002) New Zealand Press Council Case 905.

<sup>70</sup> *Canterbury District Health Board v The Timaru Herald* (February 2003) New Zealand Press Council Case 909.

<sup>71</sup> *M McCully v New Zealand Herald* (21 August 1999) New Zealand Press Council Case 752.

<sup>72</sup> *NZEPMU v New Zealand Herald* (8 May 1999) New Zealand Press Council Case 741; *Mental Health Foundation, Ministry of Health, A Beautrais, Health Waikato, S J Nicol v Craccum* (4 July 2000) New Zealand Press Council Cases 783 – 787; *Immunisation Advisory Centre v Investigate Magazine* (30 November 2001) New Zealand Press Council Case 847; *Kim Cohen v The Northern Advocate and New Zealand Herald* (June 2003) New Zealand Press Council Case 927; *New Zealand Timber Industry Federation v The Dominion Post* (June 2003) New Zealand Press Council Case 932.

reference for the source cited.<sup>73</sup> Such carelessness undermines the credibility of the Council; an incomplete citation is unprofessional since the resource cannot be traced and checked independent of the Authority's help.

The grounds for adjudications given sometimes appear to be rather brief and fail to substantiate and justify the position of the Press Council. In the almost three-page-long case 752 the facts are outlined elaborately, but the rationale for the decision encompasses just two short paragraphs.<sup>74</sup> In another example of poor practice, case 795 does not give any reasons for not upholding the complaint.<sup>75</sup> Instead, the Authority states some of the history of the grievance and adds a citation of the complainant's letter to the Council. Throughout the adjudication, no comment can be found giving even a whiff of a justification. In another situation, an opinion piece was illicitly abridged. The Council criticised the editing of the article but failed to give a single clear justification for its decision.<sup>76</sup> Furthermore, the Council provided inadequate information and justification by only stating "the newspaper acted quite reasonably in publishing only one letter ... and declaring the matter closed when it did".<sup>77</sup> In another instance, the Press Council withdrew its adjudication by saying that additional information had come to its attention that did not justify the formerly upheld decision. Neither the new information nor any justification for the withdrawal was given.<sup>78</sup>

This is rather irritating because solid grounds should form the foundation of a decision making body. If irreproducible decisions made by the Press Council, its entire reputation and authority could be jeopardised. Self-governing bodies risk replacement by statutory-based bodies if their work becomes questionable, and should thus be governed with special care and responsibility. The Press Council's

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<sup>73</sup> *NZEPMU v New Zealand Herald* (8 May 1999) New Zealand Press Council Case 741; *N v That's Life* (February 2003) New Zealand Press Council Case 914.

<sup>74</sup> *M McCully v New Zealand Herald* (21 August 1999) New Zealand Press Council Case 752; similar: *R Ridley-Smith v New Zealand Listener* (28 May 1999) New Zealand Press Council Case 744; *University of Otago & G Fogelberg v The Dominion* (5 July 2001) New Zealand Press Council Case 830.

<sup>75</sup> *N Hager v Evening Post* (11 August 2000) New Zealand Press Council Case 795.

<sup>76</sup> *Meridian Energy v Oamaru Mail* (11 November 2002) New Zealand Press Council Case 902.

<sup>77</sup> *Peter Zohrab v Wainuiomata News* (February 2003) New Zealand Press Council Case 917.

<sup>78</sup> *American Football Assn v New Zealand Herald* (28 March 2000) New Zealand Press Council Case 775.



rulings should meet the standards of professionalism. The incomprehensible and non-transparent adjudications exemplified above contravene the standards that the Authority is supposed to impose on the print industry because high standards require a sound and convincing justification. Offering more elaborate justifications for decisions would help clarify standards and boundaries for media professionals. If the industry knows what is acceptable, it is less likely to breach the Statement of Principles. By outlining in the adjudications what constitutes good journalistic practice, the Press Council's task of guiding the media would be best achieved.

## 2 General Remarks

Since the Press Council's Annual Report of 1999, all adjudications made each year are published in full and - except for the year 2000 and occasionally for 2001 - in chronological order. In the years of 1997 and 1998, the Annual Reports only featured decisions the Press Council deemed to be of interest.

It is made clear by the Council in various instances that it cannot judge on the facts or on the different views for issues things brought forward by the parties. If both arguments seem trustworthy, neither side is disbelieved. The Authority emphasises that it can only judge cases against the conformity of journalism with the standards established under the Statement of Principles.<sup>79</sup>

The Press Council suggests that where possible, complainants would achieve a better resolution to their grievances by airing their concerns about a publication through a letter to the editor, rather than through a decision of the Council.<sup>80</sup> The Council's proposal is legitimate, but complainants use the Council's services because they are seeking redress from some kind of injustice

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<sup>79</sup> *R L Clough v New Zealand Herald* (13 November 2000) New Zealand Press Council Case 802; *J Lenart v Nelson Mail* (19 August 1999) New Zealand Press Council Case 750; *M McCully v New Zealand Herald* (21 August 1999) New Zealand Press Council Case 752; *Immunisation Advisory Centre v Investigate Magazine* (30 November 2001) New Zealand Press Council Case 847; *New Zealand Timber Industry Federation v The Dominion Post* (June 2003) New Zealand Press Council Case 932.

<sup>80</sup> *M Newman v Whangarei Leader* (5 April 1999) New Zealand Press Council Case 738; *M Edgar v Sunday Star-Times* (9 July 2000) New Zealand Press Council Case 788; *REAL Management v New Zealand Herald* (13 November 2000) New Zealand Press Council Case 806; *W Penman v The Press* (20 August 2001) New Zealand Press Council Case 838.

they experienced when turning to the Authority. The newspaper's publishing of a letter to the editor does not acknowledge any fault nor will everyone who read the original article necessarily read the letter to the editor. A letter to the editor enables the writer to express his views - if it is published - but does not decide upon a matter that is in dispute. It is a decision by an independent body that people are looking for when they turn to the Council and the reason for which the body was established. Redress can be received by an official recognition that the paper erred by not including the views in the original story or by getting the facts wrong. As anyone should be free to follow any channels for redress open to him or her, the Council should be careful in discouraging people in pursuing their grievance with the Council.

Contrary to the procedure set out in the Principles, newspapers sometimes refuse to respond to a grievance, in which case the complaint advances directly to the Council.<sup>81</sup>

After dealing with three complaints from one person on similar grounds, which were all dismissed, the Authority refused to consider any more complaints from that person on similar lines.<sup>82</sup> Although this contravenes the Press Council's principle of the right to complain, this unique statement is justified because the complainant was persistently raising one point and did not seem to learn from the proper decisions made by the Council.

The members of the Council rarely make use of dissenting opinions, which are published following the majority decision.<sup>83</sup>

At a time where several complaints address the same subject, the Press Council combines the grievances and considers them in a single adjudication.<sup>84</sup>

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<sup>81</sup> *REAL Management v New Zealand Herald* (13 November 2000) New Zealand Press Council Case 806; *J & P Anderson v New Zealand Herald* (22 December 2000) New Zealand Press Council Case 810; *Koolfoam Industries v New Zealand Herald* (4 October 2001) New Zealand Press Council Case 842; *Westlake Girls High School v New Zealand Herald* (18 February 2002) New Zealand Press Council Case 869.

<sup>82</sup> *A Gibb v Contact* (11 July 2001) New Zealand Press Council Case 831; *A Gibb v Contact* (8 October 2001) New Zealand Press Council Case 844; *A Gibb v Contact* (7 December 2001) New Zealand Press Council Case 852.

<sup>83</sup> *R Dyson v The Dominion* (28 February 2002) New Zealand Press Council Case 862.

A fast-track complaint system was established in case 889 to ensure a quick adjudication on complaints arising out of matters concerning the general election.<sup>85</sup> Unfortunately, the Press Council does not make any further comment how this procedure works.

### 3 Summary

In summary, the Press Council should improve upon its procedures in several ways. First, the Authority should adopt a more structured format for its adjudications that more clearly conveys its decisions. Second, adjudications should contain the original facts and all parts of a complaint should be addressed. Finally, and of greatest importance, justifications for a decision should be given elaborately and made transparent in every adjudication.

#### **B Principle One of the Statement of Principles**

The following chapter examines the adjudications of the Press Council regarding the content related issues of balance, accuracy, and fairness, which are contained in the Statement of Principles' first provision. It states: "[p]ublications (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."<sup>86</sup>

Since no further explanation of these terms is given, it is up to the Press Council to develop and determine what they mean in a press-related context. Each of the three words have broad meanings which sometimes overlap. It can already be seen in the Statement itself that accuracy is encompassed in Principles one and two, whereas Principle two has a narrower, specific meaning of accuracy. Fairness can be seen to encompass many of the specific guidelines that appear among the other Principles including privacy, confidentiality, children and young people,

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<sup>84</sup> *Mental Health Foundation, Ministry of Health, A Beutrais, Health Waikato, S J Nicol v Craccum* (4 July 2000) New Zealand Press Council Cases 783 – 787; *University of Otago & G Fogelberg* (5 July 2001) New Zealand Press Council Case 830; *T Booker, C Davidson, S Webb v Manawatu Evening Standard* (17 December 2001) New Zealand Press Council Cases 855 - 857.

<sup>85</sup> *R Welch v Waikato Times* (22 July 2002) New Zealand Press Council Case 889.

<sup>86</sup> New Zealand Press Council <<http://www.presscouncil.org.nz>> (last accessed 30 January 2004).

discrimination, subterfuge, headline and photograph articles. It is fair treatment to respect someone's privacy, protect confidential sources, and pay attention in respect of children and young people; discrimination and subterfuge result from unfair conduct; headlines and photographs can be unfair if they misrepresent the issues. However, these concepts are also entangled with each other. An inaccurate article may be unfair because the publication misrepresents the real circumstances. In addition, an unbalanced report is also unfair because it does not give a proper report of an actual situation. Furthermore, unbalanced articles inaccurately describe current conditions.

Given this difficulty, it is a hard task for the Authority to apply the principles robustly when making decisions. This can be underlined by an attempt made by the Council to define fairness in an article about balance. It states that "[f]or the vast majority of people, fairness means equality of treatment, lack of bias, hearing both sides and ... balance and common sense."<sup>87</sup> In this circumstance, fairness encompasses everything usually attributed to balance. It seems that the Council does not distinguish between balance and fairness, but regards them as somewhat similar. This makes it harder to set clear standards for the particular principle. It would have been better for the Press Council to state that it regards fairness as an umbrella term of equal and just treatment and balance as a special aspect of it.

Furthermore, the Council has to weigh the rights of the people against the media's concept of freedom of expression. A clear line determining the rights of either side would be desirable so that it would be obvious at what point rights have been infringed upon.

### *1 Balance*

As mentioned above, the first section of the Statement of Principles requires all publications to be guided by balance.

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<sup>87</sup> New Zealand Press Council *The 29th Report of the New Zealand Press Council* (Wellington, 2001) 16.

(a) Findings

The following principles emerge from the Press Council's discussion of cases on balance.

If an article is to be published, any criticised party should be approached beforehand to insure that several views have been canvassed from the beginning of the reportage.<sup>88</sup> However, it is not compulsory to approach the criticised party as long as that party has a right and a chance to respond by publishing its own viewpoint.<sup>89</sup> The paper's efforts to approach all parties should be of some substance and cannot be accomplished through token attempts.<sup>90</sup>

Whenever accusations are made against individuals or organisations a response must be sought and preferably presented within the same article or as soon as practical thereafter.<sup>91</sup> The reaction must be published immediately and with reasonable prominence, if possible. However, "where issues of public policy are involved ... freedom of expression and the importance of allowing open and robust debate on matters of public interest will come into the equation." In this situation, balance can be made available in several articles rather than one.<sup>92</sup> Balance can also be achieved by reporting on different aspects of an issue over time.<sup>93</sup>

The Council considers the entire circumstances of filed complaints. If a complainant complains about not being heard personally in the first place, the Council will find that balance was met if different views on the topic were displayed. Before the Press Council adjudicates it is also taken into consideration

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<sup>88</sup> *P Harris v Otago Daily Times* (18 February 2002) New Zealand Press Council Case 864; *New Zealand Timber Industry Federation v The Dominion Post* (June 2003) New Zealand Press Council Case 932.

<sup>89</sup> *M McCully v New Zealand Herald* (21 August 1999) New Zealand Press Council Case 752; *Wanganui City College v Wanganui Midweek* (5 July 2000) New Zealand Press Council Case 781.

<sup>90</sup> *P Harris v Otago Daily Times* (18 February 2002) New Zealand Press Council Case 864.

<sup>91</sup> *Federated Farmers Northland v Rural News* (August 2003) New Zealand Press Council Case 937.

<sup>92</sup> New Zealand Press Council *The 29th Report of the New Zealand Press Council* (Wellington, 2001) 17; *Bill Vincent v The Press* (25 September 2002) New Zealand Press Council Case 901.

<sup>93</sup> *M Chambers v Evening Post* (10 February 2000) New Zealand Press Council Case 770; *L Adams v Oamaru Mail* (17 May 2001) New Zealand Press Council Case 825.

whether the claimant had been given an opportunity to give his or her view in the paper. The Council finds that after this opportunity had been taken, there is no ground to uphold the grievance as the purpose for balance was sufficiently served.<sup>94</sup>

The Council emphasizes the requirement for evaluating balance in total. In several instances, complaints about one-sided articles were not upheld because newspapers published several articles in total and gave overall coverage of the entire event.<sup>95</sup>

Although the respondent to a complaint has a right to express his views, after publishing a substantial response this right is exhausted.<sup>96</sup> Sometimes the party asked to comment on the matter does not want to give a statement.<sup>97</sup> In such a situation, the newspaper is entitled to publish an article and does not have to wait until the information asked for is provided. In one case, a government department did not want to comment on a case before it had finished investigating and wanted the paper to refrain from reporting on it until that time.<sup>98</sup> But due to a paper's character as a news reporting entity, the Press Council considered that it relies on presenting newsworthy material and cannot be prevented from publishing it by affected persons reluctant to give statements.

Failure to give a concerned person the right to comment on an issue only breaches the balance requirement if the news is not urgent. Breaking news has to be reported straight away to inform the public. Waiting for a different standpoint in such an instance seems unreasonable. For ordinary news, however, balance has

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<sup>94</sup> *QLDC v Mountain Scene* (18 February 1999) New Zealand Press Council Case 728; *Wanganui City College v Wanganui Midweek* (5 July 2000) New Zealand Press Council Case 781; *Immunisation Advisory Centre v Investigate Magazine* (30 November 2001) New Zealand Press Council Case 847; *Philip Davidson v Wairarapa Times-Age* (May 2003) New Zealand Press Council Case 923.

<sup>95</sup> *J Luxton v Timaru Herald* (18 February 1999) New Zealand Press Council Case 730; similar: *R Ridley-Smith v New Zealand Listener* (28 May 1999) New Zealand Press Council Case 744; *A Gibb v Contact* (11 July 2001) New Zealand Press Council Case 831; *E K Gilbert v Kookaburra Magazine* (20 August 2001) New Zealand Press Council Case 836.

<sup>96</sup> *D Dingwall v Hutt News* (17 November 1998) New Zealand Press Council Case 715.

<sup>97</sup> *M Talley v Westport News* (13 November 2000) New Zealand Press Council Case 803; *Maarie Te Toohoura v New Zealand Herald* (25 September 2002) New Zealand Press Council Case 900.

<sup>98</sup> *New Zealand Immigration Service v New Zealand Herald* (17 December 2001) New Zealand Press Council Case 860.

to be observed and cannot be waived by asserting that tight deadlines did not allow for a comment, or that a remark did not arrive by a certain time. A newspaper's internal problems cannot be used to justify unbalanced reporting.<sup>99</sup>

When reporting on the decisions of a court, tribunal or a report in an article, the Press Council finds that the focus rests on the decision itself and the paper does not have to approach the other side for comment.<sup>100</sup>

In several instances the Press Council decided that the right to express a rebuttal should be granted to the person directly affected by the unbalanced article instead of any representatives or individuals similarly affected.<sup>101</sup>

Exceptions to the rules established above apply to opinion pieces. The Press Council has acknowledged that comments can still express an honest opinion even though the opinion piece does not adhere to the created rules.<sup>102</sup> However, objecting views should be given space in other articles or the letters to the editor section.

Overall, the following rules can be outlined from the cases above. The Press Council's balance requirement is satisfied by giving affected parties of a controversy an opportunity to present their view of the dispute. The different views should be included in one article. However, where this is not possible, balanced reporting can also be achieved by publishing different views in subsequent articles.

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<sup>99</sup> *Te Aute College v Hawke's Bay Herald Tribune* (19 February 1998) New Zealand Press Council Case 685.

<sup>100</sup> *F Newman v Wangarei Leader* (10 July 1998) New Zealand Press Council Case 701; *T J Sprott v Consumer* (31 March 1999) New Zealand Press Council Case 734; *P Palmer v The Press* (3 April 2001) New Zealand Press Council Case 820; *T Humphries v Otago Daily Times* (14 May 2002) New Zealand Press Council Case 878.

<sup>101</sup> *D O'Rourke v The Press* (11 February 1999) New Zealand Press Council Case 726; *T Booker, C Davidson, S Webb v Manawatu Evening Standard* (17 December 2001) New Zealand Press Council Cases 855 - 857.

<sup>102</sup> *M Cousins v Sunday Star-Times* (5 July 1998) New Zealand Press Council Case 697; *T Mitrovic v The Press* (21 August 1999) New Zealand Press Council Case 753; *B Procter v The Southland Times* (2 April 2002) New Zealand Press Council Case 874.

(b) Criticism

In many of the Press Council's decisions it appears that the rules identified are applied properly. Some adjudications, however, give reason for some criticism.

In case 685 the Press Council held that the opposing view should be expressed throughout the article instead of appending it to the end of the article because not all readers read the entire article and thus are likely to miss this point.<sup>103</sup> This finding is questionable because readers who only read part of an article do not get the entire picture. The premise for that decision should have been an average reader trying to understand the article and therefore reading it completely.

Decision 816<sup>104</sup> dealt with articles reporting on a dispute about alleged problems with the Hokianga Harbour ferry service. The articles covered a complaint of a councillor and the response of the ferry company. A Far North District Council member complained to the District Council about inappropriate driving of the ferry during night sails and heavy cannabis use by staff. In respect of the latter the councillor admitted that his allegation was unsubstantiated. The ferry company responded to the District Council admitting dangerous sailing manoeuvres and sought to amend staff contracts to allow for drug testing. Subsequently, a member of the public complained to the Press Council about the unsubstantiated allegations and the failure of the newspaper to get in touch with the ferry company or its staff before publication. In its decision, the Press Council said the reporting was not unreasonable because the paper was in possession of the submitted letters and the ferry company had taken measures against those allegations, which shows that they had some substance. However, the Press Council stated that although no need for further action by the paper was necessary, due to the serious nature of the assertion "it would have been preferable" to contact the parties again. However, because of the paper's limited resources, this flaw was acceptable to the Council. The Council's contradictory

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<sup>103</sup> *Te Aute College v Hawke's Bay Herald Tribune* (19 February 1998) New Zealand Press Council Case 685.

<sup>104</sup> *P Evans v Northland Age* (22 February 2001) New Zealand Press Council Case 816.



decision is confusing and does not convey a clear message to those that it regulates. It is not clear whether the newspaper supplied enough information or whether small newspapers are exempt from high standards. Considering an earlier case, the Press Council itself asserted that resource-restricted newspapers have to monitor substantial standards with extra care.<sup>105</sup> Moreover, the Authority seems to set a dangerous precedent because the decision implies that the size of a paper affects its ethical responsibilities. Whereas this might even be true in some instances, it is questionable whether it should apply in a case like this where only basic resources are required to meet acceptable standards. Overall, the Council missed setting a precedent for dealing with material gained for publication.

Although the Council stated that close deadlines are a paper's problem and do not justify an unbalanced publication in case 685<sup>106</sup> it asserted the opposite in decision 855 in regard to third parties. "Given the tight deadlines of daily newspapers, there is also nothing out of the ordinary ... that ... attempts to contact the principal for comment before publication were unsuccessful."<sup>107</sup>

In a remarkable decision, the Press Council did construe some established standards in an interesting way. *Rural News* personally criticised the director of Fish & Game New Zealand as retaliation for his general criticism of farmers who fail to protect watercourses from animal pollution. The published article contained factual errors and deliberately did not seek to interview the director concerned nor give any other opportunity for defence. Although conceding that the article was unbalanced and unjust, the Council did not want to uphold the complaint because it saw the article as part of a lively public debate.<sup>108</sup> The Authority decided that since Fish & Game New Zealand, as a non-newspaper, is not obliged to be balanced, this burden cannot be put on the newspaper either. By restricting one party by a set of rules that have ramifications on the entire dispute, the debate would be distorted. The Press Council has established that a public policy

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<sup>105</sup> *A Bradley v Greymouth Evening Star* (2 October 1998) New Zealand Press Council Case 710.

<sup>106</sup> *Te Aute College v Hawke's Bay Herald Tribune* (19 February 1998) New Zealand Press Council Case 685.

<sup>107</sup> *T Booker, C Davidson, S Webb v Manawatu Evening Standard* (17 December 2001) New Zealand Press Council Cases 855 - 857.

<sup>108</sup> *Fish & Game NZ, Bryce Johnson v Rural News* (18 February 2002) New Zealand Press Council Case 863.

argument should be openly and robustly discussed, but that balance should still be observed.<sup>109</sup> In this instance, the newspaper did not strive for balance at all but maliciously intended to destroy an enemy and go beyond normal reporting practice. In addition, the Press Council surely should not compare a paper that is bound by the Statement of Principles with a lobby group that is not. It is not uncommon for a party to a dispute to be bound by restrictions the other does not need to abide by.<sup>110</sup> In fact, most disputes addressed by the Council involve an individual who is not bound by those guidelines complaining about a paper that is bound by them. Taking the present decision as a serious precedent would mean negating the Statement of Principles entirely. Furthermore, allowing *Rural News* to make its allegations under the guise of freedom of expression is not convincing. Such a decision would only be justified if freedom of expression and the need for balance were of equal importance for the case in question. As the *Rural News* article in question is abusive, the requirement for balance cannot be outweighed. The paper deliberately did not adhere to well-established standards and therefore cannot rely on them for justification. Considering the paper's clear breach of the standards, and its malicious intentions towards the complainant, the exception the Council made in this case does not seem justifiable.

In an adjudication against the *Otago Daily Times*, the Press Council found that the failure to check the facts and to give a balanced view before publishing a piece cannot be excused or replaced by a clarifying article published the next day.<sup>111</sup> In previous cases, publishing clarifications or the person's point of view after the initial article seemed to have satisfied the Council.<sup>112</sup> Contrary to the present case, the purpose of balance was found to be served in previous decisions when clarifying articles were later published. Consequently, the Council did not adjudicate in favour of the complainants. This inconsistent adjudication against the *Otago Daily Times* confuses the balance rule established earlier because it is

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<sup>109</sup> New Zealand Press Council *The 29th Report of the New Zealand Press Council* (Wellington, 2001) 17.

<sup>110</sup> Steven Price "Complaints to the Press Council" (2 June 2002) *Mediawatch* <<http://www.mediawatch.co.nz/default,177.sm>> (last accessed 30 January 2004).

<sup>111</sup> *P Harris v Otago Daily Times* (18 February 2002) New Zealand Press Council Case 864.

<sup>112</sup> For example *QLDC v Mountain Scene* (18 February 1999) New Zealand Press Council Case 728; *Philip Davidson v Wairarapa Times-Age* (May 2003) New Zealand Press Council Case 923.

unclear now if a complainant with a similar grievance has a chance to get a uphold decision by the Press Council. The Press Council did not expressly state that the adjudication represented a departure from its earlier precedents nor that the circumstances of the case were exceptional. Therefore, it cannot be inferred from that decision that the Authority intended change its overall policy.

In a striking decision, the Press Council ignored its own established rules extraordinarily. In an article about road safety the newspaper used inaccurate information, examined unreliable data, did not present a full picture of a report written about the topic, and finally did not give the complainant the opportunity to publish a rebuttal.<sup>113</sup> In relation to the case the Council conceded that “there are significant omissions and deficiencies ... but that ... [does] not justify the imposition of the Council’s ‘uphold’ decision.” Justification for this conclusion is drawn from the remark that it is “inevitable that for a brief news story only a small selection from this mass of information could be glanced at”. The Press Council clearly states that the decision is in breach of the Statement of Principles. However, it held that redress is not necessary because the “robust and determined community” affected by this report “surely understands that the stereotype of West Aucklanders that the *Herald* article seeks to perpetuate is just ... a stereotype.” Again, the Press Council undermined its own credibility in this case. From the decision it is unclear whether space restrictions or the duty to inform the reader properly prevail. A paper is a source of news to the public and is required to present the story according to the standards of journalism. If an issue cannot be reported on entirely and without distortion, the paper should refrain from reporting on it at all rather than covering extracts that do not give the full picture and distort the original piece. The internal problems of a newspaper should not be used to excuse its failure to comply with essential professional standards. Moreover, it is questionable whether space restrictions and proper information dissemination can conflict because the length of an article should not distort its content. The Council has to uphold the highest professional standards and is thus obliged to reprimand a clear breach of this principle. Not upholding a complaint in this instance sets a dangerous precedent for future cases. The Council weakens its

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<sup>113</sup> *Waitakere City Council v New Zealand Herald* (8 April 2002) New Zealand Press Council Case 875.

position mainly because its adjudications become inconsistent. Once that happens, it becomes apparent to complainants that the Council does not provide proper redress to a complaint because it follows unpredictable guidelines, which allow a clear breach not to be upheld. Furthermore, if the Council rejects to uphold a complaint that is obviously in breach of the standards it does not lead to a clear line of precedents. For these reasons the decision is highly questionable.<sup>114</sup>

In a case concerning *The Press*<sup>115</sup> a subject was portrayed in a published article with a broad-brush view, which stirred some attention among voters during election period. The article was contrary to the complainant's views, which had been uncovered during an interview on the subject, but were not published. The paper had been covering the issue over a certain period of time and had given space to different viewpoints. For that reason, the Council did not uphold the complaint because an ordinary resident would know what the debate was about and would not have to be reminded about it from the beginning. For two reasons this decision does not seem to be right. Firstly, the Press Council has made it clear that an opposing view has to be heard. In this instance, the complainant was approached and interviewed, but his view was not published. It is not reported in the decision that the paper did not make the interview available because it faced technical problems. There is no reason to suppress a person's view and not to adhere to the balance requirement after having made the effort to interview the complainant already. High professional standards require the strict observance of rules self-imposed by the industry. The second flaw with the Press Council's decision is its declaration that ordinary residents should be responsible enough to completely understand an issue. Unfortunately, the Council assumed that the ordinary resident is not likely to read through an entire article. Therefore, opposing views have to be mixed throughout the article in order to avoid distorted impressions.<sup>116</sup> The Council's assumption that the ordinary person will follow an issue over time seems unrealistic if readers are deemed to miss two views in just

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<sup>114</sup> See also Steven Price "Complaints to the Press Council" (2 June 2002) *Mediawatch* <<http://www.mediawatch.co.nz/default,177.sm>> (last accessed 30 January 2004).

<sup>115</sup> *D O'Rourke v The Press* (13 May 2002) New Zealand Press Council Case 880.

<sup>116</sup> *Te Aute College v Hawke's Bay Herald Tribune* (19 February 1998) New Zealand Press Council Case 685.

one article as expressed in case 685.<sup>117</sup> It would have been preferable for the Council to point out that in a sensitive election atmosphere, special care should be taken when it comes to contentious topics. To avoid misrepresentation, which could be disadvantageous for candidates, media standards should be observed responsibly and carefully.

In a decision on suicide, the Press Council made it clear who is responsible for contributing relevant information to achieve balanced reporting on news items and opinion pieces. As opinion pieces represent personal views, readers can contest them by sending a letter to the editor and thus submit a different view on the subject. In contrast, it is the paper's responsibility to provide the full story in news items by reporting different viewpoints on the matter.<sup>118</sup> Unfortunately, the Press Council failed to give any grounds for its decision, which would have given it proper support. It would have been better for credibility and certainty reasons if the Press Council had explained why a newspaper should not rely on letters to the editor to balance news articles.

## 2 Fairness

In addition to balance, fairness is also mentioned in the first provision of the Statement of Principles and should be observed by newspapers in their publications.

### (a) Findings

Besides the statement in Principle one that "[p]ublications should be guided at all times by ... fairness" no further definition or instruction is provided to substantiate the meaning of this term in the press context.<sup>119</sup> In one of the Annual Reports, the Press Council attempted to define the general meaning of fairness as "equality of treatment".<sup>120</sup> The Oxford English Dictionary adds to this broad core

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<sup>117</sup> *Te Aute College v Hawke's Bay Herald Tribune* (19 February 1998) New Zealand Press Council Case 685.

<sup>118</sup> *T Booker, C Davidson, S Webb v Manawatu Evening Standard* (17 December 2001) New Zealand Press Council Cases 855 - 857.

<sup>119</sup> New Zealand Press Council <<http://www.presscouncil.org.nz>> (last accessed 30 January 2004).

<sup>120</sup> New Zealand Press Council *The 29th Report of the New Zealand Press Council* (Wellington, 2001) 16.

sense the more defining clause “just or appropriate in the circumstances”.<sup>121</sup> Hence, fairness can be regarded as just treatment.

In a couple of decisions about publishing advertising features paid by candidates in local body elections the Council established that this practice was unfair.<sup>122</sup> The newspapers printed a voting guide to help voters decide amongst the candidates, but did not reveal to their readers that the feature was not an editorial, but an advertisement, and that only candidates who paid a fee for their appearance were included. The Press Council found that “making publication dependent on the candidates buying advertising was unfair, particularly on those unable or unwilling to pay”.<sup>123</sup> The Authority also found that the practice violates good journalistic practice because the newspaper is responsible for providing full coverage, guided by fairness, of a significant local affair.

In one instance, it was found to be unfair if an embargo concerning a news release was not observed by a paper because the media business relies on some well worked protocols to ensure all parties benefit.<sup>124</sup>

In case 759, a person agreed to be interviewed under the condition of not being identified. The paper did not adhere to this request and published the article revealing the interviewee’s identity and other personal details. The Authority ruled in this case that “a newspaper cannot unilaterally impose its own rules upon a member of the public while choosing to ignore any conditions [the other party] may have set”.<sup>125</sup> The paper must apply a kind of conduct that meets the standard of fairness, which means in this case that the interviewee must be entitled to withdraw the comments made. In general, the Press Council held in another decision that relying upon a trustworthy undisclosed source is acceptable journalistic practice and not unfair.<sup>126</sup>

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<sup>121</sup> Judy Pearsall (ed) *The Concise Oxford English Dictionary* (10 ed revised, Oxford University Press, Oxford, 2002) 510.

<sup>122</sup> *P Glensor v Wainuiomata News* (11 March 1999) New Zealand Press Council Case 732; *Y Johanson v Christchurch Mail* (2 July 2002) New Zealand Press Council Case 886.

<sup>123</sup> *P Glensor v Wainuiomata News* (11 March 1999) New Zealand Press Council Case 732.

<sup>124</sup> *Dairy Workers Union v Waikato Times* (21 June 1999) New Zealand Press Council Case 747.

<sup>125</sup> *K Raman v Waikato Times* (17 November 1999) New Zealand Press Council Case 759.

<sup>126</sup> *G Nicholls v The Press* (22 February 2001) New Zealand Press Council Case 814.

The fairness clause was underlined in decision 902. Two opponents were arguing about a matter using opinion pieces in the newspaper. After the first one was published fully giving the view of one side, the other party's view was printed the following week omitting an important paragraph that attacked the paper. The Council found that the paper is not entitled to alterations in this instance because both parties have to be treated equally. Furthermore, the paper is not entitled to censor information not in favour of the position maintained by the manager of the paper.<sup>127</sup>

As opinion pieces clearly state a personal view on a subject, writers do not have to adhere to the fairness requirement.<sup>128</sup> Such articles promote discussion and are open to be challenged by other readers. However, this only applies to opinion pieces in general. When a columnist uses a piece of writing in a way to redress a personal situation currently in dispute, then this conduct is inappropriate and unfair because the other party does not have the same salient opportunity to hit back.<sup>129</sup>

In general, the Press Council's decisions made according to the fairness criteria seem to interpret fairness as meaning that the print media should offer people equal opportunities, should adhere to promises given, and apply the same standards and treatment to everybody.

#### (b) Criticism

Similar to its application of the balance principle the Press Council also lacks some consistency in its application of fairness.

For instance, when a teacher was charged with indecent assault – but later acquitted – with respect to several students at a primary school, the coverage along with a photograph of the suspect gave rise to a complaint.<sup>130</sup> The photograph was taken from a well-hidden space in some bushes but the

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<sup>127</sup> *Meridian Energy v Oamaru Mail* (11 November 2002) New Zealand Press Council Case 902.

<sup>128</sup> *Northland Health v Sunday Star-Times* (11 July 1998) New Zealand Press Council Case 702.

<sup>129</sup> *J & P Anderson v New Zealand Herald* (22 December 2000) New Zealand Press Council Case 810.

<sup>130</sup> *R Hope v Waikato Times* (29 May 1998) New Zealand Press Council Case 695.

photographer assured the accused that it would not be printed. Notwithstanding this promise, the picture was used in the paper. The Council, in adjudicating the case, did not find it surprising that an allegation of indecent assault against a local teacher found prominent coverage in a report and a picture. Unfortunately, it did not consider the pledge of the reporter. Sure enough, a picture taken from a public place can be used in a paper. But consideration of the circumstances, especially the promise of the photographer to not publish the picture should have led the Press Council to a different result. It would have been appropriate for the paper to stick to their pledge. Therefore, this inappropriate journalistic practice should be reprimanded.

Another case giving substance for criticism is the Council's decision 703.<sup>131</sup> The complaint was about the way a newspaper attacked a journalist in a public debate on the funding of public broadcasting. In that discussion, the complainant argued that the newspaper disclosed – with harmful intent – sensitive information that had no relation to his standpoint and was therefore unnecessary. The information disseminated was that the complaining journalist is contracted by the Clerk of the House to present reports on Parliament for Radio New Zealand and the fact that he lives in a permanent relationship with the chief executive of that public radio station. When seen in the context of the dispute, the disclosure and use of the information was not neutral and was used to disparage and embarrass the complainant. Although the disclosure of information about the journalist's private life was abusive and was irrelevant to the complainant's article in question, the Council did not uphold the complaint. The argument used by the Authority was that the complainant made use of the name of Radio New Zealand's head first, and had to anticipate the disclosure of the personal relationship. Looking at the pieces of writing, it seems obvious that the complainant mentioned the name of the chief executive in one of his articles when advocating for government funded public broadcasting in a purely subject matter related context. The article was about the impression the head of Radio New Zealand had when reading an article incorrectly describing the broadcaster's financial situation. Mentioning the chief executive's name was inevitable when writing about that subject. Nothing in the complainant's piece of writing was in

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<sup>131</sup> *T Frewen v The Dominion* (11 August 1998) New Zealand Press Council Case 703.



relation to private life. Private matters that do not add anything to a robust debate should not be used to weaken a protagonist's standpoint. Instead, high journalistic standards require a professional and just way of dealing with opposing parties. It should be self-evident that attacks on private grounds unfairly discriminate against one side. Therefore, the Council should have not tolerated this behaviour from the newspaper and should have issued an uphold decision.

In an adjudication dealing with a dispute on the dangers of vaccination, the Press Council maintained that the unfair use of a headline did not justify upholding a complaint. Although the Authority clearly noted the headline as unfair, it adopted an approach that can also be found in the following section on the accuracy criterion. The Council explained that the article, when read in its entirety, did not go beyond acceptable journalism.<sup>132</sup> Unfortunately, the Council has not outlined when already unfair coverage turns into unacceptable journalism. Seen from a neutral standpoint any unfair reporting, especially pieces of writing identified as such by the Council, should be admonished regardless of the scope. Without clear definitions of what is acceptable, the Press Council abrogates its principles and undermines its own positions. In response to corrosion of the Council's principles, the media will drop its standards knowing that some flaws are tolerable. On the other side, consumers will cease to refer their disputes to the Council because appropriate redress seems unlikely and not worth the effort of filing complaints.

The last case showing inconsistency in the area of fairness involves the New Zealand Timber Industry Federation and *The Dominion Post*. The dispute arose about a series of articles on the possible adverse health effects of timber treated with a certain preservative.<sup>133</sup> The newspaper took the stance that the wood, which is utilised for outdoor recreational equipment throughout New Zealand, has adverse health effects to humans. Besides the fact that other countries have banned that method of treatment, the paper commissioned an independent study of playgrounds in the Wellington area to undermine its point. This enquiry examined

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<sup>132</sup> *Immunisation Advisory Centre v Investigate Magazine* (30 November 2001) New Zealand Press Council Case 847.

<sup>133</sup> *New Zealand Timber Industry Federation v The Dominion Post* (June 2003) New Zealand Press Council Case 932.

three playgrounds and found levels of the treatment product above government guidelines. The timber industry complained to the Council that the survey was too small for confident statistical extrapolation. Furthermore, the newspaper did not give due prominence to the arguments of the industry that no scientific certainty over the health risks has been achieved. The Council did not uphold the complaint because it held that the newspaper was entitled to take a firm stand on the issue of abolishing the sale of tanned timber in New Zealand. This decision would only seem to be justified if the concerns of the timber industry mentioned above had also been addressed and rectified in the adjudication. The paper would be able to take a forthright stance if the information provided had been representative and if the position of the timber industry had been given due prominence. If the situation had been as just described, the timber industry would have been treated fairly by the paper. As this was not the case, the decision of the Council to not uphold the complaint is not warranted.

### 3 Accuracy

Accuracy is another issue newspapers have to observe in their reporting according to the first provision of the Press Council's Statement of Principles.

#### (a) Findings

Principle one of the Statement states that "[p]ublications should be guided at all times by accuracy".<sup>134</sup> This Principle makes clear that incorrect information has to be corrected in the publication in a timely manner. Rules that elaborate on this guideline are set out in the decisions of the Press Council.

In a case against *The Dominion* the Authority invoked the principle that corrections must be issued quickly and displayed prominently as required by the second provision of the Statement of Principles.<sup>135</sup> The correction by the newspaper half a year later that did not explicitly refer to a new viewpoint did not meet those requirements.

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<sup>134</sup> New Zealand Press Council <<http://www.presscouncil.org.nz>> (last accessed 30 January 2004).

<sup>135</sup> *T Frewen v The Dominion* (11 August 1998) New Zealand Press Council Case 703; also *REAL Management v New Zealand Herald* (13 November 2000) New Zealand Press Council Case 806.

If a person is quoted with terms not used by that individual, it is deemed inaccurate reporting and therefore unacceptable practice by the Council.<sup>136</sup> Inaccurate reporting also occurs when a paper substitutes or alters the words used by the person that originally presented the information and this change results in an alteration of the information given and misreports the person. For example, the original information that a person was "killed" cannot be replaced by "brutally slain". Although being told the truth by a dying aunt about the assassination of her father, the interviewee did not make the statement that "she was shocked by the story blurted out". Even though it may seem to the editor that this expression is a "natural inference", the added lines misreport the individual's story and breach the principle.<sup>137</sup>

Information circulated from court hearings cannot be deemed inaccurate even though this information is untrue if this represents exactly what was said before court.<sup>138</sup>

After a paper publishes a correction, the person affected does not have an additional right to have a letter to the editor published because the error has been redressed and thus the editor's discretion to decide what will be printed prevails.<sup>139</sup>

An adjudication is not given when both parties present convincing but opposing evidence because the Press Council cannot investigate what is right and does not disbelieve either side.<sup>140</sup>

In a decision about the accuracy of a letter to the editor, the Press Council stated that the author is responsible for the content.<sup>141</sup> A newspaper provides a

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<sup>136</sup> *A Reed v New Truth* (19 February 1999) New Zealand Press Council Case 729; *R Stent v Sunday Star-Times* (20 February 2000) New Zealand Press Council Case 771; *H Evison v The Press* (7 July 2000) New Zealand Press Council Case 789.

<sup>137</sup> *D E Lumsden v New Truth* (9 April 2000) New Zealand Press Council Case 737.

<sup>138</sup> *Miss Z v New Zealand Herald* (21 June 1999) New Zealand Press Council Case 748.

<sup>139</sup> *W Plunkett v North Shore Times Advertiser* (1 April 1999) New Zealand Press Council Case 735.

<sup>140</sup> *Immunisation Advisory Centre v Investigative Magazine* (30 November 2001) New Zealand Press Council Case 847.

<sup>141</sup> *Chris Parker v Taupo Times* (20 March 1998) New Zealand Press Council Case 688.

forum for public debate through the editorial section but has no obligation to confirm the validity of every fact.

The Council supports the statement that "comment is free but facts are sacred" made by C P Scott of the *Manchester Guardian*.<sup>142</sup> Therefore, even opinion pieces that are free to express a forthright stance on a subject have to stick to assumptions and conclusions based on correct information, or face rebuke.<sup>143</sup>

(b) Criticism

Although in many cases the Council applies the principles outlined above according to the rules, the Authority can be accused of inconsistency in others.

The first decision that illustrates inconsistent application of the accuracy principle is a case against *The Dominion*. The Council did not uphold a complaint, although the underlying article was inaccurate because an overall examination of the facts proved the allegation printed by the paper to be correct.<sup>144</sup> Members of the Southern Hammer Skinheads were involved in an assault on a Maori man in Wellington. The paper relied on a police report and reported that a card found on a member of the perpetrators bore the postal address of the New Zealand Fascist Union at Paraparaumu. However, there was no such statement on the seized card. A member of the Fascist Union at Paraparaumu complained about this incorrect fact. Nevertheless, another card found later proved the allegation that the paper had published. The Press Council concluded that the newspaper's reporting was counterbalanced by the fact that the information claimed was proved by other evidence. This result seems justified since only the source relied upon was wrong but not the information printed by the newspaper.

Surprisingly, the Council found that not all inaccuracies have to be redressed. In one instance, a report on a party's by-law election rank was deemed

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<sup>142</sup> *Poultry Industry Association of New Zealand v New Zealand Herald* (19 December 2002) New Zealand Press Council Case 908.

<sup>143</sup> *S Boyce v The Dominion* (11 August 2000) New Zealand Press Council Case 792.

<sup>144</sup> *K Bolton v The Dominion* (3 July 1998) New Zealand Press Council Case 696.

to be an "honest mistake" not worth redressing.<sup>145</sup> The Authority did not address what constitutes such an error and why these kinds of flaws do not need to be addressed by the Council. Making exceptions for this category of mistakes does not seem to be good enforcement of press standards. Although not made deliberately, such errors could have severe ramifications. Such exceptions cause significant uncertainty for the public and the newspaper industry since neither one can assess without doubt when a mistake becomes excusable. Also, the exception is not based on a clause found in the Statement of Principles. The regulation deems every mistake as correctable, thus the Council should be careful in diluting the self-established rules.

The Press Council contends that only particular mistakes, which meet a certain threshold of inaccuracy, justify an uphold decision. Mistakes not made wilfully, or which are not material enough do not meet this criterion.<sup>146</sup> Sometimes even several obvious errors made in one article do not justify upholding a decision.<sup>147</sup> In one case, the Council found that three clear breaches of the principles are "not at the top end of the scale but, cumulatively, warranted the complaint being upheld."<sup>148</sup> Although the Authority points out that not all infringements should be reprimanded, the Press Council does not provide any further guidelines to illustrate the level of inaccuracy that is needed to meet the uphold requirement. Under normal circumstances, minor factual errors of little consequence to the readers would be regarded as insignificant. However, the cases presented show a variety of different levels of errors making it difficult to draw a reliable conclusion about what constitutes an infringement. This leads to uncertainty about the meaning of the emerged threshold. It would be better if objective standards would identify those prerequisites. Generally, a clear breach of journalism practice should be reprimanded regardless of the intention of the

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<sup>145</sup> *Christian Heritage v New Zealand Herald* (15 August 1998) New Zealand Press Council Case 708.

<sup>146</sup> *Architects v Daily Post* (18 February 1999) New Zealand Press Council Case 733; *Waitakere City v Western Leader* (26 November 1999) New Zealand Press Council Case 761; *Alliance Party v Northern News* (10 February 2000) New Zealand Press Council Case 769; *U Cargill v New Zealand Herald* (10 August 2001) New Zealand Press Council Case 832; *James Scott v New Zealand Herald* (August 2003) New Zealand Press Council Case 940.

<sup>147</sup> *W Forman v Napier Mail* (5 July 2001) New Zealand Press Council Case 829; *P Corwin v The Press* (18 February 2002) New Zealand Press Council Case 861.

<sup>148</sup> *D v Wainuiomata News* (September 2003) New Zealand Press Council Case 941.

writer. In order to achieve consistency in the Council's decisions every plain error should be deemed sufficient to issue an uphold decision. This argument is underscored by the wording of the principles, which consider any incorrect information - without referring to intention - as being subject to correction. Uncertainty lowers the level of the Council's standards. As the Council is supposed to oversee principles, non-infringing but ambiguous meanings impact on these standards. By allowing different interpretations of these standards, the rules are automatically lowered in order to let those terms pass.

In another decision, the Council found it acceptable that a paper did not properly redress inaccuracies. The paper committed several errors in a report about expelling people from New Zealand. Although not all errors were corrected in later coverage, the Council found that the report was not invalidated and was adequately accurate, as the story was very important and served the public interest. However, it notes that it would have been helpful for the paper "if it had made more use of its own commendable We Got It Wrong column".<sup>149</sup> Unfortunately, the Council does not express why it thinks such inaccurate behaviour is still acceptable.

An article about the assessment of the performance of councillors did not provide a full story of councillors' work. The report was based on councillors' performance at monthly council meetings, but did not take into account any other work they did for their constituency. Councillor von Dadelszen, pointing out in a letter to the editor that the assessment was inadequate, challenged the inaccurate publication. However, the Press Council found that articles are just "a snapshot of the day" that can be followed up and cannot "carefully and exactly encompass the minutiae" of council papers because "newspapers have to share their quota of space and words among ... different subjects ... in a much more compact and focused way".<sup>150</sup> The Council's argument seems to be unsound. Although space restrictions apply to news stories, assessments about the accuracy of an article should be based on proper premises. In this case, the journalist could have said

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<sup>149</sup> *New Zealand Immigration Service v New Zealand Herald* (17 December 2001) New Zealand Press Council Case 860.

<sup>150</sup> *E von Dadelszen v Hawke's Bay Today* (20 February 2002) New Zealand Press Council Case 867.

openly that the current evaluation of councillors is focussed only on their performance at meetings. Selectively telling the truth, as in this case, cannot be excused due to space restrictions. Furthermore, the Council expressed clearly in a decision about "balance" that space restrictions are a newspaper's internal problem that cannot be cited as a reason to excuse unbalanced reporting.<sup>151</sup> Hence, the same decision should apply to inaccurate reporting.

The information disseminated in a news story about \$50 surcharges in hospitals for certain afterhour services was unclear. The Press Council notes in this decision that the paper is not to blame for publishing an unclear press release because the publisher of the press release bears the responsibility for the information.<sup>152</sup> Although one can assume that the paper adopts the information published as its own and should therefore be responsible for it, in the case of printing press statements the newspaper rather provides a forum for the original author. Thus, the decision, seen under this premise, seems sound.

After the paper released an inaccurate newspaper article, the person concerned complained to the paper and set the record straight through a letter to the editor. The subsequent filing of a complaint with the Press Council was not crowned with success. The Authority explained that due to the letter of the complainant a reprimand was no longer necessary.<sup>153</sup> The Council is right that no injustice has to be redressed at this point because a correction had already taken place. However, it would have been better practice for the Council to issue a decision on the complaint. If the complainant had not made a complaint, no correction would have been made. A letter cannot redress the original inaccurate article because it does not receive the same prominence. The complaint addressed the inaccurate article which should be criticised. The letter to the editor just gave one person's view which does not necessarily receive much weight from the ordinary reader given the characteristic subjectivity of the editorial section. To encourage papers to check facts before publication to avoid inaccurate reports and

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<sup>151</sup> *Waitakere City Council v New Zealand Herald* (8 April 2002) New Zealand Press Council Case 875.

<sup>152</sup> *Southland District Health Board v Mountain Scene* (March 2003) New Zealand Press Council Case 920.

<sup>153</sup> *Philip Davidson v Wairarapa Times-Age* (May 2003) New Zealand Press Council Case 923.

to adhere to high journalistic standards, an official reproval should be issued where clear breaches have taken place.

As seen in the section above, contents of the letters to the editor give the author's personal view and are able to express things that may not be appropriate in a factual news article. However, the Press Council seems to go too far in its role as a safeguard of the media and the public when considering in case 818 that letters to the editor can convey even the most offensive and disgusting statements that are proven to be wrong.<sup>154</sup> It says: "[E]ven ... [stating] baldly, in the face of historical evidence, that the Holocaust did not take place in World War II, the letter may not necessarily be barred from publication". It goes on: "That is ... part of the free and unfettered exchange of opinion in an open society that offensive expression will find a place, even where distortions or extreme views are integral to such expressions". This understanding of a free press is disturbing. The Council enunciates that offensive matters are subject to taste which is not covered in the Statement and hence cannot be decided by the Council. This situation seems to illustrate another example of a flawed judgement by the Authority. First, section 1 of the Statement refers to publications in general and therefore pieces that are part of the content thereof, are subject to the section. Second, the principles are just guidelines for the Press Council; complaints can be considered on any plausible ground. Third, opinion is not completely up to the discretion of the writer, as found in case 792 where the Council decided that the underlying facts have to be true. Therefore, the Council asserts that offensive matter, naturally part of opinion, is subject to some regulation. Furthermore, the understanding of what constitutes a free press has to be examined. Free press should not be confused with being allowed to say anything and everything. If that were the case, the Press Council and media standards would be unnecessary. An open society can cope with many views, even extreme views. But an open society, which in this case also respects the tragedy that comes along with denying the Holocaust, is not willing to tolerate everything. Otherwise, a criminal justice system, which is used in some open society countries to prosecute lies in regard to the denial of the Holocaust, would not be needed. In an open society, everybody who wants to

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<sup>154</sup> *Auckland Jewish Council v New Zealand Herald* (1 March 2003) New Zealand Press Council Case 818.



express honest ideas is free to do so. However, where there is malicious intent and dishonest thought behind a message, an open society should not be willing to give a forum to those who undermine the freedom of thought and are not open to the same standards the society generally adheres to. In an earlier decision the Council found a piece of writing with malicious intention worth reprimanding and thus proved that not all opinions can be freely expressed.<sup>155</sup>

#### 4 *Extreme opinion pieces*

The Press Council did not specify in its earlier decisions<sup>156</sup> what an honest opinion encompasses. As it is hard to assess opinion pieces exclusively under any of the three limbs of Principle one, this section will examine separately what - in the Council's view - honest opinion encompasses.

In the decision *Patrick McEntee v Hawke's Bay Today*, the Council tried to define the meaning of acceptable opinion. It decided that beyond acceptable opinion would be an editorial which is "extreme in substance or tone".<sup>157</sup> In the same decision, the Council points out that freedom of expression should allow for an aggressive editorial opinion. These contradictory statements do not describe a clear-cut policy. Every comment made, even the most evil, can be deemed an honest and aggressive opinion. Instead of introducing an uncertain statement, the Council should have defined what constitutes an honest opinion so that opinion writers would know when they overstep the boundary to a "dishonest" opinion. Such criteria for opinion writing would have given commentators an opportunity to check their pieces of writing against certain standards. Then, media professionals and the public would have been equipped with an effective guide to establish a particular playing field for opinion pieces with certain boundaries.

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<sup>155</sup> *Mental Health Foundation, Ministry of Health, A Beautrais, Health Waikato, S J Nicol v Craccum* (4 July 2000) New Zealand Press Council Cases 783 – 787.

<sup>156</sup> See Part III B 1 (a) Findings and the cases *M Cousins v Sunday Star-Times* (5 July 1998) New Zealand Press Council Case 697; *T Mitrovic v The Press* (21 August 1999) New Zealand Press Council Case 753; *B Procter v The Southland Times* (2 April 2002) New Zealand Press Council Case 874.

<sup>157</sup> *Patrick McEntee v Hawke's Bay Today* (25 September 2002) New Zealand Press Council Case 898.

The Press Council dealt with the following case without having a clear policy towards opinion pieces. In response to war in former Yugoslavia, an author tried to condemn the atrocities committed in the Balkans in the name of Serbian nationalism by writing: "I have to plead guilty to that second form of racism: 'antagonism towards other races'. ... I refer to the people of Serbia." He went on: "The events of the past few years in the Balkans have produced in me a deep detestation of all things Serbian. ... [T]hey are fundamentally a deeply unattractive people, brutal and malignant."<sup>158</sup> After receiving a lot of attacks for treating all Serbs as perpetrators of war, the author published an apology the following month making clear that he did not mean every Serb but only the ones committing crimes in the war. Nevertheless, the Press Council had to adjudicate because the complainant was not satisfied with the apology. The Council noted that the statements made were "rhetorical devices and strategies to shock and awaken people to the brutality of what ... happen[ed]". After examining the substance of the articles, the intention of the writer emerges showing that the pieces are anti-violent and anti-racist, which the Press Council explains do not call for disapprobation.

This decision is open to criticism. The writer's intention to shock and point out the crimes that would justify NATO bombing this area is clearly honourable. The problem is that, by using such a sweeping generalisation in his article, the author undermined his credibility to depict the rest of the situation without bias. In the present context, it is difficult to depict the situation correctly by using a generalisation. The originally honourable message he wanted to convey - that atrocities could not be tolerated - was lost after the introduction, as his article degenerated into an attack on Serbs. The opening paragraph sensationalised the message he wanted to get across, which itself was likely to be misunderstood. Instead of indicating the problem to his readers, he put himself on the same level of those he wanted to antagonise. Due to his misuse of a generalisation, the article may not be deemed strong opinion anymore. Instead, it seemed to have overstepped the mark of acceptable journalism to a piece of writing that is extreme in tone. This kind of blunt opinion piece suggests that it does not convey an anti-violent and anti-racist message. Writers should be advised to exercise

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<sup>158</sup> *J Lenart v Nelson Mail* (19 August 1999) New Zealand Press Council Case 750.

extreme caution when dealing with such difficult subjects. Even if backed by good intentions a completely unintended message can be communicated to readers.

In a different case, the Council illustrates what it considers to be an opinion piece that is extreme in tone. An opinion on suicide in a student magazine was found to be insulting, its contents extremely polemic, and its conclusions obnoxious.<sup>159</sup> In this decision, the Authority was aware of the difficulties in delineating freedom of expression and extreme opinion. To tackle the problem the Council looked at the article's purpose, which it found to be irresponsible and malicious. This approach seems reasonable and feasible in this case, but the decision is not readily reproducible because identifying extremity of tone is ultimately a subjective judgement.

In comparison to the aforementioned decision, the real purpose of the writer concerning the war in former Yugoslavia might have been lofty. But the purpose can be assessed differently, depending on whether it is perceived by the author or by an objective neutral person. Interpretation also depends on the article's readership. As the publication did not concern a national, but an international subject, and no Serbs are on the Council, the ruling was likely to be more objective than if a personal and national issue had been addressed. In addition, assessing the purpose of an article means evaluating the intention the writer had and what ramifications the piece of writing had for the people affected. Viewing an article from the perspective of people negatively affected by it can change an assessment outcome significantly.

Instead of introducing an uncertain statement, the Council should have given better guidelines as to when an "honest" opinion turns into a dishonest one. It seems that the Press Council has missed an opportunity in case 750 to state more precisely what the meaning of an honest opinion encompasses. This would have given commentators an opportunity to check their pieces of writing against certain standards established by the Authority. With more conscientious decision-making by the Council, media professionals and the public would have been

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<sup>159</sup> *Mental Health Foundation, Ministry of Health, A Beautrais, Health Waikato, S J Nicol v Craccum* (4 July 2000) New Zealand Press Council Cases 783 – 787.

equipped with more effective guidelines under which they could advance their work and ideas.

#### *IV CONCLUSION*

The Government of New Zealand has transferred the responsibility for the regulation of the press into the hands of an independent organisation. Through the work of the New Zealand Press Council the print media is guided and thus the quality of press products in New Zealand can be enhanced. To reach the goal of quality publications, a high standard in the work of the Council is required. Despite having exemplified some good work in many instances, it would be desirable for the Press Council to improve significantly in some aspects to better fulfil its role as the print media's principal supervisor.

The Press Council should improve the formal composition of its adjudications to offer the reader a better overview over the case. To reach this goal several things can be outlined before the written adjudication is presented. Identifying the contravened provision clearly is of major importance to a case. Furthermore, the outcome of the case, the facts, and the decision of the Press Council should be summarised briefly.

As discussed in this paper, some of the Press Council's decisions are subject to inconsistencies when compared with the majority of the cases decided in the same field. The Council will lose its credibility if its decisions continue to bear irregularities because such inconsistencies compromise the reliability of guidance that the Council's decisions are intended to provide for the media and the public. Therefore, the Press Council should not ever permit clear breaches of the Statement of Principles as permissible. If a paper infringes upon the rules, no excuse exists in the Statement to not uphold a decision. Reprimanding the paper for sub-standard behaviour will have the positive effect of reminding each reporter to scrutinize any information for publication, and encourage the entire industry to uphold high standards and consistently abide by the rules every day. However, different penalty options should be available to address violations of different severity. It may be considered that a technical breach entails an upheld decision without the need to print the judgement whereas more serious contraventions

should require newspapers to publish the essence of the Authority's decision. It should also be possible to correct minor inaccuracies by just stating that this is due to a Press Council decision. If those options are implemented, it is very important to assign breaches to the different penalty possibilities. That insures that it becomes transparent which penalties are assigned to which infringement. The ramifications will only hurt those who do not adhere to high journalistic standards. Moreover, the complainant will receive redress. In that regard, the Council mainly serves the public as a regulator of the print media because the media's freedom of speech is not at stake when the Principles are broken.

Several penalty options for different kinds of breaches assure that sanctions resulting from the Council's decisions differ depending on the significance of the breach. This guarantees that adverse Press Council decisions are not diminished. Overseeing the print industry and upholding the highest media standards are the tasks of the Press Council. Strict adjudications will help to fulfil this duty. If upholding these objectives is no longer guaranteed, the Press Council's self governing position will be jeopardised and possibly replaced by a statutory body.

Hence, in order to improve, the Council should meet, adhere to, or exceed all relevant standards that it establishes. Adjudications should be used to set clear precedents and construe principles rigorously.

As the industry regulator, it is of particular importance that the Press Council operates in a fully transparent manner. Accordingly, justifications should be given extensively and clearly to substantiate a decision of the Council. If decisions of the Press Council are not comprehensible, the allegation of arbitrariness and bias can arise. Finally, the Press Council should only grant exceptions to the Statement of Principles if a compelling reason can be found.

## APPENDICES

### A *New Zealand Press Council Statement of Principles*

New Zealand Press Council Statement of Principles<sup>160</sup>

#### Preamble

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

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

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

The Council seeks the co-operation of editors and publishers in adherence to these Principles and disposing of complaints. The Press Council does not

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<sup>160</sup> New Zealand Press Council <<http://www.presscouncil.org.nz>> (last accessed 30 January 2004).

prescribe rules by which publications should conduct themselves. Editors have the ultimate responsibility to their proprietors for what appears editorially in their publications, and to their readers and the public for adherence to the standards of ethical journalism which the Council upholds in this Statement of Principles.

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

#### 1. Accuracy

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

#### 2. Corrections

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

#### 3. Privacy

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

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

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

#### 4. Confidentiality

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

#### 5. Children and Young People

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

#### 6. Comment and Fact

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

#### 7. Advocacy

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

#### 8. Discrimination

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

#### 9. Subterfuge

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



## 10. Headlines and Captions

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

## 11. Photographs

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

## 12. Letters

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

## 13. Council Adjudications

Editors are obliged to publish the substance of Council adjudications that uphold a complaint.

Note: Editors and publishers are aware of the extent of this Council rule that is not reproduced in full here.

## **B Constitution of the New Zealand Press Council**

Constitution of the New Zealand Press Council<sup>161</sup>

### **1. NAME**

- 1.1 The name of the council is the New Zealand Press Council.

### **2. DEFINITION**

- 2.1 In this Constitution the words shall have the following meaning:

"Council" means the New Zealand Press Council;

"NPA" means The Newspaper Publishers Association of New Zealand (Inc);

"EPMU" means the N Z Amalgamated Engineering Printing & Manufacturing Union (Inc);

"Secretary" means the secretary of the Council.

### **3. CONSTITUENT BODIES OF THE COUNCIL**

- 3.1 The Constituent bodies of the Council are the NPA and the EPMU.

### **4. OBJECTIVES**

- 4.1 The objectives of the Council are:

- (a) (i) to consider complaints about the conduct of the Press;
- (ii) to consider complaints by the Press about the conduct of persons and organisations towards the Press;
- (iii) to facilitate the satisfaction, settlement or withdrawal of complaints in an appropriate and practical manner; and
- (iv) to record the action taken by the Council
- (b) To promote freedom of speech, and freedom of the Press in New Zealand;
- (c) To maintain the New Zealand Press in accordance with the highest professional standards.

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<sup>161</sup> The constitution cannot be found on the Council's webpage. A hardcopy was obtained from the Press Council's Secretary in October 2003. This document was scanned in and is reproduced here without any changes.

7.2 The appointment of any member of the Council (including the chairperson) shall

5. **COVERAGE**

- 5.1 The Council considers complaints against newspapers, magazines and periodicals in public circulation in New Zealand (including their websites). The Council retains the discretion to decline a complaint if the publication has a limited readership or the circumstances make the complaint inappropriate for resolution by the Council.

6. **MEMBERSHIP OF THE COUNCIL**

- 6.1 The membership of the Council shall comprise:
- (a) A chairperson who shall be a person otherwise unconnected with the Press and who shall be appointed by the appointments panel.
  - (b) Five persons representing the public, such persons to be appointed by the appointments panel.
  - (c) Two members appointed by the NPA.
  - (d) Two members appointed by the EPMU.
  - (e) One member appointed by the Magazine Publishers' Association.
- 6.2 In respect of the public members there shall be an appointments panel comprising a nominee of the NPA, a nominee of the EPMU, the Chief Ombudsman and the current chairperson of the Council.

7. **TENURE**

- 7.1 (a) The appointment of the chairperson shall be for a five-year term. The retiring chairperson shall be eligible for reappointment for a term to be decided by agreement with the parties.
- (b) The appointment of the members representing the public shall be for a four-year term. Retiring members shall be eligible for reappointment for one further term.
- (c) The appointment of members appointed by the NPA, EPMU, and the MPA shall be for a four-year term. Retiring members shall be eligible for reappointment for one further term.

7.2 The appointment of any member of the Council (including the chairperson) shall terminate forthwith if that member becomes bankrupt or becomes mentally incapable or if that member retires from office by notice in writing to the secretary.

7.3 The appointment of a person to fill any casual vacancy on the Council shall be made in the same manner as the member being replaced and the term of the person so appointed shall terminate at the expiry of the term of the member being replaced.

## 8. QUORUM

8.1 A quorum on the Council shall be seven members. In the absence of the chairperson, a chairperson shall be appointed by the members present at the meeting.

## 9. SECRETARY

9.1 The administration of the Council shall be carried out by the secretary who shall be engaged for the purpose on terms and conditions determined by the Council from time to time. The secretary's duties shall include:

- (a) The preparation and submission of budgets to the Council on all aspects of the Council's activities.
- (b) The taking of minutes of Council meetings.
- (c) The preparation and dissemination of regular financial reports to the members of the Council and to the NPA and the EPMU.

## 10. PROCEDURE

- 10.1 (a) The Council is empowered to regulate and control all its procedure and actions for the furtherance and attainment of its objects as the Council may decide.
- (b) Questions arising at any meeting shall be decided by a majority vote. The chairperson and members shall each have one vote but in the case of an equality of votes the chairperson shall have a second or casting vote. Voting may be by show of hands or by ballot.

11. **MEETINGS**

- 11.1 The Council shall meet on dates determined in advance by the Council. The chairperson may call additional meetings at any time. The secretary may call additional meetings on the written request of four members. Not less than seven clear days notice of additional meetings (together with the agenda for such meetings) shall be given to each member.

12. **MINUTES OF MEETINGS**

- 12.1 A copy of the minutes of the meetings of the Council shall be sent to all members by the secretary as soon as they are issued.

13. **COMMITTEES**

- 13.1 The Council may delegate all or any of its functions to committees of such member or members as are determined at a meeting of the Council.

14. **DISSOLUTION**

- 14.1 The NPA and EPMU may at any time, after consultation with the Council, resolve to dissolve the Council.

15. **ALLOWANCES**

- 15.1 The members of the Council representing the public shall be paid a fee for each meeting of the Council attended.
- 15.2 The chairperson shall be paid an annual retainer.
- 15.3 All members of the Council shall be entitled to recover the costs of airfares and expenses reasonably incurred in attending meetings of the Council.
- 15.4 The fees payable to members representing the public and the retainer payable to the chairperson shall be paid in accordance with the rates to be determined from time to time by the NPA and the EPMLJ.

16. **FINANCE**

- 16.1 The liabilities and expense of Council in respect of any year shall be borne by the NPA, the EPMIJ and other organisations or companies as may be agreed and apportioned as determined by the NPA and EPMLJ.

16.2 The secretary shall present a budget at the start of each year to the NPA and EPMU for their approval. The funding organisations and companies will be levied on the basis of that budget for that year.

16.3 The Council's accounts shall be subject to audit each year and available for perusal by the constituent bodies.

17. **ACCOUNTS**

17.1 Council cheques must be signed by at least two persons, the secretary and/or any other designated member of the Council.

18. **NOTICES**

18.1 Notices shall be sent to the members of the Council at the address provided by the members to the secretary for such purpose.

19. **PAMPHLET**

This Constitution is to be read in conjunction with the Council's Pamphlet of Procedure and Statement of Principles that are published from time to time by the Council.

The Common Seal of THE NEWSPAPER PUBLISHERS ASSOCIATION  
Incorporated

Was affixed in the presence of

J C S Smith

Chairman of the Board of Control

Lincoln Gould Executive Director

The Common Seal of the NEW ZEALAND AMALGAMATED  
ENGINEERING, PRINTING & MANUFACTURING UNION (Inc)

Was affixed in the presence of

Andrew Little

National Secretary

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