

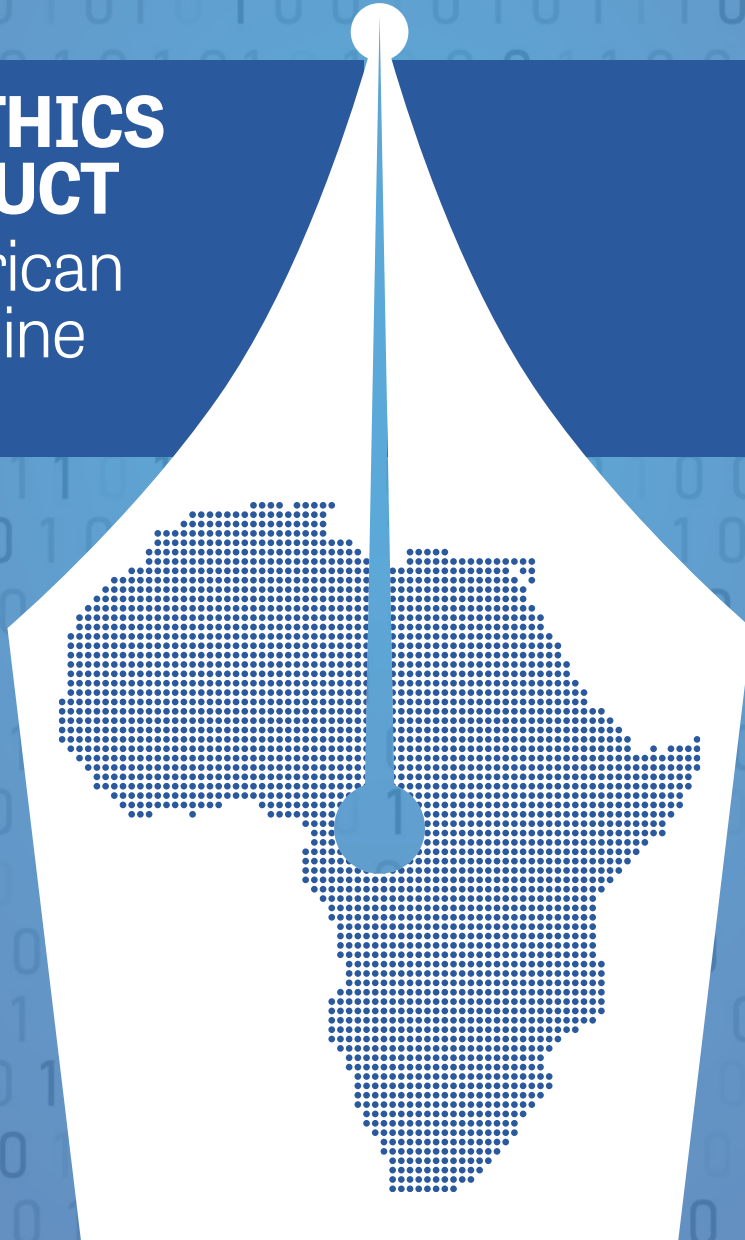
DECODING

THE CODE

sentence by sentence

CODE OF ETHICS AND CONDUCT

for South African
print and online
media



Johan Retief



For news you can trust...

... look for publications that display the FAIR logo of the Press Council, indicating that they strive to adhere to the Press Code



Factual - Accountable - Independent – Responsible

Building 12, Section B • Burnside Island Office Park • 410 Jan Smuts Avenue Craighall Park, 2196

☎ 011 484 3612 🌐 <https://www.presscouncil.org.za/> ✉ enquiries@ombudsman.org.za

Decoding the Code **sentence by sentence**

Second edition

Johan Retief



The future of the media is in your hands

PUBLISHED BY THE PRESS COUNCIL OF SOUTH AFRICA

Address: Building 12, Section B
Burnside Island Office Park
410 Jan Smuts Avenue
Craighall Park
2196

Tel: 011-484-3612
Email: enquiries@ombudsman.org.za
Website: www.presscouncil.co.za

First Edition: 2019
Second Edition: 2023

The author has a moral right to be identified as the author.

CREATIVE COMMONS LICENCE



Attribution - Non-Commercial - No Derivs

Users may copy or download this work from www.presscouncil.org.za and share it with others as long as they credit the Press Council of South Africa. The text cannot be changed in any way or used commercially.

Layout: Mir lle Jacobs, Caxton Local Media
Printing: Caxton & CTP Printers and publishers

Table of Contents

Page	Section
6	Foreword
8	From the Author
8	Code of Ethics and Conduct
13	Decoding the Code
13	Preamble
18	A. Media-generated Content and Activities
18	Gathering and Reporting of News
29	Independence and Conflict of Interest
31	Privacy, Dignity and Reputation
39	Data Protection
41	Discrimination and Hate Speech
41	Advocacy
43	Protected Comment
47	Children
50	Violence, Graphic Content
51	Headlines, Captions, Posters and Photographs
53	Confidential and Anonymous Sources
54	Payment for Information
56	B. User-generated Content and Activities



Foreword

The media plays a very important role in a democratic society such as ours where competing rights often have to be carefully balanced in the process of informing the public.

To enable the media to carry out its responsibility properly and fairly in this regard, it needs to be seen by the public to be subjected to an effective control mechanism in which ordinary people have confidence. But they would only have such confidence if the Press Code – the bedrock or source of media regulation – is accessible and understandable to them so as to enable them to invoke it to hold the media accountable.

The booklet, *Decoding the Code – sentence by sentence*, is therefore an important publication. It clarifies and simplifies the Press Code, thus rendering it accessible to all and sundry; this is one of the reasons why the Press Council has over time been receiving complaints even from ordinary people.

This version is an update of the earlier one. Like the previous version, it has been written in a language that is easy to understand. It has also taken into account some latest developments and trends, and addresses challenges that cropped up subsequent to the publication of the first version.

This booklet is therefore a must-read for everybody, let alone stakeholders in the media.



Judge Bernard M Ngoepe
Chair, Appeals Panel of the Press Council of SA
Retired Judge President: North and South Gauteng High Courts.

From the author



‘A Code of Ethics and Conduct is an ethical compass without which the media are all at sea...’ – JR

There is hardly anything that anyone can do without influencing somebody else; there is nothing that a journalist can do in her or his line of duty without affecting somebody.

Journalists should fully understand and appreciate just how much power they have. That everything they do in their professional lives influences people. That this influence can sometimes make or break a person. And that this places a huge responsibility on everybody concerned.

A Code of Ethics and Conduct is the first and most important way of assisting the press and online media (“the media”, from now on) to report responsibly. Editors often ask me for advice prior to publication. My first question always is: What does the Code of Ethics and Conduct say? In most cases the answer to this question solves the problem.

A Code of Ethics is an ethical compass without which the media are all at sea.

What follows is a discussion of the latest South African Code of Ethics and Conduct, section by section and sentence by sentence, explaining why the issues contained in them are important and illustrating the principles and consequences involved – in the hope that this would provide guidelines to journalists to churn out ethical journalism.

This booklet is designed to assist journalists in their decision-making. It is based on the experience and my knowledge and is merely meant as a guideline for interpreting the Press Code. It should not be read as an extension of the Code, but solely as an explanation by me after a decade of experience.

Members of the public will also find this booklet very helpful, assisting them to understand the Press Code.

The text itself is presented in red italics; the comments are in normal type. Examples of actual cases are presented in boxes and there are short questions to test the reader’s understanding of the Code and its application.

- Johan Retief: Press Ombud (November 2009 – March 2019)



Johan Retief served as Deputy Press Ombudsman from November 2009 to January 2013, after which he was appointed as the Press Ombud – a position he held until March 2019.

He holds a doctorate in theology from Stellenbosch University.

In addition to his book, *Media Ethics. An introduction to Responsible Journalism*; Oxford University Press (2002), he also published several articles on media ethics. These include:

- *The Heart of Hearts* (chapter on media ethics in #Journalism4.0@Stellenbosch – Journalism Department’s 40 Years; AfricanSunMedia, 2018);
- *Tertius Usus Codicis* – article on the Third Use of the Press Code (various publications, 2017); and
- *Guidelines for Ethical Journalism – and Beyond; Content of Regulation in South Africa; The Gist of the Code* (chapter in *Ethical Journalism & Gender sensitive Reporting*; UOMPRESS, University of Mauritius, 2013).

Johan now works as a consultant to both the public and publications regarding complaints about unethical journalism.

Code of Ethics and Conduct for South African Print and Online Media

(Effective from 1 September 2022)

The Press Council of South Africa adopts the following Code for print and online media (together referred to as “the media”).

PREAMBLE

The media exist to serve society. Their freedom provides for independent scrutiny of the forces that shape society, and is essential to realising the promise of democracy. It enables citizens to make informed judgments on the issues of the day, a role whose centrality is recognised in the South African Constitution.

Section 16 of the Bill of Rights sets out that:

1. Everyone has the right to freedom of expression, which includes:
 - a) Freedom of the press and other media;
 - b) Freedom to receive and impart information or ideas;
 - c) Freedom of artistic creativity; and
 - d) Academic freedom and freedom of scientific research.
2. The right in subsection (1) does not extend to:
 - a) Propaganda for war;
 - b) Incitement of imminent violence; or
 - c) Advocacy of hatred that is based on race, ethnicity, gender or religion, and that constitutes incitement to cause harm.

The media strive to hold these rights in trust for the country’s citizens; and they are subject to the same rights and duties as the individual. Everyone has the duty to defend and further these rights, in recognition of the struggles that created them: the media, the public and government, who all make up the democratic state.

The media’s work is guided at all times by the public interest, understood to describe information of legitimate interest or importance to citizens.

As journalists we commit ourselves to the highest standards, to maintain credibility and keep the trust of the public. This means always striving for truth, avoiding unnecessary harm, reflecting a multiplicity of voices in our coverage of events, showing a special concern for children and other vulnerable groups, and exhibiting sensitivity to the cultural customs of their readers and the subjects of their reportage, and acting independently.

Application of the Press Code

1. This Code applies to the following content published by members:
 - 1.1 all content that is published in a printed edition;
 - 1.2 all content that is published on a website operated by a member;
 - 1.3 all content that is published on a social media account operated by a member; and
 - 1.4 all content that is created by a member and published on any platform that is available on the world wide web (i.e. online) or in digital format.
2. All content published by a member through one or more of the platforms mentioned in 1 must comply with the Code, regardless of whether the content is in written, video, audio, pictorial or any other form.
3. Members must ensure that when they share content created by a third party through their social media accounts (for example by retweeting) they do so in a manner that is compliant with this Code.
4. Members must develop their own social media policies, guided by this Code.

Chapter 1: MEDIA-GENERATED CONTENT AND ACTIVITIES

1. Gathering and reporting of news

The media shall:

- 1.1 take care to report news truthfully, accurately and fairly;
- 1.2 present news in context and in a balanced manner, without any intentional or negligent departure from the facts whether by distortion, exaggeration or misrepresentation, material omissions, or summarisation;

- 1.3 present only what may reasonably be true as fact; opinions, allegations, rumours or suppositions shall be presented clearly as such;
- 1.4 obtain news legally, honestly and fairly, unless public interest dictates otherwise;
- 1.5 use personal information for journalistic purposes only;
- 1.6 identify themselves as such, unless public interest or their safety dictates otherwise;
- 1.7 verify the accuracy of doubtful information, if practicable; if not, this shall be stated;
- 1.8 seek, if practicable, the views of the subject of critical reportage in advance of publication, except when they might be prevented from reporting, or evidence destroyed, or sources intimidated. Such a subject should be afforded reasonable time to respond; if unable to obtain comment, this shall be stated;
- 1.9 state where a report is based on limited information, and supplement it once new information becomes available;
- 1.10 make amends for presenting inaccurate information or comment by publishing promptly and with appropriate prominence a retraction, correction, explanation or an apology on every platform where the original content was published, such as the member's website, social media accounts or any other online platform; and ensure that every journalist or freelancer employed by them who shared content on their personal social media accounts also shares any retraction, correction, explanation or apology relating to that content on their personal social media accounts.
- 1.11 prominently indicate when content that was published online has been amended or an apology or retraction published. The original content may continue to remain online but a link to the amendment, retraction or apology must be included in every version of the content which remains available online.
- 1.12 not be obliged to remove any article which is not unlawfully defamatory; and
- 1.13 not plagiarise.

2. Independence and Conflicts of Interest

The media shall:

- 2.1 not allow commercial, political, personal or other non-professional considerations to influence reporting, and avoid conflicts of interest as well as practices that could lead readers to doubt the media's independence and professionalism;
- 2.2 not accept any benefit which may influence coverage;
- 2.3 indicate clearly when an outside organisation has contributed to the cost of newsgathering; and
- 2.4 keep editorial material clearly distinct from advertising and sponsored events.

3. Privacy, Dignity and Reputation

The media shall:

- 3.1 exercise care and consideration in matters involving the private lives of individuals. The right to privacy may be overridden by legitimate public interest;
- 3.2 afford special weight to South African cultural customs concerning the protection of privacy and dignity of people who are bereaved and their respect for those who have passed away, as well as concerning children, the aged and the physically and mentally disabled;
- 3.3 exercise care and consideration in matters involving dignity and reputation, which may be overridden only if it is in the public interest and if:
- 3.3.1. the facts reported are true or substantially true; or
 - 3.3.2. the reportage amounts to protected comment based on facts that are adequately referred to and that are either true or reasonably true; or
 - 3.3.3. the reportage amounts to a fair and accurate report of court proceedings, Parliamentary proceedings or the proceedings of any quasi-judicial tribunal or forum; or
 - 3.3.4. it was reasonable for the information to be communicated because it was prepared in accordance with acceptable principles of journalistic conduct; or
 - 3.3.5. the article was, or formed part of, an accurate and impartial account of a dispute to which the complainant was a party;
- 3.4 not identify rape survivors, survivors of sexual violence which includes sexual intimidation and harassment* or disclose the HIV/AIDS status of people without their consent and, in the case of children, from their legal guardian or a similarly responsible adult as well as from the child (taking into consideration the evolving capacity of the child), and a public interest is evident, and it is in the best interests of the child.
- 3.5 only disclose sufficient personal information to identify the person being reported on as some information, such as addresses, may enable others to intrude on their privacy and safety, and such disclosure shall only be made if in the public interest.



The World Health Organisation *inter alia* defines sexual violence as follows: "Sexual violence encompasses acts that range from verbal harassment to forced penetration, and an array of types of coercion, from social pressure and intimidation to physical force..."

4. Data Protection

Members of the media shall:

- 4.1 take reasonable steps to ensure that data containing personal information* under their control is protected from misuse, loss, and unauthorised access;
- 4.2 amend inaccuracies in published personal information where a person requests a correction;
- 4.3 inform the affected person(s) and take reasonable steps to mitigate any prejudicial effects where it is reasonably suspected that an unauthorised person may have obtained access to personal information held by the media; and
- 4.4 use and disclose personal data only for journalistic purposes.

* “Personal information” is defined in Section 1 of the Protection of Personal Information Act 4 of 2013 as follows: “Personal information” means information relating to an identifiable, living, natural person, and where it is applicable, an identifiable, existing juristic person, including, but not limited to (a) information relating to the race, gender, sex, pregnancy, marital status, national, ethnic or social origin, colour, sexual orientation, age, physical or mental health, well-being, disability, religion, conscience, belief, culture, language and birth of the person; (b) information relating to the education or the medical, financial, criminal or employment history of the person; (c) any identifying number, symbol, email address, physical address, telephone number, location information, online identifier or other particular assignment to the person; (d) the biometric information of the person; (e) the personal opinions, views or preferences of the person; (f) correspondence sent by the person that is implicitly or explicitly of a private or confidential nature or further correspondence that would reveal the contents of the original correspondence; (g) the views or opinions of another individual about the person; and (h) the name of the person if it appears with other personal information relating to the person or if the disclosure of the name itself would reveal information about the person.

5. Discrimination and Hate Speech

The media shall:

- 5.1 avoid discriminatory or denigratory references to people’s race, gender, sex, pregnancy, marital status, ethnic or social origin, colour, sexual orientation, age, disability, religion, conscience, belief, culture, language and birth or other status, and not refer to such status in a prejudicial or pejorative context – and shall refer to the above only where it is strictly relevant to the matter reported, and if it is in the public interest; and
- 5.2 balance their right and duty to report and comment on all matters of legitimate public interest against the obligation not to publish material that amounts to propaganda for war, incitement of imminent violence or hate speech – that is, advocacy of hatred that is based on race, ethnicity, gender or religion, and that constitutes incitement to cause harm.

6. Advocacy

The media may strongly advocate their own views on controversial topics, provided that they clearly distinguish between fact and opinion, and not misrepresent or suppress or distort relevant facts.

7. Protected Comment

- 7.1 The media shall be entitled to comment upon or criticise any actions or events of public interest; and
- 7.2 Comment or criticism is protected even if it is extreme, unjust, unbalanced, exaggerated and prejudiced, as long as it is without malice, is on a matter of public interest, has taken fair account of all material facts that are either true or reasonably true, and is presented in a manner that it appears clearly to be comment.

8. Children

In the spirit of Section 28.2 of the Bill of Rights* the media shall:

- 8.1 exercise exceptional care and consideration when reporting about children*. If there is any chance that coverage might cause harm of any kind to a child, he or she shall not be interviewed, photographed or identified without the consent of a legal guardian or of a similarly responsible adult and the child (taking into consideration the evolving capacity of the child); and a public interest is evident;
- 8.2 not publish child pornography*; and
- 8.3 not identify children who have been victims of abuse or exploitation, or who have been charged with or convicted of a crime, without the consent of their legal guardians (or a similarly responsible adult) and the child (taking into consideration the evolving capacity of the child), a public interest is evident and it is in the best interests of the child.

- * - Section 28.2 of the Bill of Rights in the South African Constitution says: “A child’s best interests are of paramount importance in every matter concerning the child.”
- A “child” is a person under the age of 18 years.
- Child Pornography is defined in the Film and Publications Act as: “Any visual image or any description of a person, real or simulated, however created, who is or who is depicted or described as being, under the age of 18 years, explicitly depicting such a person who is or who is being depicted as engaged or participating in sexual conduct; engaged in an explicit display of genitals; participating in or assisting another person to participate in sexual conduct which, judged within context, has as its predominant objective purpose, the stimulation of sexual arousal in its target audience or showing or describing the body or parts of the body of the person in a manner or circumstance which, in context, amounts to sexual exploitation.”

9. Violence, Graphic Content

The media shall:

- 9.1 exercise due care and responsibility when presenting brutality, violence and suffering;
- 9.2 not sanction, promote or glamorise violence or unlawful conduct; and
- 9.3 avoid content which depicts violent crime or other violence or explicit sex, unless the public interest dictates otherwise – in which case a prominently displayed warning must indicate that such content is graphic and inappropriate for certain audiences such as children.

10. Headlines, Captions, Posters, Photographs and Video/Audio Content

- 10.1 Headlines, captions to photographs and posters shall not mislead the public and shall give a reasonable reflection of the contents of the report or photograph in question; and
- 10.2 Photographs and video/audio content shall not misrepresent or mislead nor be manipulated to do so.

11. Confidential and Anonymous Sources

The media shall:

- 11.1 protect confidential sources of information – the protection of sources is a basic principle in a democratic and free society;
- 11.2 avoid the use of anonymous sources unless there is no other way to deal with a story, and shall take care to corroborate such information; and
- 11.3 not publish information that constitutes a breach of confidence, unless the public interest dictates otherwise.

12. Payment for Information

The media shall avoid shady journalism in which informants are paid to induce them to give the information, particularly when they are criminals – except where the material concerned ought to be published in the public interest and the payment is necessary for this to be done.

Chapter 2: USER-GENERATED CONTENT AND ACTIVITIES*

13. Principles

The media:

- 13.1 are not obliged to moderate all user-generated content (UGC) in advance;
- 13.2 shall have a UGC Policy, consistent with the Constitution of the Republic of South Africa, governing moderation and/or removal of UGC or user profiles posted;
- 13.3 may remove any UGC or user profile in accordance with their policy;
- 13.4 must make their policy publicly available and set out clearly the:
 - 13.4.1 authorisation process, if any, which would-be users must follow, as well as any terms, conditions and indemnity clauses during such registration process;
 - 13.4.2 content which shall be prohibited; and
 - 13.4.3 manner in which the public may inform them of prohibited content;
- 13.5 should, where practicable, place a notice on the platforms to discourage the posting of prohibited content;
- 13.6 should inform the public that UGC is posted directly by users, and does not necessarily reflect their views;
- 13.7 shall encourage users to report content which may violate the provisions of their policy; and
- 13.8 shall particularly carefully monitor online forums directed at children.

14. Prohibited Content

Material constitutes prohibited content if it is expressly not allowed in a member’s UGC Policy, and in Section 5.2 of this Code (which refers to Section 16 of the Bill of Rights, and overrules anything to the contrary contained in a UGC policy).

15. Defence

- 15.1 It is a defence for the media to show that they did not author or edit the content complained of;
- 15.2 However, where a complainant has sent a written notice to the particular media, identifying the content concerned, specifying where it was posted, and motivating why it is prohibited (see Clause 14); the media must then either:
 - 15.2.1 remove the relevant UGC as soon as possible and notify the complainant accordingly; or
 - 15.2.2 decide not to remove the UGC and notify the complainant accordingly. In the latter case, the complainant may complain to the Press Ombud, who will treat it as if the UGC was posted by the member itself.

[*	Chapter 2 applies where a complaint is brought against a member in respect of comments and content posted by users on all platforms it controls and on which it distributes its content.]
-----	--	---

Notes

DECODING THE CODE

SENTENCE BY SENTENCE

PREAMBLE

The media exist to serve society

Have you ever asked yourself just *why* you are a journalist?

Reporters should be in the industry for the right reason. If you are in the industry to serve yourself, whether that be to exert some influence, or to boost your image, or to make some money, please think again. In those cases, the finger points at you – while for journalists, it should always point *away* from you, towards society.

That should be your priority, and nothing else. That is why this sentence appears upfront and serves as an introduction to everything else following in the preamble and in the Code itself. Serving society (read: the public interest) is the be-all and end-all of good journalism.

But there is more – the word “serve” always implies accountability and responsibility. It is *because* journalists are serving that they are accountable, as one is always accountable to the person/entity that one serves.

Therefore, because the service is aimed at the public, it follows that journalists are first and foremost accountable to society. (The fact that they are also accountable to their publication does not need any justification.) That is why there is a Press Council in the first place, as the most credible body that holds journalists accountable, and further responsible journalism.

The first aspect of serving society, therefore, entails that the media should ensure that their reporting is true, accurate, fair and balanced. This means an obligation to turn inwards, to be self-critical. Serving society, accountability, requires of the media to have and to keep their house in order.

Once journalists have grasped this fundamental truth, they should be more inclined to act ethically and less prone to causing people unnecessary harm – a vital issue that I’ll soon address in more detail.

Their freedom provides for independent scrutiny of the forces that shape society, and is essential to realising the promise of democracy.

The word “freedom” implies that it is a given; the freedom of the media should (indeed) not need any justification in a democratic state.

But hold your horses! It is of vital importance to understand the real nature of freedom. It does not mean you can do as you please. It is not a “licence to kill”. You are not 007. Along with your freedom goes responsibility and accountability. The person who is really “free” is always the one who balances her or his actions with a sense of morality (read: taking into account the consequences of one’s actions, meaning the effect that those may have on people or on nature). No right, including freedom, is absolute!

How this freedom is utilised should therefore be your concern, and represents the very reason why we have a Code of Ethics in the first place.

The other side of the coin (serving society) is as important. The mere fact that the media exist to serve society, which implies accountability towards the public with regards to their own operations, also means that our freedom should hold *the powers that be* accountable. In other words: The media are accountable to the public and, at the same time, hold society to account.

The media are not called the Fourth Estate for nothing, as scrutiny is vital to keep these powers in check. Remember what philosopher Lord Acton said: “*Power corrupts; and absolute power tends to corrupt absolutely.*” If there is no proper – independent and free – watchdog, politicians are likely to simply run rife and harm the very society that they should serve (in service of themselves).

Any healthy democracy is dependent upon the freedom and the independence of the media; without this, it would die. The media should therefore scrutinise “the forces that shape society” in order to curtail unbridled power and to limit abuse and corruption to the best of their ability – and we should do so “independently” (read: without being influenced from the outside).

Some politicians do not like free and independent media, for obvious reasons; others merely tolerate them, at best, as they know how important the Fourth Estate is. But they are also afraid that the media may expose them for what they might have done, or are doing, or plan to do. Do not be alarmed at this tension, for in a healthy democracy it should always be there – as long as this tension remains healthy.

However, note that the “forces that shape society” include not only politics – these also comprise religion, the economy, education, social issues, sport, etc.

The phrase “promise of democracy” reminds us that South Africa’s democracy should not be taken for granted and that it should be nurtured like a newborn baby – which makes the role of a free and independent media all the more important.

It enables citizens to make informed judgments on the issues of the day, a role whose centrality is recognised in the South African Constitution.

The media serve society by providing the public with the necessary information to help them make informed decisions on important issues. The phrase “informed judgments” implies that the information which leads to these decisions *inter alia* should be accurate, fair, and in context – which the Code addresses in more detail.

Section 16 of the Bill of Rights sets out that: “1. Everyone has the right to freedom of expression, which includes: a) Freedom of the press and other media; b) Freedom to receive and impart information or ideas; c) Freedom of artistic creativity; and d) Academic freedom and freedom of scientific research. 2. The right in subsection (1) does not extend to: a) Propaganda for war; b) Incitement of imminent violence; or c) Advocacy of hatred that is based on race, ethnicity, gender or religion, and that constitutes incitement to cause harm.”

The words “everyone” and “which includes freedom of the press and other media” imply, *inter alia*, that:

- the right to freedom of expression is not the privilege of a selected few – it extends to everyone;
- every citizen has the right to freedom of the press and the media and the right to receive information and ideas (as confirmed by our courts, [see *Khumalo and Others v Holomisa*]); the media’s freedom of speech is founded/based on the *public’s* right to know; and
- the media are singled out in the Bill of Rights, which gives it a special place in society – not because the media have special rights, but because citizens have the right of freedom of expression.

The second part of Section 16, which defines hate speech, reminds us yet again that freedom of expression is not absolute. The highest law in our country indeed forbids speech that is intended to cause people physical harm – and the media should follow suit.

The media strive to hold these rights in trust for the country’s citizens; and they are subject to the same rights and duties as the individual.

Because of its “special place in society”, as mentioned above, the media are ideally positioned for the responsibility of striving to hold the right to freedom of expression in trust for the public (as part of its service to society).

The word “strive” implies that the goal of holding these rights in trust for the people can never fully be achieved – it is always in progress, forever something to aspire to. The media should therefore never be complacent, or assume that the right to freedom of expression is safeguarded for the future.

The statement that the media are “subject to the same rights and duties as the individual” implies the “special place” that the media enjoy, does not mean that journalists should enjoy special privileges – again, they have the right to know, *not because they are reporters, but because they serve society* (that has the right to know).

It is significant that the first part of this clause is plural (“the media”), while the second one is singular (“the individual”). In a very real sense, “society” is about “individuals”. That, really, is the heart of any liberal democracy.

Everyone has the duty to defend and further these rights, in recognition of the struggles that created them: the media, the public and government, who all make up the democratic state.

Because society and individuals have the right to know, furthering the right to freedom of expression is not limited to the media – it is in fact each and everyone’s *duty* to do so. Everybody who is part of our democratic state, including the media, should *defend* these rights to the hilt.

In this process we recognise those who created and who presently make up the democratic state – lest we forget where we come from, and to remind ourselves that freedom of expression is inherent in any healthy democracy.

The media’s work is guided at all times by the public interest, understood to describe information of legitimate interest or importance to citizens.

The “definition” of “public interest” is deliberately quite vague and phrased in general terms, as this concept is not easily defined. However, let me say that it concerns both quantity and quality:

- **Quantity:** The more people are affected by an event, the more it is in the public interest. That is why (for example) extreme weather conditions are always news – they affect nearly everybody. Conversely, there is a certain organisation in South Africa that has only one member. Its “meetings” can hardly be in the public interest; and
- **Quality:** The more deeply people are affected by an issue, the more it will be in society’s interest to know. For example, if a prominent public official (who is being paid with public money) is corrupt, the public should be informed. The more money involved, the more reason to report it.

As journalists we commit ourselves to the highest standards, to maintain credibility and keep the trust of the public.

The word “commit” immediately catches the eye: A journalist’s work has to do with duty, obligation, dedication, devotion. Commitment. Everybody can become a journalist, because everybody has the right to freedom of expression – but not everybody can become a good journalist. Only those reporters who are *committed* to their work would be good reporters.

Moreover, the Preamble does not ask for just any kind of (diluted) commitment – it requires the *maximum*; it speaks of the “*highest*” standards of excellence.

This is one of the differences between law and ethics. Many people are guided by the question, “What is the maximum *with which I can get away?*” Conversely, ethics asks: “What is the maximum *I can do* in order to meet my commitment?” Ethics aims at the “highest” of standards, not the “lowest”.

If the media are not committed to the highest standards of excellence, it will lose its credibility and, in the process, forfeit the trust of its readers. Then you may as well pack your bags. Credibility (trust) is earned; it does not come with the package.

This means always striving for truth, avoiding unnecessary harm, reflecting a multiplicity of voices in our coverage of events, showing a special concern for children and other vulnerable groups, and exhibiting sensitivity to the cultural customs of their readers and the subjects of their reportage, and acting independently.

This single sentence overshadows the whole of the Preamble and the Code itself. If the Code is scrapped in its totality but these sentences are retained, all would be well (as this is the heart of the Code).

Always striving for truth: This sounds so obvious that the question may well arise as to why it is even necessary to say it in the first place. The naked truth, though, is that journalists often do not strive for truth. Reporters often take from media releases or official documents only what supports their stories and what suits them – and ignore the rest, even though it may be material to the issue. I’ll return to this shortly.

“Striving” for truth implies an acceptance of the fact that “truth” has many facets, that “my” truth may be different from “your” truth, and that “truth” is very much like a diamond – its colour depends on the angle from which you look at it. There is a lesson in this: Never be so arrogant as to believe that you possess the whole truth; never think somebody is wrong just because that person holds a different view.

The word “always” (striving for truth) is weighty in its meaning. There should never be one moment, not one instance, when a journalist can take the eye off the ball and give up the dream.

Avoiding unnecessary harm: This is the heart of the heart of media ethics, and also of the Code.

The media are in the business of harming people. For example, if a public official is found to be corrupt, it is in the public interest to reveal this, *inter alia*, because that person is paid with public money and is therefore accountable to all and sundry. The publication of the story is bound to harm this individual, but that would be to the greater good of society. In such a case the official deserves to be exposed. In fact, corrupt people harm themselves. The media merely *report* the corruption and are therefore only a secondary instrument in this process.

The Code does not say that the media should never harm anybody; it is about not causing *unnecessary* harm.

An alarming example is the effect of a story on a man who reportedly did something wrong. Not only did this report cost him his job, but he also lost his wife – who left him – and his children. Some months later he was able to establish his innocence, upon which the newspaper apologised – but it was too late. The harm had been done.

Unfortunately, this is not an isolated incident, and it can happen so easily. If you don’t listen to the other side, if you don’t verify your information, if you depend on secondary sources, if you gullibly believe an anonymous source who may have ulterior motives, if you disregard the context, if you open yourself to outside influences (etc.), you are likely to cause people unnecessary harm.

But I am getting ahead of myself.

Reflecting a multiplicity of voices: This helps to prevent one-sided reporting, and it also assists the media to fulfil one of its most important duties, namely to give a voice to the voiceless.

In practice, this means (for example) that when a journalist reports on specific issues or about a minority group in society, the views of those concerned should be reported. For example, all too often it happens that the media report about women – but the sources they use are all male.

Showing a special concern for children and other vulnerable groups: Section 8 deals with children, which is when I shall comment on the special care and consideration the media should exercise when reporting on children.

Of importance here is also the mentioning of “other vulnerable groups”. There are too many such groups to try and mention them all, but certainly they include homosexual people, sex workers, the aged, disabled people, the homeless, religious groups, etc. The point is that, while vulnerable people can easily be exploited, the media should maintain a moral ground in this regard. See also Section 3.2.

Exhibiting sensitivity to the cultural customs of readers: This issue is dealt with in Section 5.1. As South Africans, we live in a culturally diverse country where – shame on us! – we do not always understand, let alone make room for, the customs and beliefs of people who do not share our specific culture. Given our tragic past, the media should go out of their way in democratic South Africa to be sensitive to, and not belittle, customs which are foreign to them.

Acting independently: I shall return to this issue when discussing Clause 2.

We now move on to the Code itself. Note the structure – Chapter 1 of the Code is about media-generated content, which deals with both print and online issues; Chapter 2 deals with user-generated matters and is therefore only concerned with online comments made by readers.

Q: A. Complete the following sentences – the answers are on page 57:

- | | | |
|-----|--|-----|
| 1. | The media exist to ... | (1) |
| 2. | Journalists are first and foremost accountable to ... | (1) |
| 3. | The freedom of the media is not a licence to ... | (1) |
| 4. | Real freedom breeds ... and ... | (2) |
| 5. | The freedom of the media enables citizens to ... | (1) |
| 6. | The media’s freedom is founded or based on the ... right to know | (1) |
| 7. | The media serving society means looking inward, ensuring ...; and looking outward, ensuring that ... | (2) |
| 8. | The media’s work is guided at all times by the public interest, understood to describe... | (1) |
| 9. | Journalists should commit themselves to this highest standard in order to ... and to ... | (2) |
| 10. | The heart of media ethics and of our Code can be summarised in the following statements:
always striving for ...; and always avoiding ... | (2) |
| 11. | Chapter 1 of the Code is about content generated by ... ; Chapter 2 of the Code is about content generated by ... | (2) |

[Total: 16]

Notes

Chapter 1: Media-generated content and activities

1. Gathering and reporting of news

1.1 The media shall take care to report news truthfully, accurately, and fairly.

Together with Section 1.8 (about asking a subject of critical reportage for comment) this clause probably is the most fundamental, but at the same time also the most contravened part of the Code.

Truthfully: Another word for “truthfully” is “honestly”. A journalist once told me he had sucked out of his thumb the “best” story that he had ever written. Fortunately, he is not a journalist anymore (as far as I know). Such a “journalist” does not belong in the profession. No argument here.

I have also come across journalists who merely wanted to further their own ideological and political aims – and in the process “adjusted” their “news” to suit their own agendas. Shame on them!

Enjoy this one: A journalist from a conservative publication (in apartheid South Africa) once asked his editor if he might “adjust” his facts to suit the newspaper’s political agenda. The editor retorted: “In a news story, you present the facts – I’ll distort them in my editorials.”

News stories should stick to facts, *finish en klaar*.

ACTUAL CASE

A journalist (always “X”, from now on) reported the Auditor-General had recommended that the complainant (“Y”) should repay the money he had awarded himself after hiking his salary by 350%. X stated he saw “a special audit” to this effect. However, the A-G officially, and in person, denied any such audit and investigation by his office.

In my finding, I wrote: “I have no other explanation for [X’s] inability/refusal to provide me with this document than one of the following alternatives:

- *Either there is no such document ... in which case the journalist has deliberately misled the public, his own newspaper, and this office; or*
- *He has accepted the existence of a forged document as a real one, without proper verification.”*

I believed that, if X had such a document, he would have provided me with it. I therefore concluded that he had *deliberately* misled all and sundry. He was dishonest in the extreme.

X quoted a spokesperson of a provincial Premier – but it turned out that he had never spoken to him at all. Believe it or not: X fabricated the quote. Need I state what immense damage such reporting does to the credibility of the South African media in general, and to X in particular?

Accurately: The be-all and end-all of all good journalism is to check, re-check, and check again if there is any possibility that your information is not correct. Unfortunately, there is a raft of examples where journalists have failed to do so.

One of accuracy’s most deadly enemies is assumption. In the film *Silence of the Lambs*, Jodie Foster’s boss says to her: “If you assume, you are making an ass out of you and me” (ass-u-me).

If you need to handle a subject that you know very little about, be extra careful – you are about to make mistakes. Rather consult an expert than err. It is also quite in order that, when you deal with a complicated case, to give your source an opportunity to comment on the technicality of statements – not to endorse your story, but merely to check for possible errors.

The heart of all good journalism is accuracy.

ACTUAL CASE

X reported that a provincial Premier had not acted on a report by a department regarding a multimillion-rand corruption tender awarded by another department “under his close ally, MEC”. The fact of the matter, though, is that the tender had been awarded before that person’s term as MEC had even started.

Here are some more examples:

- X was at it again when reporting that a law firm had “found” that a certain person was a “Gupta lieutenant” – while that statement never occurred in the firm’s report and was merely conjecture on the journalist’s part.
- Another complaint concerned a story, headlined: *Kings Beach kite fight lands radio presenter and woman in court*. The factual statements, that Y was facing a charge of malicious damage to property, that he had briefly appeared in court, and that he would return to court were simply false. I stated: “I find it difficult to understand how it can happen that a journalist reports information, as fact, which is not true. I leave this matter to the editor, hoping that such sloppy reporting will be prevented in future.”

Fairly: It is not easy to define what “fairly” means. Try it! However, while many people would have difficulty in explaining this concept, they would instinctively recognise it when confronted with unfair behaviour towards themselves. Therefore, when someone complains that you have been unfair to her/him, put yourself in that person’s shoes – if you really do, you will quickly know the answer.

Let me nevertheless try: “Fair” means “balance”, “reasonableness”, “even-handedness”, “justness”. Accuracy and fairness go hand in hand – an inaccurate statement that unnecessarily harms someone is, of necessity, going to be unfair to that person, and it could easily unnecessarily tarnish her/his dignity and reputation.

Here is a hypothetical example of fair reporting: A certain country has four political parties in Parliament – the ruling party has 60% support; the opposition has 30%; the third party 9%; and the smallest party’s basis is 1%. Two tiny parties are not represented in Parliament. Clearly “fair” (balanced) reporting does not mean that a publication should give equal coverage to all six parties (depending on the nature of the issue and newsworthiness, of course).

It is all about balance.

ACTUAL CASE

X reported that the newspaper “has seen email correspondence in which Y had *instructed employees* at the university *to secure funding for a student*, who also happened to be a friend of his son.” (Emphases added.) This was simply untrue – he received an email, which he forwarded to some of his colleagues, asking (not instructing) them if they could help. Put yourself in Y’s shoes, and you’ll realise just how unfair this reportage was.

More examples:

- A TV actress complained about a story, headlined: *Scorned woman turns on playboy*, saying it unfairly created the impression that she had had a sexual relationship with a certain businessman. Whether that was indeed unfair was not for me to say – however, it was blatantly unfair to her for neglecting to report her denial in this regard.
- Sometimes we call business people “tenderpreneurs” (tender + entrepreneur). This term refers to government officials, politicians and people connected to them *who unduly use their power and influence to secure government tenders and contracts*. In one case a businessman had obtained a government contract – but this did not, by default, make him a tenderpreneur (as alleged by the journalist). X failed to show that the subject used his influence to obtain the contract. The damage unfairly caused to this subject was immeasurable.
- X had seen only part of a video featuring a celebrity. This part showed stuff that may or may not have been cocaine. The article then alleged that the celebrity had been a drug addict and had participated in a sex orgy. Now, even if it was cocaine, how could the journalist have been sure of that? And on what basis was the celebrity said to have been an “addict”? Also, X had seen no evidence of any orgy – yet it was reported as fact. X argued the journalist “assumed” that there must have been an orgy after drugs had been taken, and that the celebrity was part of that situation. But there was no proof of this; it was merely an assumption with no evidence whatsoever.

1.2 [The media shall] present news in context and in a balanced manner, without any intentional or negligent departure from the facts whether by distortion, exaggeration or misrepresentation, material omissions, or summarisation.

Context is as important as text.

One can easily depart from the facts not only by distorting, exaggerating, misrepresenting, or summarising them, but also by omission. This is important: It is often not *what* journalists write that is unethical, but also what they *do not report* that is problematic.

The following example from the Bible shows the importance of context (please, I am not preaching!): There is a text that says, “There is no God”. So, if you cite those words you would be accurate. But that is misleading, as the preceding words put it into context. They namely read: “The fool says that...” (there is no God). This is a classic illustration of just how important context is.

This section is particularly important when a journalist reports on a media release. Nobody expects a publication to publish the full text, especially if it is quite long. When summarising such texts, always ensure that you do not leave out material information. A badly summarised media release will always lack context. The need to shorten such texts is no excuse for omitting material information.

The same mistake also often occurs when journalists refer to a report, or quote a source.

ACTUAL CASE

Once, an editor could not understand why I took on a complaint as everything which was written was accurate. I had to explain it was what X *did not write* that was problematic – he omitted material information, the context of which would have provided a different understanding of the matter.

More of the same:

- X once reported that there were allegations about corruption against a certain city councillor (Y); he added that Y had been involved in a financial scandal in the past. While the latter was true, X conveniently neglected to add that there had been an enquiry into that scandal and that Y had been exonerated of all wrongdoing. This context would have put the more recent matter in a completely different light, but clearly this did not suit X – to the detriment of the (innocent and unfortunate) councillor. He simply refused to allow the proper context to stand in the way of his story.
- X reported on a controversial person who had received medical parole under allegedly controversial circumstances. The reporter, who was highly critical of this matter, reported only one medical reason given for parole – while officials gave two other (quite credible) reasons for that person’s release. X neglected to report those reasons, again because such facts did not suit his story.
- Accuracy means nothing without the correct context. In another case, X correctly stated a law firm had recommended that a person’s conduct regarding a locomotives contract be investigated, and that, with his assistance, the contract had ballooned from R38.6 billion to R54.5 billion. However, the context was missing, as this document was “inconclusive” and had not been accepted by Transnet’s board – a fact that X neglected to report. X made it sound as if the report was official, while it was not.

1.3 [The media shall] present only what may reasonably be true as fact; opinions, allegations, rumours or suppositions shall be presented clearly as such.

Journalists should not present information as fact which cannot reasonably be true. For instance, never publish an allegation if you know it is not true. Reporters should always make sure that their sources, and their information, are credible, and make their decisions accordingly. Sources often have agendas, so always be careful.

During my term as Ombud, I often saw that journalists presented an opinion/allegation/rumour/supposition as fact – turning question marks into exclamation marks.

Sub-editors are especially prone to this mistake, either in the editing process or in the writing of a headline. This is bound to cause huge and unnecessary damage. (See the discussion on headlines further down.)

ACTUAL CASE

A family complained that an article stated, or at least implied, that the late father had raped a child – while he was never charged or accused of rape, nor did he ever face criminal charges for indecent assault. At the time of publication, this was nothing more than an allegation (even if it was true). The publication was justified to quote the woman in this regard, but it was not at liberty to turn her allegations into fact (before a court had not done so). Unfortunately, this is exactly what it did.

Another example:

- A newspaper complained that a story in another newspaper falsely accused it of driving a racist and a political agenda against the then provincial Premier. A well-known MEC in the provincial cabinet was reportedly implicated and had been “confirmed” by sources as the “mastermind” behind the “dirty leaks”. The problem was that the reportage presented the allegation of a smear campaign against the Premier as fact – without any evidence or substantiation. I wrote: “The newspaper should have been careful to present its claim for what it was – [not as fact but] as an allegation, based on the opinion of some unnamed sources.”

1.4 News should be obtained legally, honestly and fairly, unless public interest dictates otherwise.

Reporters should act ethically, not only when they write their stories, but also while they are gathering their news. Remember, everything journalists do in the fulfilment of their duties has ethical consequences.

“Legally”:

ACTUAL CASE

X wrote a story about homeless people who had TB. He went to the hospital and took a photograph of such a patient, without permission from either the hospital or the patient. If the journalist asked for permission and was refused, and the reporter was convinced that it was in the public interest to report the story and there was no other way to gather his information, the Code would have allowed him to do so. In this instance, however, that was not the case. Journalists must exhaust all possibilities of obtaining news, and the information must be in the overwhelming public interest, before any such action may be contemplated.

In another instance, an investigative journalist was informed that members of staff at a home for the aged were abusing elderly people in the bathroom. The journalist then had hidden cameras installed, invading the privacy of the aged. X recorded and aired the abuses – which was clearly in the public interest. The abuses stopped and understandably there was no litigation. As there was no other way of reporting on the matter, X was justified in her/his actions.

“Honestly and fairly”: Here is an over-the-top, thumb-suck example: A well-known public figure is attacked on a sidewalk. Somebody stabs him with a knife in the neck, grabs his wallet, leaves him for dead, and runs off. His wife, who saw the assault, is hysterical.

Now a journalist comes onto the scene. It would be highly inappropriate to shove your tape-recorder against the victim’s mouth and, while he is gurgling and gasping for his last breath of air, ask him: “How does it feel to die?” And then turn to his wife and ask, “What are your last words to him going to be?”

Of course, this is an absurd example, but the point is that journalists should act ethically (and fairly) in everything they do – also in the manner in which they gather their news. Even the way you talk to people over the telephone, or the tone of your emails, is important.

“Unless...”: Our office has had many complaints about whistle-blowers who had leaked classified information to reporters. If this information was in the public interest, if it was accurate, and if there was no other way of obtaining it, it did not really matter how the reporter obtained the news. The journalist may end up in court if she or he broke the law – but in such circumstances, the Ombud would not find against such a journalist.

Remember: Never gather news illegally, dishonestly, and unfairly when there is no proper public interest involved in the matter, and/or if there are other ways of obtaining the information. And if you do so, remember that you may end up in court.

1.5 [The media shall] use personal information for journalistic purposes only.

I shall return to this issue when discussing Clause 3.5 and Clause 4.

1.6 [The media shall] identify themselves as such, unless public interest or their safety dictates otherwise.

Sometimes journalists obscure their identity to obtain news. There is nothing wrong with that, as long as there is public interest in the matter, or their safety is at stake, and there is no other way of obtaining the information.

A person once started telling me a story, and I realised that this could be big news. I had to make a quick decision – do I reveal my identity as a journalist, or do I keep quiet and hear him out? Some reporters would have chosen the first option; others would have gone for the second. In a split-second I decided to reveal my identity and gave him the option to continue or not.

Was I right? You decide.

In case you are curious: He continued with his story and I had it published the very next day. On the front page.

1.7 [The media shall] verify the accuracy of doubtful information, if practicable; if not, this shall be stated.

Firstly, it is important to understand the difference between verification and corroboration (See also Section 11 on anonymous sources). If you verify information, you have established that it is true – something that you can prove; corroboration is when you get another source to affirm what your other source told you (which is not necessarily or by nature true – although corroboration does point to a statement being reasonably true, especially when it comes from independent sources).

To put it differently: It is possible to corroborate a lie (if another source tells the same lie) – but you cannot determine the veracity of a lie, as a lie is per definition not true.

Therefore, this section warns that, if journalists are in doubt whether their information is accurate, they should make sure that it is verified (read: “true”). And if this is not possible, this should be stated.

The reason for this speaks for itself – you cannot expect members of the public to believe something that you yourself are not sure of.

Conversely, it also means that you need not verify your information if you do not have reason to doubt that it is accurate. For example, if a funeral is going to be held and you need to establish on what day and at what time it is going to commence, the vicar’s word should be good enough. In that case, there is no need to verify the information. Or a sports team has won a national title – everybody knows that it is true, and you really do not have to phone the captain or the manager to verify that the team has really won.

In these cases, a journalist can be reasonably sure of the facts. In the end, if you need to verify your information but are unable to do so, you should state it in your story.

Another vital consideration is that verification can only be achieved with *primary* and *independent* sources. Consider this: Another publication is normally not a *primary* source. This means that if you use your archives, you may simply succeed in creating a false statement that, if the public starts to believe it, becomes “fact”. Newspapers often provide me with previously published stories to try and “prove” that their stories are accurate. These are empty arguments, which do not prove anything. The mere fact that the information was published before, does not make it true.

Remember what Hitler’s Propaganda Minister, Joseph Goebbels, loved to say – if you repeat a lie often enough, people will start to believe it.

Please keep this in mind: This clause does not state it explicitly, but its spirit is that journalists should verify doubtful information *that is likely to harm somebody unnecessarily*. The greater the likelihood of harm, the greater the need for verification; and *vice versa*.

ACTUAL CASE

X reported that a certain politician (Y) owned a home worth R16 million. Eventually Y lodged a complaint with my office, and the publication in question provided me with umpteen news reports that mentioned the same amount. The argument was that this information was in the “public domain”.

However, this information turned out to be false – I took the trouble to verify the information by asking architects to provide me with a valuation of the property. It turned out that the total value was approximately R8 million.

A lie can also be in the “public domain”.

Clearly, the media all too easily merely repeated other reports – to such an extent that the R16 million eventually became “reality”. Goebbels would have relished such reportage. In the meantime, nobody took the trouble to verify this “information” with a primary source (such as the architect) – and a false statement eventually became “fact” in the public’s perception due to repeated false reporting.

For the record: This property was sold a few months later for approximately R8.5 million.

1.8 [The media shall] seek, if practicable, the views of the subject of critical reportage in advance of publication, except when they might be prevented from reporting, or evidence destroyed, or sources intimidated. Such a subject should be afforded reasonable time to respond; if unable to obtain comment, this shall be stated.

“Critical reportage” is when the publication of information is likely to lower a subject’s reputation (whether she/he deserves it or not). This is the bottom-line question. If yes, journalists are obliged to ask such a person for comment.

This is one of the most common mistakes journalists seem to make regularly – even senior, experienced reporters. It is a surprising fact that most complaints lodged with the Ombud’s office include this complaint – and in many such cases, the complainant had a point.

This is astonishing, for this is one of the most fundamental maxims of journalism – listen to the other side, and report that view. *Audi alteram partem*. Surely! It is downright unfair to write about someone who is likely to be harmed by your story, without asking that person for her/his opinion.

How would you feel if that happened to you?

There is more to this clause than may meet the eye. Firstly, I am going to explain in which cases it is not necessary to ask for comment; secondly, I’ll address some pitfalls journalists should be careful of; and lastly, make general comments.

Not in all cases

It is important to understand that you need not ask for comment in all circumstances. Note the phrase “critical reportage”. If your reportage is not likely to cause harm, you are under no obligation to ask for comment. For example, if a journalist reports on a new appointment at the local school, it is not necessary to get comment (although you may ask for it, of course) – because your reportage is not “critical” (read: likely to cause harm). Or, when a sports person is named Player of the Match, you may report this without asking the subject for comment. The reason? Such reportage is not likely to cause the person unnecessary harm. Again, the journalist may ask this person for comment, but it is not unethical not to do so.

This is the principle: The less potentially harmful your story, the lesser the need to ask for comment – and *vice versa*. The general rule is that you should always ask for comment when there is any likelihood that the subject of your reportage may be harmed.

But that is not all. Here are some other cases where journalists need not ask for comment when reporting “critically” about a subject:

- When covering court cases – you may adversely influence court proceedings if you do ask for comment; once the other side has had a chance to testify in court, then it is the time for you to report those views; journalists also do not need to ask for comment when reporting on proceedings in Parliament, provincial legislatures, local government or public bodies.
- When you merely retell history (probably for context), and a subject of critical reportage’s views on the matter is in the public domain and widely known. However, in that case that reporter should also repeat the subject’s views on that matter. Neglecting to do so would be unfair; and
- When you have reasonable grounds for believing that by doing so, you would be prevented from publishing the report or if evidence might be destroyed, or sources intimidated.

It gets even more complicated and nuanced, especially in political reportage. For example, if a source says that the President of the country is doing a bad job, which has the possibility of harming him, you don’t have to ask the head of state for comment. The reason for this is simple: You have merely reported the source’s opinion and did not state it as fact. It is a different matter, though, when your source makes a statement of fact (for example, that the President had sex with your wife/husband). Surely, the subject should then have an opportunity to respond.

The reasons for the difference between political and hard news reporting is exemplified in the following study case:

ACTUAL CASE

The article in question was headlined, *[Y], [political party – Q] want to continue legacy of apartheid: independent analyst*. In the article it was stated that Y “has shown himself to be somebody who subscribes to right-wing thinking if we’re being kind, but just plain old racist thinking if we are being honest”; it also stated that Q wanted to perpetuate the legacy of apartheid.

Y and Q complained that the story amounted to critical reportage and that the publication should therefore have asked them for comment prior to publication.

This was critical reporting, all right, especially as it was published shortly before some local government elections.

The Public Advocate declined to entertain the complaint, arguing it was a generally accepted journalistic practice that political opinions could be expressed without obtaining comment – which made it different from hard news reporting. Also, to his credit, he noted that the contested statements were opinions (and not fact), and that they were reported as such.

Y and Q objected to this decision, after which the complaint landed on a Deputy Ombud’s desk.

The latter agreed with the Public Advocate and added: “While the Press Code requires opinions to be clearly distinguished from facts, this obligation cannot apply equally, and inflexibly, to every possible genre or form of journalism. Sports reporting, for example, tends to allow journalists far more latitude to incorporate interpretation and comment in their writing. Political reporting, similarly, lends itself to a more interpretive form of writing... Seeking to eliminate interpretation from political reporting would be to attempt to hold journalists and publications technically accountable to the letter – but not necessarily to the spirit – of the Press Code.”

Exactly.

Pitfalls to avoid

Consider the following unfair practices:

- Asking a subject for comment, but then reporting on matters that the subject was not asked about;
- Asking difficult questions with short notice;
- Making an enquiry without confirming that the subject has indeed received it;
- Making use of one type of communication (for example, a cell phone) when there are other mechanisms available to obtain the comment you need – never be lackadaisical, just to satisfy the minimum effort that is required from you. It simply is not sufficient to make a phone call or two, and then wash your hands in innocence if you were unsuccessful. Remember, as a journalist you should be committed to the highest standards of journalism so that you can maintain credibility and keep the trust of the public; and
- Asking the wrong person for comment. For example, when something went wrong in a school, you should not ask the principal for comment as that person is not mandated to speak to the media. Contact the school governing body, or even the Department of Education. Asking the wrong person will not exonerate you in the event of a complaint lodged against you.

General comments

Giving a subject of critical reportage a right of reply is not only a duty – it is also an opportunity to verify your information.

Also note the words, “if practicable”. There may be cases when you are not able to get comment. For example, the person you are going to report on critically is on holiday somewhere on a mountain, where there is no reception. In such a case, you should mention it in your story – otherwise it creates the impression that you are lazy and, even worse, that you do not care.

It all boils down to common sense. Unfortunately, common sense is not common (as one of my former professors of philosophy always liked to say – “common sense is not so common”).

ACTUAL CASE

Some examples:

- X's excuse was that a certain organisation always ignored her, so she decided it was not worth her while to ask it again for comment. I ruled that it was her duty to try again – journalists should always try to solicit comment, even if circumstances are dire;
- One story implicated a former provincial premier in corruption on a massive scale. For some strange reason the publication never asked him for comment – even though the reportage had the potential to cause him huge unnecessary harm;
- A government department complained a story falsely created the impression that the newspaper had interviewed its spokesperson. It then appeared that the publication quoted from a memorandum, falsely creating the impression that the journalist had interviewed this person; and
- X wrote that some cattle meant for the poor were diverted to a certain person, while insinuating that the latter had unduly benefited from that. X did contact the subject for comment, but never mentioned this specific information. It is worthless if you contact a subject of critical reportage, but you neglect to ask her or him the right questions.

Reasonable time: Journalists often ask what “reasonable time” is. Some even suggest that two days should be enough. Nope! Save the media from such forced restrictions!

Instead, “reasonable time” will depend on the number and the nature of the questions. If, for example, you ask a mayor if he drives a white Mercedes, reasonable time would be (say) three seconds. However, if you ask his comment on an allegation that his secretary is corrupt, it may take more time. Sometimes a subject has to do some investigation first.

When confronted with such a complaint, I always weigh up the number as well as the nature of the questions – this will determine how much time would be “reasonable”.

ACTUAL CASE

X started to work early in the week on an important and sensitive story involving two of the most prominent politicians in South Africa (the possible successor to the then President of the country). He contacted many people for comment – but waited until the very last moment (late on a Saturday afternoon, shortly before deadline) to ask the main subject of his reportage for comment. The fact that he asked him so late amounted, for all intents and purposes, to not having asked him for comment at all. X should not have expected the subject to comment on a weighty matter on the spur of the moment.

1.9 [The media shall] state where a report is based on limited information, and supplement it once new information becomes available.

This clause calls for two actions by the media, both of which are often neglected. (One editor, for example, once indicated that he did not even know about this requirement in the Code ...)

State the limitation: Sometimes information is not complete – which, in itself, should not prevent the media from reporting. However, it is simply unfair to subjects of critical reportage if this is not stated in the article as the impression would then be created that the full picture was presented – while it was only part of it. Not only the subject of reportage, but also the public deserves better than such misleading reporting.

Again, context is as important as text. So, when information is incomplete, and you know it – please say it. This does not diminish your credibility – on the contrary, it enhances it because the public then has reason to trust that, when you make a statement, it is true and complete.

Follow-up: I have often encountered situations, especially in online media, where new information became available which shed a different light on a matter – and yet the publication did not follow it up. That is patently unfair. Once it has published material that is potentially harmful to a subject, the publication is obliged to follow this up when new information is obtained, especially when it sheds new light on a matter.

Reporting online is immediate, and it is understandable that stories are published before comment could be obtained. In such cases, the publication should point this out – and update the article immediately once such comment is received.

1.10 [The media shall] make amends for presenting inaccurate information or comment by publishing promptly and with appropriate prominence a retraction, correction, explanation or an apology on every platform where the original content was published, such as the member's website, social media accounts or any other online platform; and ensure that every journalist or freelancer employed by them who shared content on their personal social media accounts also shares any retraction, correction, explanation or apology relating to that content on their personal social media accounts.


When I have sanctioned a publication, I have always stated the page on which it should be published (usually on the same page where the offending article was carried), how prominently it should be presented, and even how the headline should be worded.

However, sometimes a complainant does not address a complaint directly to the Ombud's office, but rather confronts the publication itself. If an editor realises a mistake has been made, either in the news columns or in the editorials, the matter should be rectified "promptly" and with "appropriate prominence".

The problem, though, is that publications often obfuscate such corrections or apologies by placing a short sentence or two at the bottom of a page, obviously to minimise the harm to their image. Clearly, that is against the spirit of self-regulation and of good, sound, ethical journalism.

Note that it is not sufficient to publish a retraction, etc. on only one platform where the original content was published – it should be published on all platforms where it appeared. Journalists or freelancers should also publish the sanction on their personal social media platforms if the content was shared on their platforms.

When a journalist writes on a personal online account on a matter that is not elsewhere reported on, it is a matter between that reporter and the editor.

 The Press Council issued a guidance note in 2021 to its members regarding the publication of corrections and apologies which they publish without the intervention of the Council. While these guidelines are not binding on editors, they do provide excellent advice. This document can be found at www.presscouncil.org.za

1.11 [The media shall] prominently indicate when content which was published online has been amended or an apology or retraction published. The original content may continue to remain online but a link to the amendment, retraction or apology must be included in every version of the content which remains available online.

The reason for this provision is that the correction of mistakes should not go unnoticed – and a subject suffers unnecessarily, and the public is misled. That goes against the letter and spirit of the Code.

It is noticeable that nothing stops a publication from removing an inaccurate article – but nothing forces it to do so either. That decision remains up to the editor. If it remains, a link to the sanction must be included wherever the content remains available online.

There is one exception, though, as can be seen in the next subsection.

1.12 [The media shall] not be obliged to remove any article which is not unlawfully defamatory.

When subjects of critical reportage google their name, all sorts of spiders keep on crawling back to them and potentially harm their future careers. This subsection makes it important to understand what constitutes defamation and whether it is lawful or unlawful.

In short, anything that lowers the reputation of someone is defamatory in a legal sense. As I've stated before, the media is in the business of harming people. Sometimes, however, it is justified to defame someone. In law, defamatory matter will not be unlawful if there is a justification for the defamation. Common justifications used in court cases include truth in the public interest, protected commentary, and reasonableness.

In layperson's terms, "unlawful defamation" translates to *unnecessary and unjustified* lowering of someone's public image.

(Please turn to my comments on Section 3 of the Code for a more detailed discussion on defamation.)

People who are merely embarrassed by an article should blame themselves, and not the media, for the embarrassment. A publication is not forced to keep or to remove an article that is merely embarrassing to a person – that decision is up to the editor.

Moreover, if there is a justification for the critical piece, the person is not entitled to demand removal of the article.

ACTUAL CASE

The directors of a company complained the inference that they were involved in state capture was false, misleading, and defamatory. An interesting consideration was that the story had been published about a year previously – but as a new story provided a link to the one in question, the old article justifiably became the object of a legitimate complaint.

The complaint was upheld.

The issue for the complainants was that, when people googled their names, the allegations against them kept on popping up. Given the situation in the country, it was beyond doubt that the unfair allegation or inference of having been involved in state capture would unnecessarily have significantly lowered their reputation.

I therefore directed the newspaper to remove all references to the complainants in the articles, which included the use of their photographs.

1.13 [The media shall] not plagiarise.

Plagiarism is one of the worst “faces” of unethical journalism imaginable. Reporters work with words, and if they take over text from somebody else without acknowledging this fact, they are stealing and betraying the very trade that they (should) hold so dearly.

It is not prohibited to take over text from someone else, but then you should limit it to the minimum and clearly attribute it to the source.

The most common errors in this regard are twofold: Sometimes journalists simply cut and paste from the internet and then put their names to it; or reporters merely publish media releases, again under their own names.

To me, such journalists do not belong in the industry. They make their living by writing – and if they use somebody else’s work under their own names, they are defying the very purpose for which they should be striving.

ACTUAL CASE

In one instance, X took over another newspaper’s story, without attribution, and restructured it under his own name. Unfortunately for him, he also took over the same spelling – and other – mistakes.

Notes

Q: B. Complete the following sentences; or say “true” or “false” / “yes” or “no”. The answers are on page 58:

- 12. Another word for “truthfully” is ... (1)
- 13. Editor to X: “If you assume, you are ...” (1)
- 14. Another word for “fair” is ... or ... (2)
- 15. ... is as important as text (1)
- 16. It is not always what journalists write that is unethical, but often also what they ... that is problematic (1)
- 17. Journalists should not present information as fact that cannot ... (1)
- 18. News should be obtained legally, honestly and fairly, unless ... or ... (2)
- 19. The gathering of personal information for the purposes of journalistic expression must ... (1)
- 20. Media representatives shall identify themselves as such, unless ... or ... dictates otherwise (2)
- 21. Journalists should ... if they have reason to doubt the accuracy thereof (1)
- 22. “Verification” means ... while “corroboration” is when ... (2)
- 23. Verification can only be achieved with ... and ... sources (2)
- 24. The media shall seek the views of the subject of ... in advance of publication (1)
- 25. “Critical reportage” is when the publication of information ... (1)
- 26. Journalists need not verify their information if they ... (1)
- 27. Journalists should verify doubtful information because ... (1)
- 28. “Reasonable time” for a response depends on the ... and the ... of the questions (2)
- 29. Should a journalist report it if she/he was unable to obtain comment? “yes” or “no” (1)
- 30. Journalists are not allowed to ask parties to an ongoing court case for comment because ... (1)
- 31. Where a news item is published on the basis of limited information, this shall be stated as such and ... (1)
- 32. The media shall make amends for presenting information or comment that is found to be inaccurate by communicating, ... and ... a retraction, correction, explanation, or an apology (2)
- 33. An online article that has been amended for factual accuracy should ... (1)
- 34. The only reason for an article to be removed from a website is in case of ... (1)
- 35. If a reporter takes over text from somebody else, the journalist should ... (1)

[Total: 30]

Notes

2. Independence and Conflicts of Interest

2.1 *The media shall not allow commercial, political, personal or other non-professional considerations to influence reporting, and avoid conflicts of interest as well as practices that could lead readers to doubt the media's independence and professionalism.*

The Preamble to the Code already mentions this aspect – be, and stay, independent. By that we mean that journalists should never allow any influences to slant their reporting. If that happens, publications will allow its reportage to be biased, and invariably lose their credibility.

“Commercial”: All journalists are subject to this danger, but especially financial reporters. For example, journalists may succumb to the temptation to write favourably about shares they own to boost the value of those shares.

“Political”: This problem is even more common. Every journalist has the right to hold political views and even to support a specific political party. However, they should not allow their political persuasions to slant their reporting. Surely, it is best not to be a member of any party.

“Personal”: In one case, a journalist unfairly (because her facts were wrong) advocated a point of view because it benefited or promoted her interests in a specific building project.

These all amount to conflicts of interest.

But this clause goes further: Journalists should also contemplate what *impression* their actions may create. That is why the Code adds that “arrangements or practices that could lead audiences to doubt the media’s independence and professionalism” should be avoided. *Perceptions are realities in the eyes of the beholder*. So: Even if your conscience is clear, you still need to consider the effect (consequences) of your actions.

For example: My office used to be adjacent to that of Sanef. Remember, members of Sanef are one party to a complaint. The Ombud is a referee – in the middle, not taking sides. Now, as Ombud I was never influenced by the fact that Sanef was just next door. We could even have shared the same office as far as I was concerned, as I was convinced that nothing from outside would influence my decisions.

However, that was not the point. It mattered that certain members of the public could have had their doubts as to my office’s independence (because of Sanef’s close physical proximity to the Ombud). So, even though it did not influence my rulings in the least, we moved to different premises to avoid the perception that our independence and professionalism might be compromised.

Also consider the possibility of journalists having been captured themselves. There are some recent examples where reporters accepted money in return for favourable coverage of some people. That is just despicable.

The Press Council takes this matter so seriously that it views conflicts of interest as a third-tier transgression of the Code, which is headlined, *Serious misconduct* – along with the publication of child pornography.

It is that serious.

ACTUAL CASE

In an extremely serious case, part of the complaint was that the editor had been conflicted (and that led to white-on-black violence and intimidation).

The stories were about the alleged approval by the Department of Water and Sanitation of a resort next to a dam in the North West province (that would have been developed by black people in a predominantly white area).

X created the (false) perception that it would be similar to another development nearby, a pleasure resort that was frequented by black people only (a mistake which they later admitted to); a second story suggested that the would-be developers were illegally occupying the land (fuelling the tension in the country about expropriation of land without compensation).

The editor stated that the proposed new development (which he factually misrepresented) would have a devastating effect on property values and the ecosystem. The (mainly white) community was up in arms about this, and so was the editor. This even led to incidents of vandalism and death threats towards the entrepreneurs.

It was X’s right to advocate a cause. However, in that process the publication became so involved in these actions that the newspaper became *part of* the news. The editor even invited those who were interested in pledging their support to contact him (on his newspaper’s email address). He allowed non-professional considerations to influence or slant his reporting – with devastating effects.

2.2 *[T]he media shall not accept any benefit which may influence coverage.*

This subsection is closely linked to the previous one.

ACTUAL CASE

In South Africa we have had several instances of alleged political interference with reporting. In one case, a former journalist admitted in an affidavit to the NPA to allegations that he was paid to write news articles that were favourable to a provincial Premier. In exchange, he reportedly requested indemnity against any possible criminal charges. This is journalism at its worst.

But let's take a closer look at this clause. It does not say that journalists may never accept anything – it merely states that reporters should not accept gifts “*which may influence coverage*”. If, for example, a political party holds a conference and provides you with some writing material, surely that is not likely to influence your reporting. However, for the sake of argument, if the pen provided by the party is made of solid gold, it might become a different matter.

Also consider the impression that receiving a gift may create – rightly or wrongly. Again, this is a judgment call. The point is to remain on the alert – never accept anything that may influence your reporting *or that may create such an impression*. Remember that perceptions are realities. Be careful not to be party to a situation that may create the wrong impression or lead to wrong perceptions, even though you may be convinced that you would not be influenced by a gift.

That is why I, as the Ombud, never accepted an invitation from a publication to attend a sports occasion, or go on a free weekend somewhere, or something similar.

2.3 [The media shall] indicate clearly when an outside organisation has contributed to the cost of newsgathering.

This clause does not prohibit the practice of outside organisations paying journalists to cover an event. It does, though, make it clear that in such instances the reporter should report this fact. The reason is obvious – if an outside organisation has contributed to the cost of newsgathering, the perception could be created that the journalist might write favourably about the sponsors. The public needs to know this, which would place it in a position to decide for itself whether the reporting was slanted or not.

Motoring journalists travel abroad on a regular basis and in many instances their publications do not pay for the trips. So be it – as long as it is made clear that an outside organisation has picked up the tab.

There also is nothing wrong when (say) a foreign government invites you to its country to cover its elections. This happened to me once, when the German government invited me for that very reason – but then, the public had a right to know that my publication did not cover the costs.

So then, state it.

ACTUAL CASE

The headlines to the contested texts read, *How South Africans defied the booze ban* (main article), *Alcohol industry counts lockdown losses*, and *Sensible drinking is a joint effort*. X flagged at the top of a page the words, *Editorial Partnership*. It also featured a red blob on the page that referred to a *Partnership between [Y] and [an organisation – Q]* and carried a note at the bottom of the page that stated, *This project was paid for by the [Q] and reported by [X]*.

A Deputy Ombud found that the involvement of an outside organisation was not indicated clearly enough. He also argued that the banner, *Editorial Partnership*, and the wording in the red blob was vague; he argued that the explanatory note at the bottom of the page had been placed in what was “perhaps the least conspicuous position on the page”; and added that the location of the note could be misinterpreted as referring to that particular article only and not to the page as a whole. The deputy also opined that X had assigned reporting staff to write two of the articles – which created the impression that those articles were independently produced news stories.

He added: “These transgressions raise doubts about the independence of the newspaper, for which X must apologise to its readers.”

This goes to show just how careful publications must be to *clearly* distinguish between independent editorial and copy that was paid for.

2.4 [The media shall] keep editorial material clearly distinct from advertising and sponsored events.

Under “advertising” we mean advertisements, advertorials as well as so-called “native advertising” (where a subject pays for text which is presented as news). Be alert – the intention of native advertising is to obscure the distinction between

advertising and news. A publication should always take care to make this distinction sufficiently clear.

This clause, and the reason for it, should be read in the context of that which precedes it (“independence”). Advertisements and advertorials should be “kept clearly distinct” from editorial material because, if not, the publication’s very independence is at stake.

The case discussed above is also applicable to this subsection of the Code.

3. Privacy, Dignity and Reputation

3.1 *The media shall exercise care and consideration in matters involving the private lives of individuals. The right to privacy may be overridden by legitimate public interest.*

Two issues are at stake here:

- The right to privacy as such; and
- The relationship between public interest and an individual’s right to privacy.

In general, it can be said that an invasion of privacy can occur “either through unreasonable intrusion into or interference with a person’s private sphere; or through unauthorised disclosure of private facts”*.

Privacy: The concept of privacy is complicated, and it is rather a modern one. Let’s try to simplify the matter: A person has the right to privacy in her or his home, as well as to matters such as health, sex, and finance. Normally, when people leave the privacy of their home, they have a lesser right to privacy as they enter public space. However, people may have a legitimate expectation of privacy even in a public place, for example when eating in a remote corner in a tea garden, or in a (public) restroom.

Moreover, privacy does not mean the same thing to everybody – one needs to make a distinction between public officials, public figures or celebrities, and ordinary citizens.

Public officials have the least right to privacy because they are getting paid with taxpayers’ money – which means that they are accountable to the public, which in turn entails that it is the duty of the media to hold such people accountable. They have no grounds to complain if the media reveal their private matters *when such issues have a bearing on their public duty*.

Of course, this does not mean that public officials have no privacy at all. The litmus test is always whether a certain matter impacts on the fulfilment of their public duties. This, of course, is a grey area. For example, when the President of the United States has an extramarital affair, many of its citizens are up in arms; if it happens in France, people ask: “So what?” This may be an overstatement, but it does serve to illustrate that values and norms may vary – which should alert the media even more to be careful when making decisions whether to expose private information or not.

To a lesser extent, but still so, *public figures* or *celebrities* should also be held accountable for their actions – not because they are getting paid with public money, but because they are role models, especially for the youth. For that reason, the media have the right to report on their private lives – *but again, only if it impacts on their roles in society*.

Private citizens have the most right to privacy. For example, if an individual has an extramarital affair, publications should (normally) ignore it as it is of little or no importance to the public.

The following interpretations on the invasion of privacy were taken from the book, *Neethling on Personality Rights**:

Privacy can be invaded only if *true* private facts are communicated.

Depending on the situation, examples of grounds of justification are:

- necessity (read: where legitimate interests can only be protected by infringing another person’s privacy);
- private defence (for example, when a spouse spies on her/his partner who may be cheating); and
- acting in a statutory or official capacity (for example, where it is appropriate to uphold the law, to prevent crime and disorder, to safeguard state security, to protect public health, etc.)

Normally, the relationship between doctor and patient, lawyer and client, banker and client (etc.) is confidential. However, public interest can trump even such confidential relationships – for example, if a patient’s condition may endanger public safety, or when the spouse of a teacher informs the principal that his/her partner is addicted to drugs.

These factors do not necessarily render the publication of private information lawful as other factors may come in play, such as the nature of the information, the question if it was obtained by intrusion or if it was in breach of a confidential relationship, and the extent and intensity of the infringement of privacy. The rule of thumb is that the more intensive the infringement, the more difficult it becomes to justify it.

In general, these grounds for justification also apply in cases of defamation.

When the media disclose private information, they must properly weigh up the general sense of justice of the community (read: the interests of the public – not merely the public interestedness or curiosity) with an individual's right to privacy. Relevant factors in play are *inter alia* the:

- position of the person in society;
- newsworthiness of an event;
- extent or intensity of the matter;
- extent to which the holder of the right exposed her or his privacy to the risk of violation;
- media's motive for publishing;
- possibility that private information was obtained wrongfully or in breach of a confidential relationship;
- time span between the newsworthy event and the publication thereof;
- degree of identifiability of the person; and
- question if information was published contrary to a court order or statutory provision or if it amounted to a breach of contract.

It speaks for itself that consent to the disclosure of private information cannot be seen as an infringement of privacy. However, such consent can be given tacitly – for example where someone does not do so explicitly, but places herself/himself in the limelight, knowing full well that the media will report on it.

While the legal issues in cases of breach of privacy may be quite complex, my own interpretation of the above is quite simple. It seems to me it all boils down to the question if the public interest necessitates an invasion of privacy. The principle is clear; its application requires a healthy dose of common sense.

Private vs. public interest: Be careful – public interest does not always trump personal interest. If you are going to invade somebody's privacy, always ask if it really is in the public interest to do so. This should be the question: Which weighs heavier – the freedom of expression in the public interest, or the subject's right not to have their privacy unjustifiably and unreasonably infringed upon? This is not easy!

Keep this in mind: The more there is a public *need to know* (in this case, certainly not merely *nice to know*), the more the scale tips in favour of the public and against an individual – and *vice versa*.

The advent of social media has brought some interesting new challenges to media ethics, specifically with regards to the processing of personal information. Here is one such example:

- * - *A Practical Guide to Media Law*, p 53, Dario Milo and Pamela Stein, LexisNexis, 2013. The book lists examples of invasions of privacy *inter alia* as the interception of communication; surveillance stalking or harassment; entering a private home; eavesdropping; searching a person; interrogation of a person; or gaining unauthorised entry to a computer.
- *Neethling on Personality Rights*, J Neethling, JM Potgieter and A Roos, LexisNexis, 2019.

ACTUAL CASE

X published a photograph of a seriously injured two-year-old who accidentally had been run over by his father. He lifted the photograph from Facebook, arguing it was justified to publish it because it already was in the public domain. Right? Not necessarily so!

The mere fact that a photograph appears on social media does not necessarily mean that the media may use it. The question is: What if that photograph was put on Facebook without a parent's permission – or even worse, against a parent's will?

It would be a different matter if a parent has put the photograph on Facebook. The implication would then be that that parent *wanted* the photograph to be in the public domain. In that case, the media can use the photograph without having to contact the parent – permission has already been given, albeit in an indirect way.

But not so fast – there are some twists in this tiger's tail.

The first one is this: There is a difference between “open” and “private” social media. When “open”, surely the information is in the public domain. But when “private”, personal information should remain private. Therefore, if a person on a private group on social media shares some information from that group with a journalist, the public domain argument clearly cannot apply.

The second twist: How does a journalist *know* that a parent has put the photograph on open social media, or at least has given someone else permission to do so? Or even worse: How does a reporter *know* that the photograph was not published against a parent's will? If there is any reasonable ground to doubt this, the safest way to go is not to use it, or perhaps block features out that disclose private information. Be careful!

ACTUAL CASE

I have had complaints from angry citizens that the media photographed their houses without their consent. I have dismissed most of these complaints, as their houses were in public spaces. It would have been a different matter, though, if a journalist had entered the premises without permission, or “stole” photographs through windows (unless a public interest was evident), or if people’s lives were endangered in the process. In any event, this matter is quite complicated. See Section 3.5 of the Code below. Again, public interest is the litmus test in this regard.

Some other cases:

- Y complained that X had taken a photograph of her while she had been shopping, arguing that her privacy had been invaded. She had no leg to stand on – she was in a public place, with no reasonable expectation of privacy.
- X identified a certain prominent politician and his wife in their divorce proceedings – leaving him and his children embarrassed. The reportage unnecessarily intruded in their personal life.

To demonstrate just how difficult a decision can be to publish or not to publish (read: what weighs most – public or personal/private interests), let me use a fictitious example, based on an actual situation.

FICTITIOUS CASES

Shortly after a former President had been jailed for contempt of court, he was released on medical parole. The state insisted that doctors employed by the state should examine him to establish the validity of his own doctors’ report. The man refused to allow that. (So far, this is history.)

Now, for the fictitious part: Let’s say someone leaks his doctors’ report to the media – would the public interest in this case outweigh the private information contained in the medical report?

Some may argue that this case is so exceptional, and so overwhelmingly in the public interest, that the media may use this private information; others, though, may believe that his medical condition should be kept private.

Which is which? Weigh up the man’s right to privacy with his status as former President of this country – then you decide.

Indeed, journalism, and indeed media ethics, are not for sissies.

I noticed, with appreciation, an editorial in an Afrikaans daily in which a golden mean was used. After stating that South Africans deserve to know what procedure had been followed in taking the decision to release the former President on medical parole, the editor said that, even though his privacy should be respected, the process itself should be transparent – if not, speculation and suspicion would run rife.

That, to my mind, was responsible journalism at its very best.

3.2 [The media shall] afford special weight to South African cultural customs concerning the protection of privacy and dignity of people who are bereaved and their respect for those who have passed away, as well as concerning children, the aged and the physically and mentally disabled.

Privacy: In this subsection, privacy is firstly applied to the bereaved. For example, if a family asks the media not to take photographs at a funeral, that wish should be respected – even though the ceremony takes place in a public place. Public interest in such an event must be extremely high for the media to ignore such a request. I know of some instances where the media simply ignored the family’s wishes, without sufficient public interest in the matter. Put yourself in the shoes of the bereaved, and you also will find such behaviour atrocious.

Dignity, cultural customs: “Dignity” can be described as the right of people to be valued and respected for their own sake, and to be treated accordingly. In a certain sense, “dignity” boils down to what you think of yourself.

In this subsection, the media are asked to respect bereaved people for whom they are, and for the latter’s respect for those who have died.

This is more complicated than it may look, as cultural customs regarding the dead vary quite considerably. The media should be aware that different cultures have different rituals and may attach different values to the dead.

Respect and sensitivity are required to cater for the type of culture that is involved, and are the operative words here.

I have seen a journalist clothed like a Hillbilly taking photographs in a church and where everybody else was clothed in style. Disrespect for the bereaved breeds disrespect for the media.

The same goes for children, the aged, and the disabled. They deserve your respect, so don't make fun of them. A certain journalist made a "joke" about a conference held by stutterers, saying it will take them the whole weekend to make a point or two (or something to this effect). Such remarks are not funny and should be avoided.

Even though the Press Code does not mention suicide, journalists are encouraged to take cognisance of the World Health Organisation's document, *Preventing suicide: a resource for media professionals* (2017)*. This comes highly recommended.

* Visit <https://apps.who.int/iris/handle/10665/258814>. It is also available at www.presscouncil.org.za

ACTUAL CASE

The family of a deceased person complained the statement that the latter had died in a "smokkeljaar" (a smugglers' den) falsely created the impression that he had been involved in untoward activities. The article reported on gang-related violence on the Cape Flats. I found that the newspaper did not sufficiently show respect for the dignity of people who were bereaved and respect for the person who had died.

3.3 [The media shall] exercise care and consideration in matters involving dignity and reputation, which may be overridden only if it is in the public interest and if:

3.3.1. the facts reported are true or substantially true; or

3.3.2. the reportage amounts to protected comment based on facts that are adequately referred to and that are either true or reasonably true; or

3.3.3. the reportage amounts to a fair and accurate report of court proceedings, Parliamentary proceedings or the proceedings of any quasi-judicial tribunal or forum; or

3.3.4. it was reasonable for the information to be communicated because it was prepared in accordance with acceptable principles of journalistic conduct; or

3.3.5. the article was, or formed part of, an accurate and impartial account of a dispute to which the complainant was a party.

"Dignity" and "reputation" are not synonymous, although they swim in the same pond.

"Dignity" is the right to be treated with respect, based on the respect you have for yourself. In short: "Dignity" is what you think of yourself. "Reputation", on the other hand, is the respect other people have for you or, to say it more simply, what other people think of you.

The protection of both these concepts is of vital importance in any healthy democracy, where human rights are taken seriously. The Press Code acknowledges this and follows suit.

However, as with any other right, these are also not absolute. But first, let's turn to defamation, as the Press Council receives many such complaints. (The relationship between defamation and dignity and reputation should become clear below.)

Except for Section 1.12, the Code does not mention the word "defamation" at all. The reason for this should be obvious – "defamation" is a legal term, while the Code deals with ethics.

That is why, when I received a complaint about defamation, I always turned it into "the possible unnecessary lowering of someone's dignity and reputation". Unfortunately, valid complaints in this regard are quite common.

It would still be necessary to touch on defamation here, however, as the media are susceptible to it and therefore may face very unwelcome court cases in this regard. Defamation can, in short, be described as a wrongful and intentional publication of a statement that will tarnish the reputation of a person in the eyes of the public.

The defence against defamation in South African law rests on three pillars: The statement must be true; it must be in the public interest; and it must comply with acceptable principles of journalistic conduct – which includes if the story was balanced and fair, the question of how reliable your sources were, and the steps that you took to verify the information in the article.

It follows that the lowering of a person's dignity and reputation *per se* is not forbidden. For example, if it is true that the mayor stole money, you may lower that person's public image (reputation) without fear of unlawfully or illegally defaming her or him (as it would be in the public interest as well).

But beware – if you want to use the defence of "truth in public interest" when you diminish somebody's public image, you then need to be able to prove that your allegations are true. If that is not possible or practicable, there still is the defence of reasonableness.

The well-known ruling made by Judge JA Hefer in the case *National Media Ltd. and Others vs. Bogoshi* (29 September 1998) is of particular interest and should be studied in its entirety. He said *inter alia*: "... the publication in the press of

false defamatory allegations of fact will not be regarded as unlawful *if*, upon a consideration of all the circumstances of the case, *it is found to have been reasonable to publish the particular facts in the particular way and at the particular time*. In considering the reasonableness of the publication account must obviously be taken of the nature, extent and tone of the allegations. We know, for instance, that greater latitude is usually allowed in respect of political discussion ... and that the tone in which a newspaper article is written, or the way in which it is presented, sometimes provides additional, and perhaps unnecessary, sting. What will also figure prominently, is the nature of the information on which the allegations were based and the reliability of their source, as well as the steps taken to verify the information. Ultimately there can be no justification for the publication of untruths, and members of the press should not be left with the impression that they have a licence to lower the standards of care which must be observed before defamatory matter is published in a newspaper ... a high degree of circumspection must be expected of editors and their editorial staff on account of the nature of their occupation; particularly, I would add, in light of the powerful position of the press and the credibility which it enjoys amongst large sections of the community.” (Emphasis added.)

I have used this argument of reasonableness umpteen times, and so should the media – as long as it is not abused as a free pass for conducting unethical journalism.

Also note the following:

- The use of the word “allege” does not always save the media. It may well be that an allegation that a person stole money is defamatory as well. “Allege” is an important word in journalism, but it does not safeguard you in all instances. *Never publish an allegation that you know to be false*;
- Journalists may report without fear of defamation on proceedings in courts of law, Parliament, or any quasi-judicial tribunal, even when that may significantly lower someone’s reputation, provided that they do so accurately and fairly;
- The repetition of defamation is also defamation. If a person defames someone by stating that she or he is a thief, the media would also defame that person by repeating it. However, nothing stops the media from reporting *someone said* that that person is a thief – as long as it was in the public interest, and was stated as an allegation, or was said in Parliament or in court, or it was otherwise reasonable to publish it; and
- You cannot defame a dead person. Defamation laws are designed to protect people’s interests – and a dead person does not have interests anymore.

It is worth your while to peruse the outcome of a webinar initiated by the Press Council regarding reporting on medical negligence*.

* ***This document can be found at <https://bhekisisa.org/article/2020-12-11-no-routine-operation-5-tips-for-reporting-on-medical-negligence-without-getting-into-legal-trouble-yourself/>. It is also available at www.presscouncil.org.za***

ACTUAL CASE

In one instance, two male farm workers were accused of killing a well-known right-wing leader (also male). However, X reported that the workers had sex with him before murdering him. Even if it was true, such reports could not have defamed the murdered man, as he was dead; however, it could have unlawfully or illegally defamed the farm workers (if the rumours were false).

3.4 [The media shall] not identify rape survivors, survivors of sexual violence* which includes sexual intimidation and harassment or disclose the HIV/AIDS status of people without their consent and, in the case of children, from their legal guardian or a similarly responsible adult as well as from the child (taking into consideration the evolving capacity of the child), and a public interest is evident, and it is in the best interests of the child.

Survivors: The important consideration is that the decision to identify such a person is up to the victim, not to the journalist. A reporter does not have the right to decide for adults what is good for them.

Children: The matter is more complicated when it comes to children. Please note that, this time, the word “and” (not “or”) is consistently used – you need consent from a legal guardian and the child; and it should be in the public interest, and in the best interest of the child. The last consideration is especially a weighty one and places a huge responsibility on your shoulders – as you should realise when reading the next paragraph.

* ***The World Health Organisation inter alia defines sexual violence as follows: “Sexual violence encompasses acts that range from verbal harassment to forced penetration, and an array of types of coercion, from social pressure and intimidation to physical force ...”***

Legal guardian, responsible adult: What if a legal guardian or a similarly responsible adult is not representing the best interests of a child? They may have ulterior motives, or (for argument's sake) may even be drunk or drugged at the time. And what if one parent says "yes", and the other says "no"? All the very best with your decision if you encounter such a situation! Please remember. **When in doubt, consult; when still in doubt, leave out.**

The child: A child may not be identified without its own consent. But, of course, the journalist should use discretion here – which is why the Code adds that the evolving capacity of the child should be taken into account. If a baby is raped, clearly that child cannot give consent. But when the child is about to become an adult, it is a different kettle of fish. It is up to the journalist to decide if a specific child is old enough to understand the consequences of consenting. **When in doubt, consult; when still in doubt, rather leave out.**

Public interest: The preamble to the Code states: "Our work is guided at all times by the public interest, understood to describe information of legitimate interest or importance to citizens." The journalist should be satisfied that revealing such a child's identity will indeed be "of legitimate interest or importance to citizens". That decision is up to the reporter. I am not saying it will never happen, but even in my wildest imagination it is difficult to fathom a situation where it would be in the public interest to identify a child survivor. **When in doubt, consult; when still in doubt, rather leave out.**

The best interests of the child: The same goes for this stipulation. The responsibility on the journalist's shoulders is enormous. **When in doubt, consult; when still in doubt, rather leave out.**

HIV/AIDS is singled out above conditions such as (for example) cancer, malaria and TB, as it carries a stigma, unlike most other diseases. The same arguments regarding children, as discussed immediately above, apply here.

3.5 [The media shall] only disclose sufficient personal information to identify the person being reported on as some information, such as addresses, may enable others to intrude on their privacy and safety, and such disclosure shall only be made if in the public interest.

The issue of only disclosing "sufficient personal information" requires serious consideration and deliberation before making an editorial decision. Always be careful not to over-share personal information. Ask yourself this question: Is it really in the public interest to reveal this specific personal information?

Once again, put yourself in the shoes of the person about whom you are to disclose personal information. How would you feel if, for example, you are accused (rightly or wrongly) of raping a child, and the journalist reports your name, your home address, or your email address? Let's say you are innocent – just imagine the hate mail you'll receive unnecessarily, even including death threats.

The disclosure of personal information may indeed endanger the life of a subject. For example, it is highly irresponsible to publish the address of a person who may be the subject of a kangaroo court. As always, public interest should guide the media – the question always should be if the public has any genuine interest in the personal information of a subject.

As always, be careful not to cause unnecessary harm.

ACTUAL CASE

X reported on a woman (Y) who was allegedly the subject of sexual exploitation and mentioned the type of car, as well as its colour, that she drove. She complained that this (personal) information had identified her and, in fact, endangered her life.

If she drove a white Mercedes in a small town, she would have had a case, as it is likely that there was only one or perhaps just a few such cars in town. However, Y lived in Johannesburg, where there could have been many such cars and the likelihood that she could have been identified by this piece of information was low.

Q: C. Complete the following sentences. You should know by now where to find the answers.

- | | | |
|-----|--|-----|
| 36. | By saying that journalists should stay independent we mean ... | (1) |
| 37. | Conflicts of interest must be avoided because ... | (1) |
| 38. | The media shall not accept a bribe, gift, or ... where this may ... | (2) |
| 39. | The media shall indicate clearly when an outside organisation has contributed to the cost of newsgathering because ... | (1) |
| 40. | "Native advertising" is where ... | (1) |
| 41. | Regarding public interest, one must distinguish between ... and ... and ... | (3) |
| 42. | Public officials have the least right to privacy because ... | (1) |
| 43. | Celebrities have less right to privacy than citizens because ... | (1) |
| 44. | "Reputation" can be defined as ... | (1) |
| 45. | "Dignity" can be defined as ... | (1) |
| 46. | You cannot defame someone with ... and when it is ... | (2) |
| 47. | The repetition of defamation is also ... | (1) |
| 48. | You are always safe if you used the word "allegedly" – "true" or "false" | (1) |
| 49. | To identify a rape survivor you need to ... | (1) |
| 50. | To identify a child who is a rape survivor you need to ... and ... and ... and ... | (4) |
| 51. | The status of a person living with HIV/AIDS should normally not be disclosed because ... | (1) |

[Total: 23]**Notes**

4. Data protection

Members of the media shall:

4.1 take reasonable steps to ensure that data containing personal information* under their control is protected from misuse, loss, and unauthorised access.

The gathering and possession of personal information is not prohibited as such, and neither is its use (if, of course, in the public interest) – however, the media should ensure that such information is not misused or lost, and that it does not fall into the wrong hands. Therefore, take care not to throw away notebooks that contain sensitive information or to forward emails with such information to the wrong people. Again, some common sense will come in handy here.

Editors have a special responsibility in this regard. It would be helpful if they continuously conscientise their staff, cautioning them not to misuse or lose such information.

I strongly recommend that such a clause be incorporated in every publication's own Code of Ethics.

* “Personal information” is defined in Section 1 of the Protection of Personal Information Act 4 of 2013 as follows: “Personal information” means information relating to an identifiable, living, natural person, and where it is applicable, an identifiable, existing juristic person, including, but not limited to (a) information relating to the race, gender, sex, pregnancy, marital status, national, ethnic or social origin, colour, sexual orientation, age, physical or mental health, well-being, disability, religion, conscience, belief, culture, language and birth of the person; (b) information relating to the education or the medical, financial, criminal or employment history of the person; (c) any identifying number, symbol, email address, physical address, telephone number, location information, online identifier or other particular assignment to the person; (d) the biometric information of the person; (e) the personal opinions, views or preferences of the person; (f) correspondence sent by the person that is implicitly or explicitly of a private or confidential nature or further correspondence that would reveal the contents of the original correspondence; (g) the views or opinions of another individual about the person; and (h) the name of the person if it appears with other personal information relating to the person or if the disclosure of the name itself would reveal information about the person.

4.2 [Members of the media shall] amend inaccuracies in published personal information where a person requests a correction.

The person who knows best what his or her personal information is, is the subject her- or himself. Therefore, if someone requests a correction, the media should always take this seriously and promptly verify and correct, if necessary, that information.

Note that inaccurate and out-of-date personal information can cause a subject irreparable harm. It is therefore important to ensure the accuracy of such information, as well as to keep it up to date.

4.3 [Members of the media shall] inform the affected person(s) and take reasonable steps to mitigate any prejudicial effects where it is reasonably suspected that an unauthorised person may have obtained access to personal information held by the media.

Again, this clause places a special burden of responsibility on the shoulders of editors. See the comment under Section 4.1.

4.4. [Members of the media shall] use and disclose personal data only for journalistic purposes.

People are entitled to their privacy, and the use of personal information for purposes other than for journalistic expression would go against that right. Think of this in terms of confidentiality between a doctor and a patient, or an attorney and a client. Private information should remain private and should not be used if there is no urgent public interest in the matter.

This clause places a large burden of responsibility on the media. For example, it may be tempting to “impress” your friends or family with inside information, or to use some data for personal gain. Don't!

Note that the phrase “journalistic purposes” goes further than merely reporting – it includes, for example, cartoons, photographs, and editorials.

General remark: If the media adheres to this Code, they are excluded from the Protection of Personal Information Act (PoPIa). Therefore, it is not only in the public interest that you abide by the Code – it is also in your own personal and professional interest.

Lined writing area consisting of multiple horizontal dotted lines.

5. Discrimination and Hate Speech

5.1. The media shall avoid discriminatory or denigratory references to people's race, gender, sex, pregnancy, marital status, ethnic or social origin, colour, sexual orientation, age, disability, religion, conscience, belief, culture, language and birth or other status, and not refer to such status in a prejudicial or pejorative context – and shall refer to the above only where it is strictly relevant to the matter reported, and if it is in the public interest.

Please do not refer to a person's race, gender, etc, if it is not "strictly relevant" and in the public interest to do so.

If, for example, a:

- gay person has been run over by a car, his sexual orientation should not be mentioned – unless, of course, it is relevant to the matter (if it was due to homophobia); and
- a white male in his forties is alleged to have stolen money from a shop and is now at large, it would for obvious reasons be in the public interest for the media to mention his name, race, sex, and age.

ACTUAL CASE

A columnist called for a revision of the country's Constitution to take away the rights gays and lesbians have won in the new South Africa. My predecessor found that, while the writer did not equate homosexuality with bestiality, he in fact implied that homosexuals were a lower breed than heterosexuals.

5.2 [The media shall] balance their right and duty to report and comment on all matters of legitimate public interest against the obligation not to publish material that amounts to propaganda for war, incitement of imminent violence or hate speech – that is, advocacy of hatred that is based on race, ethnicity, gender or religion, and that constitutes incitement to cause harm.

This subsection defines hate speech – which amounts to the incitement to cause physical harm, based on prejudices regarding race, etc. It is not about hurtful speech, such as insulting people or calling them names. The Equality Act has widened the definition of hate speech to include insult, but I believe it is better to stick to the Constitution's definition.

The Code does not only say that the media has the "right" to report and comment on all matters of legitimate public interest – it is indeed also their "duty" to do so.

The rest of this clause has already been dealt with under the preamble. Even the right to freedom of expression has its boundaries and is not absolute, as the duty to report and comment have to be balanced against the obligation to avoid hate speech.

ACTUAL CASE

To amount to hate speech, the Appeals Panel stated in a case about hate speech: "What is said should not only advocate hatred, but also be an incitement to cause harm. Both elements must exist. The test for the likely effect of the words is an objective one; that is, how an ordinary reasonable or intelligent reader would understand the words."

6. Advocacy

The media may strongly advocate their own views on controversial topics, provided that they clearly distinguish between fact and opinion, and not misrepresent or suppress or distort relevant facts.

This clause acknowledges the media's right to (strongly) advocate their views on any important matter (politics, the economy, social issues, ecology, whatever). It should be noted that this article does not apply to news reports.

In doing so, though, the Code sets some conditions. The reason for that, again, is to ensure fairness. Again, the spirit of the Code is to strive for truth and to avoid unnecessary harm.

A series of horizontal dotted lines spanning the width of the page, providing space for writing.

ACTUAL CASES

The same example used under Section 2.1 applies here. (Please go back to that subsection for the necessary context.) I have already indicated that X was squarely within his rights to advocate a certain case, but in this instance, he went too far by becoming part of the news – with atrocious consequences. Relevant to this part of the Press Code, X indicated in his first text that that was the “latest news” – only to realise later that had had made a mistake, which he corrected by saying that that was in fact an opinion piece. He initially faulted in not properly distinguishing between fact and opinion.

In another editorial, X stated that Y (a civil rights organisation) was targeting, attacking or vilifying a radio breakfast show presenter, that it “harked back” to the time of apartheid, and that it has resorted to “racially divisive” tactics.

The problem was that the publication equated Y with a certain union, incorrectly ascribing the allegations regarding the latter to the former. I stated: “The editor needs not be afraid that this office will stifle freedom of speech or criticism. Both the Constitution of the country and the SA Press Code give [the publication] the freedom to criticise [X] as much as it wants to. However, the Press Code does list a few conditions in this regard. The one in question is whether any facts were distorted – which the editorial did in ascribing the union’s opinions and actions to Y.”

7. Protected Comment

General observation: Many journalists, as well as some of their legal representatives, often misunderstand this section of the Code – every so often they interpret it as giving the media a green light to comment in *news stories*. However, this section does *not* deal with news – it is about opinion pieces, editorials, and cartoons.

7.1 The media shall be entitled to comment upon or criticise any actions or events of public interest.

The Code guarantees the media the freedom to comment on or to criticise any matter of public interest as they see fit and to contribute fearlessly to the robustness of the debate (as does the Constitution of our country) and it enables the media to fulfil their task as the Fourth Estate.

7.2 Comment or criticism is protected even if it is extreme, unjust, unbalanced, exaggerated and prejudiced, as long as it is without malice, is on a matter of public interest, has taken fair account of all material facts that are either true or reasonably true, and is presented in a manner that it appears clearly to be comment.

Extreme, unjust, unbalanced, exaggerated, prejudiced: This is in line with a finding of the highest court in our country. Judge Edwin Cameron of the Constitutional Court ruled in April 2011 (*Robert McBride vs. The Citizen*): “Criticism is protected even if extreme, unjust, unbalanced, exaggerated and prejudiced (as long as it ...).”

Clearly, the Code shares the court’s conviction.

I have had many complaints over the years about extreme, prejudiced, etc. views in editorials and cartoons. In some cases, I did not agree with the content of those editorials – but that could not be my yardstick for adjudication. Even if an editorial is wrong in its outlook, from my point of view, that is, both the Constitution and the Code give the editor the right to be wrong.

This reminds me of the following statement which is widely attributed to the French philosopher François-Marie Arouet, also known as Voltaire: “I disapprove of what you say, but I will defend to the death your right to say it.”

As long as it is...: However, no right is absolute and therefore both the Constitutional Court and the Code have set some borders – real freedom always carries with it accountability and responsibility (as is evident in this section, yet again).

I have encountered many arguments by editors who said that their comment is “protected” *because* it is comment. I have heard the words, “but this is comment, so it is protected” too many times. Nothing can be further from the truth – *the Code does not protect all comment*.

Therefore, the words “as long as it” must be taken as seriously as the first part of the sentence.

The following provisions are also in line with those of the Constitutional Court:

Honestly held opinion: This is a difficult matter, as it is almost impossible for an outsider (like the Ombud) to accuse an editor that she or he is not honest about an issue. But nevertheless, always be honest!

Without malice: “Malice” can be defined as the intent to inflict injury, harm, or suffering on somebody. I have seldom encountered situations where I had to decide whether a journalist was malicious or not. But there were exceptions, and those were extremely serious ...

ACTUAL CASE

A municipality complained that a cartoonist intended to cause maximum harm to its image, as well as to the image of its employees. Y described the cartoon as a deliberate attack on the intellectual capacity of its administration, saying that it had made “a political statement” and that it was racist.

The story was about a farmer who used a horse to plough his land because of the high cost of petrol. The cartoon consisted of a four-panel piece that was about the use of horses for transport. The top two panels of the cartoon said: “If we went back to horse power, things would change for the better ...” The third panel showed people scattering as a horse and rider caused mayhem. The fourth portrayed a horse pushing the cart – labelled “municipality” – and carrying four people. The words above the third and fourth panels were: “or would they?”

Unlike Y, I found the criticism in this instance to be mild and certainly not malicious, as I did not detect a hostile or mean desire on the cartoonist’s part to inflict injury, harm, or suffering on the municipality. It was, rather, a legitimate expression of an honestly held opinion (also held by many other people). The cartoonist may have been wrong, for all I care – but he still had a right to voice his opinion (within the guidelines of the relevant articles in the Code).

There are quite a few famous examples of cartoons depicting the Muslim prophet Muhammad (PBUH). I am always wary of any such cartoons (even if they are not critical of the prophet or the Islamic religion), as the Muslim community worldwide is dead against any photograph or sketch of him. The cartoonist may not share this belief – but, knowing full well that it offends the Muslim community, and contemplating the consequences that such a cartoon may have, publications should be careful and tread lightly.

The same sensitivity should be exercised regarding all other religions. Each situation should be considered on its own merits.

The following cases were about not taking fair account of all available, material facts:

- A prominent politician once said at a conference in Johannesburg that the media were “like a pack of dogs”. One newspaper reported this correctly, but the editor of the same publication then accused the politician of saying the media were dogs. Without stereotyping the matter, one must remember that in some cultures dogs are often seen as one of the lowest forms of life. I directed the newspaper to apologise for this mistake to minimise the unnecessary harm that it caused this politician.
- When a prominent right-wing (white) leader (of an all-white organisation) was murdered (I have already referred to this case, but in a different context), a journalist wrote an opinion piece after having attended his funeral. This columnist accused the murdered man’s organisation of having killed a (black) mayor. The reporter was entitled to his opinion, but he did not take all available facts into account. In this instance, a court had already convicted a black man (who could not have belonged to the all-white organisation) for the murder of the mayor. If the columnist had stated that he knew about the court case but disagreed with the outcome, that would have been in order – because then he would have taken this vital piece of available fact into account (with which he did not have to agree). Unfortunately, he neglected to do so.
- A hospital complained that an opinion piece unfairly said that the Department of Health had appointed “fake” medical practitioners, nurses and doctors. The hospital justifiably argued that its staff had all been registered with the Health Professional Council of South Africa and that they therefore could not have been “fake”. Again, the journalist did not take fair account of all available facts. His comment was not based on true or reasonably true facts.
- Two municipal officers complained that the following references to their houses (in an editorial) were incorrect and misleading: “They sat in their multi-million rand mansions in Hermanus, bought with our hard-earned money, while [the town] was burning.” In fact, their houses were not worth that much, and they bought the houses with money obtained elsewhere. This may seem “innocent”, but it was not – there were strikes and violence erupted in the area due to alleged poor service delivery. There was a real possibility that the reportage could unnecessarily have incited antagonism by the local community towards them.
- An editorial called a certain politician a “serial wrongdoer” – but only offered one (possible) example to this effect. Even if the politician was guilty in this instance, he did not deserve the epithet “serial wrongdoer”, as this implied the plural.

Q: D. Complete the following sentences; or say “true” or “false”:

- 52. “Hate speech” demonstrates a clear intention to be hurtful or harmful or to incite harm or to promote or propagate hatred – “true” or “false” (1)
- 53. The media have the right and indeed the ... to report and comment on all matters of legitimate public interest (1)
- 54. The media shall use and disclose personal data only for ... (1)
- 55. Stereotyping is dangerous because it ... (1)
- 56. Publications are justified in strongly advocating their own views on controversial topics, provided that they treat their constituencies fairly by ... and by ... and by not ... (3)
- 57. Section 7, on “Protected Comment” also applies to hard news stories – “yes” or “no” (1)
- 58. Comment or criticism is protected even if it is ... and ... and ... and ... and ... - as long as it ...; is ...; is ... ; has ...; and is presented ... (10)

[Total: 18]

.....

.....

.....

.....

.....

.....

.....

.....

.....

.....

.....

.....

.....

.....

.....

.....

.....

.....

.....

.....

.....

.....

.....

.....

8. Children

8.1 In the spirit of Section 28.2 of the Bill of Rights* the media shall exercise exceptional care and consideration when reporting about children . If there is any chance that coverage might cause harm of any kind to a child, he or she shall not be interviewed, photographed or identified without the consent of a legal guardian or of a similarly responsible adult and the child (taking into consideration the evolving capacity of the child); and a public interest is evident.

Both the SA Constitution and the Press Council take the “best interests” of a child (a person under the age of 18) extremely seriously.

Note the care with which this sentence is constructed:

- It does not mention “children” (plural, which may have amounted to a generalisation); instead, it is about a specific child (singular) – each and every child is an individual, unique, precious and important, and should be treated as such;
- It is not only about a child’s interests; it is about their “best” interests;
- Most importantly, the specification that a child’s best interests are of “paramount importance” should not be taken lightly – this is the first and only time that the Code qualifies a matter in such radical terms; and
- As if that is not enough, the clause adds that such importance is relevant in “every” matter that concerns a “child” (singular, again).

There are no exceptions, nor should there be any. If this sentence does not alert the media to be extremely careful when reporting about a child, nothing will. The message is clear – your ears should prick, your eyebrows should lift, your heart should start racing, and all sorts of yellow and red lights should start flickering when reportage involves a child who could be harmed by your reportage.

This article should be read as meticulously as it was formulated. In some instances, the Code asks journalists to exercise “care and consideration”. In this instance, it adds the word “exceptional” – the only time where the Code uses this word.

The principle is: If there is *any chance* that coverage might cause a child harm of *any kind*, the child should not be interviewed, photographed, or identified unless a custodial parent and the child consent, and a public interest is evident.

In this instance, there are no exceptions. There should be none.

But beware! A “legal guardian” or a “similarly responsible adult” may not be in a position to allow the media to identify the child. For example, such a person may be intoxicated, or have ulterior motives – which must alert the media even more to be ultra-careful.

These are some of the implications:

- When there is no likelihood that a child may be harmed by a story or a photograph, the media are free to report on the matter. For example, two schools compete in their annual athletics clash. The journalist takes photographs of children on the pavilion, cheering their teams on. You don’t need anybody’s permission to publish those photographs, as it is not likely that publication will harm any child. The same does not apply to (for example) a child in an orphanage, which has the potential to be harmful to the child. Therefore, even if your intentions are good, you will do well to reconsider and re-reconsider before you decide to publish; and
- It is up to the journalist/publication to decide if a certain matter regarding a child is in the public interest. Just imagine the responsibility this entails.

Please return to the discussion on Section 3.4, as the same arguments are valid here. Especially note the comments about the child also needing to give consent.

***** Section 28.2 of the Bill of Rights in the South African Constitution says: “A child’s best interests are of paramount importance in every matter concerning the child.”

ACTUAL CASES

A person was in the news since his arrest after the death of his wife on a wine estate outside Stellenbosch. He was accused of strangling his wife; his defence was that she had committed suicide.

X published a photograph of this man's family, including his three daughters – two of whom were minors at the time (they were 16). I wrote: "If the publication of this photograph did not add to the children's trauma, I would be most surprised. [The magazine's] argument that the photograph was on [the wife's] Facebook page and therefore accessible to the public, and that [she] had therefore waived her children's right to privacy is poor – the fact that a photograph is accessible does not by default mean that it may be published. If it does, then Section 8.1.1 is not worth the paper it is written on. The argument that some other publications published the photographs in question before [X] did so, is irrelevant..."

I also argued that the children were old enough to give consent.

In conclusion, I stated: "I cannot agree with [X's] assertion that its 'contribution, if any, to the harm suffered by the minors is ... negligible'. On the contrary. And if there was any public interest in the publication of a photograph of the minors, I am yet to be enlightened about it."

In another case, X saw it fit to vividly describe a 15-year-old girl (and her circumstances) who allegedly wanted to join the Islamic State. I wrote: "I have little doubt that residents in the area might have been able to identify the girl in question, based on the over-sharing of the information reported in the story." Her father was a prominent businessman, and the issue was extremely serious – both within and outside of the Muslim community.

8.2 [In the spirit of Section 28.2 of the Bill of Rights the media shall] not publish child pornography .

There is no excuse for publishing child pornography. It is as simple as that, and nothing more needs to be said. Full stop.

It is noticeable that this clause does not prohibit the publication of pornography as such. The nature of a publication and what its readers could reasonably expect would be the determining factors. For example, I would find against a church or a family magazine if it publishes pornography, but not against a magazine with a title such as "Porno at its best", or something similar. The criterion is what readers can reasonably expect from a publication.

***** Child Pornography is defined in the Film and Publications Act as: "Any visual image or any description of a person, real or simulated, however created, who is or who is depicted or described as being, under the age of 18 years, explicitly depicting such a person who is or who is being depicted as engaged or participating in sexual conduct; engaged in an explicit display of genitals; participating in or assisting another person to participate in sexual conduct which, judged within context, has as its predominant objective purpose, the stimulation of sexual arousal in its target audience or showing or describing the body or parts of the body of the person in a manner or circumstance which, in context, amounts to sexual exploitation."

8.3 [In the spirit of Section 28.2 of the Bill of Rights the media shall] not identify children who have been victims of abuse or exploitation, or who have been charged with or convicted of a crime, without the consent of their legal guardians (or a similarly responsible adult) and the child (taking into consideration the evolving capacity of the child), a public interest is evident and it is in the best interests of the child.

Note the two qualifications here: A child victim or a child charged with a crime, or a child convicted of a crime, may only be identified when it is in the public's interest and if it is in that child's best interests to do so. The fact that both conditions should be met again places the onus on the journalist to make a responsible decision in this regard.

The same arguments put forward under Section 3.4 are applicable here. Especially, see the comments about the child also needing to give consent.

I did not have any such complaints during my term as Ombud.

9. Violence, Graphic Content

9.1 The media shall exercise due care and responsibility when presenting brutality, violence and suffering.

It is noticeable that the Press Code does not prohibit the publication of brutality, violence and suffering – in fact, in some instances it is even necessary to inform the public of such happenings. Not only does the public have the right to know, but the presentation of violence etc. may be instructive and serve positive purposes if done with sensitivity.

However, as always, there are limitations. Such matters can easily be sensationalised and glamorised, and even be inflammatory. Always ensure that any such presentation does not portray brutality etc. in a positive light. This is especially important when violence etc. is committed based on race, ethnicity, religion, sex, age, or disability.

Along with public interest, the media should also consider the effect its reportage may have on people who are affected by violence – especially when a loved one has died.

ACTUAL CASE

Sometimes publications are not careful enough. In one such instance, a child took his own life by hanging himself from a tree (on school grounds). The newspaper published this photograph and blocked out his eyes – but that was not enough, as his parents and friends could still identify him. Think of the unnecessary pain this photograph has caused them. Personally, I would only have published this photograph if I had the consent of both parents.

9.2 [The media shall] not sanction, promote or glamorise violence or unlawful conduct.

We live in a brutal, violent world, and the public has a right to know about it. However, there is no need to overkill. Anything does not go. This clause asks for “care and responsibility” and refers to text as well as photographs.

Text: Let me use an extreme example to try and make a point by returning to the fictitious public figure who was killed when his throat was slit. (See discussion under Section 1.4 above.) There is no need to report just how long and how deep the cut was. Just think about the unnecessary pain and suffering such details would cause his loved ones.

Photographs, video footage. The danger of overstepping is even greater in these instances. I have seen some atrocious examples of this.

Here are some of the measures you can use when deciding if and how to publish dubious photographs:

- It has to be in the public interest; and
- In the case of dead or heavily injured people, you may avoid causing unnecessary harm by considering not to:
 - identify the person (for example, blocking out the person’s face and other vital parts of the body – and doing so adequately);
 - publish gross details of wounds;
 - use colour photographs;
 - publish large photographs; and
 - use photographs on the front page.

In such cases, readers – and especially children – should be informed about the sensitive material.

Let me dwell on these issues for a while. The more a matter is in the public interest, the greater your freedom will be. For example, in 1966 South Africa’s Prime Minister (Hendrik Verwoerd) was stabbed to death in Parliament. Just about every newspaper in the country published his bloody face on its front page. The public interest was so overriding that this was deemed to be acceptable.

Some journalists argue that a warning on the front page is counterproductive as it will only stir up curiosity and so encourage people to look. That may be true, but I do not hold this view. By warning the public, you have done your ethical duty – the media inform; the public choose.

ACTUAL CASES

Only one hand of a person who had died in a motor accident was visible in the photograph – yet the family still complained. I dismissed the complaint because the body had not been identified, nor the extent of the injuries revealed.

X published a photograph of the Marikana massacre when police shot and killed 34 miners and wounded scores more. Naturally, it was big news at the time. The people in the photograph were all dead. I found that the newspaper was justified in publishing this photograph as it was overwhelmingly in the public interest, as none of the deceased could be identified (their faces were all turned away, with the possible exception of one), and as no gruesome wounds were visible.

9.3 [The media shall] avoid content which depicts violent crime or other violence or explicit sex, unless the public interest dictates otherwise – in which case a prominently displayed warning must indicate that such content is graphic and inappropriate for certain audiences such as children.

Enough has been said about violence.

Nudity is not necessarily the same as sex. Note that the Press Code does not prohibit the publication of nude photographs – that decision is left up to the publication itself. As I have stated under Section 8.2 above (about pornography), the nature of a publication and what its readers could reasonably expect would be the determining factors.

ACTUAL CASES

The headline to an article which had been complained about said it all: *Models shown having actual sex in new controversial fashion ad campaign*. The complaint was that the article contained graphics of models having “actual sex” – even while the photographs were “hazed over”, it was “pretty graphic and explicit for any not wanting to see photographs of a pornographic nature” (the complainant said).

One photograph depicted a woman who appeared to hold a man’s penis in her hand and was probably kissing it (the photograph was blurred, so the vital parts were not clear – but it was clear enough to fathom what was transpiring). Another photograph showed two people kissing, while the woman had her hand on the other person’s (naked but blurred) genitals. Even though the vital parts were blurred, it was not done in such a way that it left much to the imagination as to what was happening.

I quoted the preamble’s “definition” of public interest: “The media’s work is guided at all times by the public interest, understood to describe information of legitimate *interest or importance* to citizens.” (My emphasis.)

Noting the difference between “interest” and “importance”, I argued that the photographs were not of legitimate “importance” to readers – they were, however, of “legitimate interest” to the public (given the uniqueness of the matter). I also noticed that readers could have reasonably expected such pictures in this publication.

In the end, I dismissed the complaint, but upheld it in so far as there was no warning that the content contained material of a graphic sexual nature.

An organisation complained that an online publication showed, without warning, naked female breasts on its website. Only the woman’s nipples were covered with little ice cream cones. I noted that the photograph in question did not portray sex, let alone “explicit sex” – it was about nudity. I said there is a (decisive) difference between sex and nudity. The Code does not prohibit the latter but leaves it up to publications to decide for themselves what should be published and what not. It also does not prohibit photographs of sex – it clarifies by saying “explicit” sex. And even then, it is permissible if it is in the public interest. I added: “South Africa is an open society, and this office should do nothing to suppress our hard-earned freedom of speech and expression. If the photograph contained explicit sex, I would have expected [the publication] to warn readers about it.”

10. Headlines, Captions, Posters, Photographs and Video / Audio Content

10.1 Headlines, captions to photographs and posters shall not mislead the public and shall give a reasonable reflection of the contents of the report or photograph in question.

If an article is well-written, the gist of the story is in the intro – from where the headline then usually follows. This ensures

that the headline gives a reasonable reflection of the content of the report. However, if the story is badly written, it makes life difficult for sub-editors.

The most common mistake is that headlines often portray an allegation as fact – even after the story has quite correctly presented an allegation for what it is and has attributed it to a source. However, some thoughtless journalists often neglect to use inverted commas or to attribute the statement when writing headlines.

Also, note that when a story is inaccurate and this is reflected in a headline or a caption, that headline or caption will also be wrong and therefore will also be in breach of the Code.

Sub-editors should be careful – they are also subject to the Code.

Sometimes, citing some court verdicts, newspapers argue that headlines should be read “holistically”, meaning that they should be interpreted in the light of the story itself (as a defence for a badly written headline). This is only partly true. For example, Judge Phillip Levinsohn said in a Supreme Court case in eSwatini (in 2013): “Many readers of newspapers simply glance at the bold headings only and then move on. The impression implanted in the mind of the reader by such blaring headlines is likely to be both deep and lasting. Most readers do not read the whole story ...”

From this, it is fair to say that headlines should stand on their own and should therefore give a reasonable reflection of the content of the story.

ACTUAL CASES

One headline read: *SIU probes [Y's] associates – Net widens as investigators find evidence of fraudulent activity conducted in three provinces*. However, the investigators who found this “evidence” qualified the statement that they had found “possible evidence”. The newspaper saw it fit to ignore that qualification.

Here are some more examples:

- X quoted sources who alleged that a certain public official (Y) was corrupt. The headline should therefore have read: *Y ‘corrupt’, or Y corrupt, sources say*. These are not statements of fact, as they are shown to be people’s opinions. It should not read *Y is corrupt* – which is exactly what the headline said. That, again, is turning an allegation into fact.
- X alleged that a prominent politician was lying about a certain matter (singular, one alleged lie). However, the headline stated: *“Lies, lies and more lies”*. This was plural, as well as a statement of fact; while the story referred to only *one, alleged lie*.
- A person who was hijacked, complained the caption falsely stated that the incident had happened “recently” – while, in fact, it had happened many months ago. The story itself did not put any date to the hijacking, nor did it use the word “recently”. The sub-editor took it upon her- or himself to use that word, probably to make the incident more newsworthy.

Posters can cause even more harm than text, as many people read them – but without the necessary context. Here are some examples:

- A newspaper’s main front-page headline read that “spy tapes” had exposed Y as the mastermind behind the manipulation of the NPA (which resulted in the withdrawal of corruption charges against the then President of the country). Posters also read: “Spy tapes expose [Y]”. I directed the newspaper to apologise to him for stating as fact in the headlines that the “spy tapes” have “exposed” him, thereby inaccurately, unfairly, and unnecessarily harming his reputation; I also asked for a retraction of the mastermind-statement. He accepted this ruling but appealed my decision not to carry the apology on posters as well. The Appeals Panel overturned my decision regarding the posters and ordered X to apologise on that platform as well. This was the first, and to my knowledge the only, time that a newspaper had to apologise on its posters.
- A former provincial Premier complained about a poster that stated as fact that she had wasted millions of rands. However, the story attributed this allegation to a source – who was later found to be wrong. Talk about causing unnecessary harm.
- A poster claimed that the wife of the then State Security Minister had been found guilty of drug smuggling. The fact that she was later convicted of this felony did not justify X to state it as fact at that stage – the court case had not even yet begun.

10.2 Photographs and video/audio content shall not misrepresent or mislead nor be manipulated to do so.

The manipulation of photographs can be done either by photo-shopping (either by entering new images, or removing old ones), or by cropping.

Remember the world-famous example of photograph manipulation when the late President Nelson Mandela released two white doves after he had been released from jail? These doves were too far away from Mandela’s hands to fit in the

photograph, so the publication manipulated it.

This was an “innocent” manipulation as it did not alter the meaning of what had happened. Yet, the publication should have mentioned that it had doctored the photograph. Very few journalistic practices erode the credibility of a newspaper more than this – readers invariably ask what else can be make-believe.

The point is: If, for practical reasons, a photograph must be manipulated (either by photo-shopping or by cropping), *it should not change its meaning*; and when it is photo-shopped, such as in Mandela’s case, the media should inform the public accordingly.

A word of caution regarding the use of stock photographs: For example, when someone was killed with a knife and the publication has no photograph of the incident, it may use a photograph of somebody’s hand, holding a knife that drips with blood. In that case, be careful – depending on the story, of course, the colour of that person’s hand, or tattoo marks on the hand, may perpetuate a stereotype. “This is what white, or black, people often do – what else can you expect?” Or: “Typical of a member of a gang – this is what they routinely do.”

ACTUAL CASE

Five colleagues were socialising in a bar after work. The story was about an alleged extramarital relationship between two of them. The publication then cropped the photograph to make it seem as if the “couple” was socialising on their own – which was not true. They were merely sitting next to each other, together with three other colleagues (who were cropped out of the photograph). Cropping the story to suit X’s reportage. Shame on X.

11. Confidential and Anonymous Sources

11.1 *The media shall protect confidential sources of information – the protection of sources is a basic principle in a democratic and free society.*

It is an extremely serious matter to give your word to protect the identity of a source – Section 205 of the South African Criminal Procedures Act stipulates that the state may force persons (and also journalists) to reveal their sources, at the risk of going to prison. This is the principle: Once you have given your word not to reveal a source’s identity, you should stick to it – even though it may have dire consequences for you.

However, if you later discover that your source has (purposefully) misled you, you have every right to reveal that source’s identity. Please note, though, that you are not obliged to do so – that is the journalist’s and/or the publication’s decision.

11.2 *[The media shall] avoid the use of anonymous sources unless there is no other way to deal with a story, and shall take care to corroborate such information.*

The use of anonymous sources has become a major problem of late. The main reason is that so many government officials are scared to speak out, so some of them become anonymous whistle-blowers. This is forcing the media to make use of such information, which is not a healthy situation at all.

The obligation to avoid the use of anonymous sources, if possible, is important because unnamed people:

- can say whatever they want to;
- are not accountable; and
- may have ulterior motives (I have indeed often seen anonymous sources trying to mislead journalists to enhance their own agendas).

Politicians are the usual suspects in this regard. Some of them will go to extreme lengths to discredit their opponents.

ACTUAL CASES

A certain political party “analysed” a report and fed the newspaper with its analysis – pretending that its probe presented the truth. X took the information contained in this “analysis” as gospel and published it as such. In the meantime, though, the party misinterpreted the report – with the result that the public was misled as well. My journalistic instinct tells me that this was intentional. This may sound strange but being cynical is an asset to journalists.

Here are more examples:

- X reported that a certain prominent person in South Africa was not making himself available for election as deputy president of the ruling party. The senior political editor’s information was the opposite, so she tried to stop the publication of the story. The reporter allegedly told her that she should trust him, as he trusted his (anonymous) sources. His story later turned out to be false – and the political editor resigned as a result of that. I commend her for that. One can only speculate as to the motives of the sources who planted the incorrect information.
- A school principal was suspended by the Department of Education, but it did not communicate any clear reason for its actions at that stage. Nine publications reported this matter, eight of them correctly stating that the reason for the suspension was unclear. However, the ninth quoted a single, anonymous source saying that the reason was theft. This turned out to be false, and the newspaper stated in a follow-up story that the source had spread malicious gossip. Yet, X allowed herself to be misled by this source, and ended up causing the principal huge, unnecessary harm.

Therefore, always:

- handle anonymous sources with the utmost care – they may have ulterior motives;
- try to convince your sources to go on record – if not, you may proceed, provided that you cannot get the same information elsewhere and that the information is in the public interest;
- talk to your editor before publication; and
- corroborate their allegations – if you cannot do that, you should either not publish at all, or at the very least state that you were not able to corroborate the information.

However, circumstances alter cases. For example, if a source tells you off the record that Parliament is going to be blown up the next day, surely this information should be published in the public interest – if you can corroborate it, or not. But such an exception would be few and far between.

11.3 [The media shall] not publish information that constitutes a breach of confidence, unless the public interest dictates otherwise.

Under normal circumstances, journalists should at all costs protect their sources and not publish information that constitutes a breach of confidence.

I have already stated above that nobody can expect you to protect sources who have purposefully misled you (read: spread fake news). It may be in the public interest to expose such “sources”.

12. Payment for Information

The media shall avoid shady journalism in which informants are paid to induce them to give the information, particularly when they are criminals – except where the material concerned ought to be published in the public interest and the payment is necessary for this to be done.

It is important to understand the reasons behind this subsection. The practice of paying for information should be avoided because it:

- puts the credibility of the information in doubt – will such a source tell you the truth, or perhaps what you want to hear, or maybe try to further some or other agenda?
- changes the relationship between the journalist and the source – the latter becomes a business partner, which may compromise the journalist’s independence.

However, if the information is in the public interest and a journalist cannot obtain it otherwise, the Code does allow journalists to pay for information. But that should certainly be the exception.

I did not have any such complaints during my stint of more than nine years as Press Ombud.

Q: E. Complete the following sentences, or say “true” or “false”:

59. A child is a person under the age of ... (1)
60. The SA Constitution states: “A child’s best interests are of paramount importance in every matter concerning the child” – “yes” or “no” (1)
61. If there is any chance that coverage might cause harm of any kind to a child, he or she shall not be interviewed, photographed or identified without ... or ... ; and the ... ; and ... (4)
62. The media shall not identify children who have been victims of abuse, exploitation, or who have been charged with or convicted of a crime, without ... or ... and the ... and ... and it is ... (5)
63. Under certain circumstances, the media may publish child pornography – “true” or “false” (1)
64. The Press Code prohibits the publication of brutality, gratuitous violence and suffering – “true” or “false” (1)
65. The Press Code prohibits the depiction of violent crime and explicit sex – “true” or “false” (1)
66. If a headline reflects the content of an inaccurate story, the media are in breach of the Code – “true” or “false” (1)
67. Photographs can be manipulated either by ... or by ... (2)
68. There is nothing wrong with manipulating a photograph, as long as it ... and ... (2)
69. The media shall avoid the use of anonymous sources, if possible, because ... and ... (2)
70. The media shall ... which they have obtained from anonymous sources (1)
71. The media may under no circumstances publish information that constitutes a breach of confidence – “true” or “false” (1)

[Total: 23]

Chapter 2: USER-GENERATED CONTENT AND ACTIVITIES

While Chapter 1 of the Code is about content generated by the media, the second chapter is about user-generated content.

In May 2020, the Press Council issued a guidance note to assist its subscriber members when formulating social media policies for their journalists. Contact the Press Council in this regard.

Study this section carefully (which is self-explanatory), and then answer the following questions

Q: F Complete the following sentences, or say “true” or “false”:

- | | | |
|-----|--|-----|
| 72. | Chapter 1 of the Code is about content generated by ... ; Chapter 2 of the Code is about content generated by ... | (2) |
| 73. | The media are obliged to moderate all user-generated content in advance – “true” or “false” | (1) |
| 74. | It is up to every publication to have a user-generated content (UGC) policy, or not – “true” or “false” | (1) |
| 75. | A publication may remove any user profile in accordance with its UGC policy – “true” or “false” | (1) |
| 76. | The media do not have to make their UGC policy public – “true” or “false” | (1) |
| 77. | The media shall particularly carefully monitor online forums directed at ... | (1) |
| 78. | Normally, it is a defence for the media to show that they did not author or edit the content complained of – “true” or “false” | (1) |

[Total: 8]

Lined writing area with horizontal dotted lines for text entry.

THE ANSWERS

A: Preamble

1	The media exist to SERVE SOCIETY	1
2	Journalists are first and foremost accountable to THE PUBLIC	1
3	The freedom of the media is not a licence to KILL	1
4	Real freedom breeds ACCOUNTABILITY and RESPONSIBILITY	2
5	The freedom of the media enables citizens to MAKE INFORMED JUDGMENTS	1
6	The media's freedom is founded or based on the PUBLIC'S right to know	1
7	The media serving society means looking inward, ensuring ETHICAL REPORTING; and looking outward, ensuring that THE FORCES THAT SHAPE SOCIETY ARE SCRUTINISED	2
8	"Public interest" describes INFORMATION OF LEGITIMATE INTEREST OR IMPORTANCE TO CITIZENS	1
9	Journalists should commit themselves to the highest standards in order to MAINTAIN CREDIBILITY and to KEEP THE TRUST OF THE PUBLIC	2
10	The heart of media ethics and of our Code is: always striving for TRUTH; and always avoiding UNNECESSARY HARM	2
11	Chapter 1 of the Code is about content generated by THE MEDIA; Chapter 2 of the Code is about content generated by THE PUBLIC/USERS	2

[Total: 16]

Chapter 1: MEDIA-GENERATED CONTENT

B: Gathering, Reporting of News (Section 1)

12	Another word for “truthfully” is BALANCE or REASONABLENESS	2
13	Editor to X: “If you assume, you are MAKING AN ASS OUT OF YOU AND ME”	1
14	Another word for “fair” is BALANCED	1
15	CONTEXT is as important as text	1
16	It is not always what journalists write that is unethical, but often also what they DO NOT REPORT that is problematic	1
17	Journalists should not present information as fact that cannot REASONABLY BE TRUE	1
18	News should be obtained legally, honestly and fairly, unless PUBLIC INTEREST DICTATES OTHERWISE	1
19	The gathering of personal information for the purposes of journalistic expression must ONLY BE USED FOR THIS PURPOSE	1
20	Media representatives shall identify themselves as such, unless PUBLIC INTEREST or THEIR SAFETY dictates otherwise	2
21	Journalists should VERIFY THEIR INFORMATION if they have reason to doubt the accuracy thereof	1
22	“Verification” means ESTABLISHING THE TRUTH, while “corroboration” is when ANOTHER SOURCE CONFIRMS YOUR INFORMATION	2
23	Verification can only be achieved with PRIMARY and INDEPENDENT sources	2
24	The media shall seek the views of the subject of CRITICAL REPORTAGE in advance of publication	1
25	“Critical reportage” is when THE PUBLICATION OF INFORMATION IS LIKELY TO LOWER A SUBJECT’S REPUTATION	1
26	Journalists need not verify their information if they DO NOT HAVE REASON TO DOUBT IF IT IS CORRECT	1
27	Journalists should verify doubtful information because SUCH INFORMATION IS LIKELY TO HARM SOMEBODY UNNECESSARILY	1
28	“Reasonable time” for a response depends on the NUMBER and the NATURE of the questions	2
29	Should a journalist report it if she/he was unable to obtain comment? YES	1
30	Journalists are not allowed to ask parties to an ongoing court case for comment because IT IS LIKELY TO INFLUENCE COURT PROCEEDINGS	1
31	Where a news item is published on the basis of limited information, this shall be stated as such and BE SUPPLEMENTED ONCE NEW INFORMATION BECOMES AVAILABLE	1
32	The media shall make amends for presenting information or comment that is found to be inaccurate by communicating, PROMPTLY and WITH APPROPRIATE PROMINENCE a retraction, correction or explanation	2
33	An online article that has been amended for factual accuracy should INDICATE THIS	1
34	The only reason for an article to be removed from a website is in case of DEFAMATION	1
35	If a reporter takes over text from somebody else, the journalist should INDICATE THIS	1

[Total: 30]

C: Independence, conflict of interest (2); Privacy, dignity, reputation (3)

36	By saying that journalists should stay independent we mean BEING FREE OF NON-PROFESSIONAL CONSIDERATIONS	1
37	Conflicts of interest must be avoided because IT COULD LEAD READERS TO DOUBT THE MEDIA'S INDEPENDENCE AND PROFESSIONALISM	1
38	The media shall not accept a bribe, gift, OR ANY OTHER BENEFIT WHICH MAY INFLUENCE COVERAGE	2
39	The media shall indicate clearly when an outside organisation has contributed to the cost of newsgathering because IT MAY LEAD TO SLANTED REPORTAGE – WHICH THE PUBLIC HAS THE RIGHT TO KNOW	1
40	“Native advertising” is where SOMEONE PAYS FOR TEXT THAT IS PRESENTED AS NEWS	1
41	Regarding privacy, one must distinguish between PUBLIC OFFICIALS and PUBLIC FIGURES (CELEBRITIES) and PRIVATE CITIZENS	3
42	Public officials have the least right to privacy because THEY ARE ACCOUNTABLE TO THE PUBLIC	1
43	Celebrities have less right to privacy than citizens because THEY ARE ROLE MODELS	1
44	“Reputation” can be defined as SOMEONE’S PUBLIC IMAGE	1
45	“Dignity” can be defined as THE RIGHT OF PEOPLE TO BE VALUED AND RESPECTED FOR THEIR OWN SAKE, AND TO BE TREATED ACCORDINGLY	1
46	You cannot defame someone with THE TRUTH and when it is IN THE PUBLIC INTEREST	2
47	The repetition of defamation is also DEFAMATION	1
48	You are always safe if you used the word “allegedly” – FALSE	1
49	To identify a rape survivor, you need to GET CONSENT FROM THE PERSON	1
50	To identify a child who is a rape survivor you need to GET CONSENT FROM ITS LEGAL GUARDIAN, and THE CHILD, and PUBLIC INTEREST IS EVIDENT, and IT IS IN THE BEST INTERESTS OF THE CHILD	4
51	The status of a person living with HIV/AIDS should normally not be disclosed because IT CARRIES A STIGMA WITH IT	1

[Total: 23]

D: Protection of Personal Information (4); Discrimination & Hate Speech (5); Advocacy (6); Protected Comment (7)

52	“Hate speech” demonstrates a clear intention to be hurtful or harmful or to incite harm or to promote or propagate hatred – YES	1
53	The media have the right and indeed the DUTY to report and comment on all matters of legitimate public interest	1
54	The media shall use and disclose personal data only for JOURNALISTIC PURPOSES	1
55	Stereotyping is dangerous because it DOES NOT TREAT PEOPLE AS INDIVIDUALS	1
56	Publications are justified in strongly advocating their own views on controversial topics, provided that they treat their constituencies fairly by CLEARLY DISTINGUISHING BETWEEN FACT AND OPINION and by NOT MISREPRESENTING OR SUPPRESSING RELEVANT FACTS and by not DISTORTING THE FACTS	3
57	Section 7 on “Protected comment” also applies to hard news stories – NO	1
58	Comment or criticism is protected even if it is EXTREME and UNJUST and UNBALANCED and EXAGGERATED and PREJUDICED – as long as it EXPRESSES AN HONESTLY HELD OPINION; is WITHOUT MALICE; is ON A MATTER OF PUBLIC INTEREST; has TAKEN FAIR ACCOUNT OF ALL MATERIAL FACTS; and is presented IN A MANNER THAT IT APPEARS CLEARLY TO BE COMMENT	10

[Total: 18]

E: Children (8); Violence, Graphic Content (9); Headlines, Posters, Photographs, Captions (10); Confidential, Anonymous Sources (11); Payment for information (12)

59	A child is a person under the age of EIGHTEEN	1
60	The SA Constitution states: "A child's best interests are of paramount importance in every matter concerning the child" – TRUE	1
61	If there is any chance that coverage might cause harm of any kind to a child, he or she shall not be interviewed, photographed or identified without THE CONSENT OF A LEGAL GUARDIAN or OF A SIMILARLY RESPONSIBLE ADULT; and the CHILD; and A PUBLIC INTEREST IS EVIDENT	4
62	The media shall not identify children who have been victims of abuse, exploitation, or who have been charged with or convicted of a crime, without WITHOUT THE CONSENT OF THEIR LEGAL GUARDIANS or A SIMILARLY RESPONSIBLE ADULT and the CHILD (TAKING INTO CONSIDERATION THE EVOLVING CAPACITY OF THE CHILD) and IS IN THE PUBLIC INTEREST and it is IN THE BEST INTERESTS OF THE CHILD	5
63	Under certain circumstances, the media may publish child pornography – FALSE	1
64	The Press Code prohibits the publication of brutality, gratuitous violence and suffering – FALSE	1
65	The Press Code prohibits the depiction of violent crime and explicit sex – FALSE	1
66	If a headline reflects the content of an inaccurate story, the media are in breach of the Code – TRUE	1
67	Photographs can be manipulated either by PHOTO-SHOPPING or by CROPPING	2
68	There is nothing wrong with manipulating a photograph, as long as it DOES NOT CHANGE ITS MEANING and THE PUBLIC IS INFORMED	2
69	The media shall avoid the use of anonymous sources, if possible, because UNNAMED PEOPLE CAN SAY WHAT THEY LIKE and ARE NOT ACCOUNTABLE AND MAY HAVE ULTERIOR MOTIVES	2
70	The media shall CORROBORATE INFORMATION which they have obtained from anonymous sources	1
71	The media may under no circumstances publish information that constitutes a breach of confidence – FALSE	1

[Total: 23]

Chapter 2: USER-GENERATED CONTENT

72	Chapter 1 of the Code is about content generated by THE MEDIA; Chapter 2 of the Code is about content generated by THE PUBLIC	2
73	The media are obliged to moderate all user-generated content in advance – FALSE	1
74	It is up to every publication to have a user-generated content (UGC) policy, or not – FALSE	1
75	A publication may remove any user profile in accordance with its UGC policy – TRUE	1
76	The media do not have to make their UGC policy public – FALSE	1
77	The media shall particularly carefully monitor online forums directed at CHILDREN	1
78	Normally, it is a defence for the media to show that they did not author or edit the content complained of – TRUE	1

[Total: 8]

Grand total: 118

My score: _____

Your mark	My comment
118	That's the way it should be
100 – 117	Hmm – cause for concern
Below 100	I see a bad moon rising

ASSOCIATION OF INDEPENDENT PUBLISHERS

The Association of Independent Publishers (AIP) is a non-profit company registered with the CIPC and a Public Benefit Organisation (PBO).

AIP was established as a membership association in 2005. Today it represents grassroots community newspapers (both online and print). There are 171 AIP members that publish 226 publications that produce over 4.7 million copies per month (reaching close to 14.1 million readers).

AIP member publications are distinct from mainstream media owned by the large media groups like Media 24, Independent, Caxton Group and Arena. Members publish

Our work as AIP includes the following areas:

1. Research and legal support for our members;
2. Support to strengthen sustainability of our publishers in the digital environment; and
3. Training and capacity building support to professionalise the community media sector.

primarily in rural areas, townships and small towns. They are independently owned and funded.

The AIP represents print and online media published in all 11 official languages.



171

AIP members



AIP | ASSOCIATION OF INDEPENDENT PUBLISHERS

For more information: support@aip.org.za • www.aip.org.za
• 272 Pretoria Ave, Ferndale, Randburg, 2194 • 011-713-9614

INTERACTIVE ADVERTISING BUREAU (IAB)



150

leading media and marketing companies

The Interactive Advertising Bureau (IAB) South Africa empowers the media and marketing industries to thrive in the digital economy. Its membership is comprised of more than 150 leading media and marketing companies, brands, and the technology firms responsible for enabling excellence in digital marketing focusing on identifying and targeting audiences, delivering and optimising campaigns to these audiences and the innovation and selling of such activities.

The non-profit, non-government, trade group fields critical research on interactive advertising, while also educating brands, agencies, publishers and the wider business community on the importance of digital marketing.

The IAB strives to consistently and systematically safeguard and propel the lasting success of our members with these 5 key priorities that must be resolved for the long-term health of the interactive advertising industry. Building brands digitally, putting users first, creating a consistent approach to measuring, ensuring the value of publishers' audiences are realized and diversified revenue streams are commonplace and ensuring a trustworthy digital supply chain.

iab.
south africa

Contact: razia@iabsa.net or 071 394 4928 • debbie@iabsa.net or 010 900 3338

SOUTH AFRICAN NATIONAL EDITORS' FORUM (SANEF)

The South African National Editors' Forum (SANEF) is a non-profit organisation whose members are editors, senior journalists and journalism trainers from all areas of the South African media.

We are committed to championing South Africa's hard-won freedom of expression and promoting quality, ethics and diversity in the South African media.

SANEF promotes excellence in journalism through fighting for media freedom, writing policy submissions, research, education and training programmes.

WE PROMOTE:

QUALITY

SANEF promotes excellence in journalism through training and education programmes as well as our free-of-charge publications.

ETHICS

SANEF is committed to encouraging ethically-driven media, and providing an environment for ethics discourse.

FREEDOM

SANEF supports a free media and the right of the media to work without fear of reprisal, harassment or intimidation.

DIVERSITY

Among SANEF's key endeavours is the work of addressing racial and gender diversity in the media so that it more accurately reflects South Africa's demographics.

The Station, 63 Peter Place, Bryanston, 2196 • 010 001 8971 • 079 029 7656 • sanef@sanef.org.za

FORUM OF COMMUNITY JOURNALISTS (FCJ)

The FCJ (Forum of Community Journalists) is an independent, non-profit, non-racial and voluntary organisation (registered as a Section 21 company) striving to promote and express the interests of all journalists employed on a permanent or freelance basis at regional community newspapers and online community publications in South Africa.

Representing hundreds of community journalists from community newspapers across the country, the FCJ takes pride in its duty to safeguard press freedom as the cornerstone of democracy. The FCJ is led by the Board of Directors which comprises a group of volunteers who are invested in a credible community media for future generations.




100+
Representing
hundreds of
community
journalists

Go to www.fcjonline.co.za or email myfcjinfo@gmail.com

5 STEPS TO SUBMIT A COMPLAINT TO THE PRESS COUNCIL

1 If you believe a publication – print or online – has not lived up to the Code of Ethics and Conduct for South African Print and Online Media, you may lodge a complaint with the Press Council at www.presscouncil.org.za or per email at enquiries@ombudsman.org.za within 20 working days of the publication of the relevant story. If necessary, the Public Advocate will assist you in formulating your complaint. The Public Advocate will also act as your champion throughout the process, arguing your matter before the Press Ombud and the Appeals Panel, if it reaches that level. In the complaint, state the name and date of the publication and the reason why you believe it has breached the Code. Send a copy of the article with the complaint to speed up the process.

2 The Public Advocate will negotiate with the publication on your behalf in an attempt to find a speedy settlement.

3 If no amicable resolution is achieved, the Public Advocate will refer the matter to a member of Press Ombuds Panel for adjudication. The Press Ombud will either review

the complaint on the papers submitted to him/her or he/she may hold a hearing and will be assisted by two members of the Panel of Adjudicators – a media representative and a public representative – at the hearing. Decision will be by majority vote.

4 If either party is not satisfied with the decision, it may take the matter on appeal to the Chair of Appeals, retired Judge President Judge Bernard Ngoepe. If leave to appeal is granted, the Judge will hear the appeal with a media representative and up to three public representatives from the Panel of Adjudicators.

5 The decision of the Appeals Panel is final. The matter may be taken to the High Court for review, but only on procedural issues and not the merits.

Effective self-regulation is the best system for promoting high standards in the media.

- Declaration of Principles on Freedom of Expression in Africa, 2002

The Press Council of South Africa (PCSA) is an independent, co-regulatory body. We believe that the quality of our journalism will improve if the public is vigilant and holds journalists to account to promote and develop ethical practice in journalism which will elevate our public discourse.

The Press Council aims to uphold and promote the SA Constitution by preserving the right to freedom of expression and freedom of the media as contained in Section 16 of the Bill of Rights.

The Press Council has established and maintains a voluntary, independent mediation and adjudication mechanism to deal with complaints.

For more information on the PCSA:



www.presscouncil.org.za



enquiries@ombudsman.org.za



011-484-3612





CONSTANT

Quality-assurance processes are in place to ensure printing excellence is maintained



MATERIALS

Caxton uses the best quality, environmentally friendly consumables



YEARS

After 40 years in the printing industry, we offer both experience and expertise



KEEP

Client retention through excellent service delivery



8 COLDSET FACTORIES ACROSS RSA

Johannesburg: Caxton JHB Printers

Polokwane: Northern Media Group

Pietermaritzburg: Guardian Web

Empangeni: Darwain Investments

Nelspruit: Lowveld Media

Rustenburg: Northwest Printers

Pinetown - DBN: Highway Printers

Cape Town: CTP Newspapers



Coldset Printing contact: **Juanita Roodt**
010 976 4345 or juanita@caxtonworks.co.za
www.caxton.co.za



SCAN HERE
to learn
more about
Caxton

YOUR ONE-STOP PRINT AND MEDIA SOLUTION