

# Decoding the code

sentence by sentence

by **Johan Retief**

**CODE OF ETHICS AND CONDUCT**

for South African print and online media



We stand for:

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**FAIRNESS**  
**BALANCE**  
**TRUTH**



CAXTON local media

# Decoding the code

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## Foreword

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 regulating the press and online media (“the media”, for the purpose of this exercise). Editors and journalists 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 basic guidelines to journalists for acting ethically at all times.

The text itself is presented in bold italics; the comments are in normal type. Examples of actual cases are presented in boxes.

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



“Decoding the Code” is an ethics made easy manual or a Code for Ethics for dummies which attempts to simplify decision-making of complex and vexing questions of what to or not to publish under deadline pressures. It is immensely useful and a must for every newsroom.”

- Mathatha Tsedu, former Sanef executive director. *Photo: Tracy Lee Stark*

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

**Effective from 1 January 2019**

The Press Council of South Africa and the Interactive Advertising Bureau South Africa adopt 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.

## 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 summarization;
- 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;
- 1.11 prominently indicate when an online article has been amended or an apology or retraction published and link such to that text, while the original article may remain;
- 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 organization 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 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.



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. Protection of Personal Information\*

The media shall:

- 4.1 take reasonable steps to ensure that the personal information under their control is protected from misuse, loss, and unauthorized access;
- 4.2 ensure that the personal information they gather is accurate, reasonably complete and up to date;
- 4.3 take steps to verify the accuracy of their information and, if necessary, amend it where a person requests a correction to be made to his or her personal information;
- 4.4 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
- 4.5 inform the affected person(s) and take reasonable steps to mitigate any prejudicial effects where it is reasonably suspected that an unauthorized person may have obtained access to personal information held by the media.



“Personal information” is defined as follows in Section 1 of the Protection of Personal Information Act 4 of 2013: “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\*;

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, Pictures and Video / Audio Content

10.1 Headlines, captions to pictures and posters shall not mislead the public and shall give a reasonable reflection of the contents of the report or picture in question; and

10.2 Pictures 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.



This section 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.



# 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 up-front, and serves as an introduction to everything else following in the preamble and in the Code itself. 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 argument.) That is why there is a Press Council in the first place, as the most credible body that holds journalists accountable, and to further responsible journalism.

The first aspect of serving society, therefore, entails that the media should ensure that their reporting is true, accurate, fair, balanced, etc. 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 will 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 argument 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 (read: ability to act independently, without constraint) 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 utilized 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.

The media are not called the Fourth Estate for nothing, as scrutiny is vital to keep these powers in check. Remember what Lord Acton said: “*Power corrupts; and absolute power corrupts 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 such 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 new-born baby – which makes the role of a free and independent media all the more important.

***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 everybody;
- anybody can become a journalist – yes, without any sort of qualification;
- 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.

The second part of Section 16, which partly defines hate speech, reminds us that not even the freedom of the media is absolute. The highest law in our country 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 reach for. The media should therefore never be complacent, or assume that the right to freedom of speech is safeguarded for all time to come.

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 that freedom of expression is inherent to 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.

Note the distinction between “information of legitimate interest or importance” (emphasis added). There is indeed a difference between “what is interesting to the public” and “public interest”. The first can be described as “soft” news, the second as “hard” news. The former is not out of bounds as it is also enshrined in this Preamble.

***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 speech – 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 (watered-down) 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 minimum 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 is 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 apologized – 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 fulfill one of its most important duties, namely to give 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, homeless ones, etc. The point is that, while vulnerable people can easily be exploited, the media should maintain a moral high 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:*** See the discussion on this issue in Section 2 below.

We now move on to the Code itself. Note the structure – Chapter 1 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.





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



## THE CODE

### 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 said he had sucked out of his thumb the “best” story that he had ever written. Fortunately, he is not a journalist any more (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 in order 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 CASES

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 untruthful to the extreme.

Another journalist quoted a spokesperson of the Premier of Limpopo – but it turned out that he had never spoken to him at all. Believe it or not: X fabricated the quote that he had attributed to the spokesperson.

Need I state what immense damage such reporting does to the credibility of the South African media in general, and to the newspaper in particular?

**Accurately:** The be-all and end-all of all good journalism is to check, re-check, and re-re-check. Unfortunately, there is a deluge 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).

The heart of all good journalism is accuracy.



## ACTUAL CASES

X reported that a premier had not acted on a report by the provincial Department of Treasury regarding a multi-million rand corruption tender awarded by the Department of Health “under his close ally, MEC [Y]”. The fact of the matter, though, is that the tender had been awarded before Y’s term as MEC had even started.

X was at it again when reporting that a law firm has “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 fight lands radio presenter and woman in court*. The statements, of fact, that the complainant 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 was not true. I leave this matter to the editor, hoping that such sloppy reporting would 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 recognize 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.

“Fair” means “balance”, “reasonableness”, “evenhandedness”, “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 or 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).

## ACTUAL CASES

X reported that the newspaper “has seen email correspondence in which [Wits vice-chancellor Adam] Habib *instructs employees* at the university to *secure funding for a student*, who also happens to be a friend of his son, Irfan.” (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 Habib’s shoes, and you’ll realise just how unfair this reportage was.

TV actress Winnie Ntshaba 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 to neglect 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). The newspaper 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, the journalist had seen no evidence of any orgy – yet it was reported as such.

The publication argued the journalist “assumed” that there must have been an orgy after drugs had been taken, and that the celebrity was part of that scene. 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 summarization.***

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. 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 summarizing such texts, always ensure that you do not leave out material information. A badly summarized 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 CASES**

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.

Here is an atrocious example: 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 wrong-doing. 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.

In another case X reported on a controversial person who had received medical parole under alleged 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. The journalist neglected to report these reasons, again because such facts did not suit his story.

Accuracy means nothing without the correct context. In one 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 has ballooned from R38.6-billion to R54.5-billion. However, the context was missing, as this document was “inconclusive” and has not been accepted by Transnet’s board – a fact that X neglected to report. He made it sound as if the report was official, which 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 that cannot reasonably be 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. Again, note the use of the word “context”.

During my term as Ombud, I have often seen that journalists present 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 unnecessary damage. (See the discussion on headlines further down.)

## ACTUAL CASES

The Frankel family complained that an article stated, or at least implied, that the late Sidney Frankel had raped Marinda Smith (53) when she was 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 Smith in this regard, but it was not at liberty to turn her allegations into fact (before a court has not done so). Unfortunately, this is exactly what it did.

Cricket South Africa complained about the following sentence: “A knock-on effect of Brimstone’s abrupt decamping has seen the player auction that was initially slated to take place on August 19 being delayed by a week.”

This statement came from a source, but without the journalist acknowledging it. Even worse, he stated it as fact – which proved to be false. This was despite the fact that SCA had given the journalist the correct information prior to publication.

Volksblad complained that a story in another newspaper (headlined: *Volksblad clandestine agenda exposed – A covert cloak and dagger smear campaign against Dr Ace Magashule looms... The posters read, Volksblad covert agenda exposed*) falsely accused it of driving a racist and a political agenda against the then Free State Premier Ace Magashule. A well-known MEC in the provincial cabinet was reportedly implicated and has 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 Magashule 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 CASES

X wrote a story about homeless people who had TB. He went to the hospital and took a picture of such a patient, without permission from either the hospital or the patient. That is illegal – yet the reporter went ahead, anyway.

If the journalist asked for permission and was refused, and that 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 – even if it was illegal.

In this instance, however, that was not the case.

Journalists must exhaust all possibilities of obtaining news, and the information must be in the public interest, before any such action may be contemplated.

In another instance, an investigative TV 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. The journalist recorded and aired the abuses – which was clearly in the public interest. Needless to say, the abuses stopped and understandably there was no litigation against the station. As there was no other way of reporting on the matter, the TV station was justified in its 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, grabs his wallet, leaves him for dead, and runs off. His wife, who saw the assault, is hysterical.

Now X 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.

**“Public interest”:** Our office has had many complaints about whistleblowers 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 X obtained the news. The reporter 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, remember that you may end up in court.

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

The intention of this clause is to protect the public against the misuse of personal information gathered by journalists. This is in line with the (envisaged) Prevention of Personal Information Act (Popia). 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” you friends or family with inside information, or to use some data for personal gain.

Don’t!

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

Section 4 of the Code deals with this matter in more detail.

### ***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 a 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 realized 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 listen 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 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.

And, in the end, if you are unable to verify your information, you should state it in your story.

Another vital consideration is that verification can only be achieved with *primary* and *independent* sources.

Consider this: A publication is normally not a *primary* source. This means that if you use your archives, you may simply succeed in perpetrating 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 CASES

X reported that Mr Julius Malema owned a home worth R16-million. Eventually the politician 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.

Just 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 one of the most common mistakes journalists seem to be making all the time – even senior, experienced reporters. It is a surprising fact that most complaints lodged with the Ombud’s office include the issue of “I was not asked for comment prior to publication” – and in roughly 50% of the cases, the complainant has a point.

This is astonishing, for surely 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 his / her opinion. How would you feel if this happened to you?

It is important to understand that this does not apply in all circumstances. Firstly, note the phrase “critical reportage”. Again, the issue is about possible harm. If it is likely that your story may cause someone harm (rightly or wrongly), journalists are ethically obliged to ask such a person for comment.

Conversely, the less potentially harmful your story, the lesser the need to ask for comment. 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.

For example, if a journalist reports on a new appointment at the local school, it surely 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 soccer player is named Player of the Match you may report that he was awarded this honour without asking him for comment – as this reportage is not likely to cause him any harm. (Again, the journalist may ask this person for comment, but it is not unethical not to do so.)

Also, note that this clause does not apply to all instances of critical reportage. For example, in court reporting you are not obliged to ask for comment – you are in fact not allowed to do so as the matter is *sub judice* and you may adversely influence court proceedings. Once the other side has had a chance to testify in court, then it is time for you to report those views.

Also, a publication is not obliged to ask for comment if it merely recoups history (probably for context), and a subject of critical reportage’s views on the matter is in the public domain and widely known. There are court cases to back this up. (However: If X sees it fit to recoup the past in which a subject was involved in critical reportage, that reporter should also see it fit to repeat the subject’s views on that matter. Not to do so, would not be fair).

Another quite common problem is where a journalist in fact asks the subject for comment, but then reports on matters that the subject was not asked about.

Note that this clause contains the safeguard that journalists need not ask for comment if the publication has reasonable grounds for believing that by doing so, it would be prevented from publishing the report or where evidence might be destroyed or sources intimidated.

In the end, this is the bottom-line: Get comment from the person if your reporting is likely to harm that subject. In this process, you should give that person enough time to comment meaningfully – and, if you cannot get comment, then state it in your story (or else it would create the impression that you are lazy and, even worse, you are not concerned about the truth).



## ACTUAL CASES

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 some cattle meant for the poor were diverted to a certain person, while insinuating that the latter had unduly benefitted 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 is “reasonable time”. 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 with the time in which the subject had to reply. This is always a value judgment, before continuing to publish a story.

## ACTUAL CASES

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, Thabo Mbeki). 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 (Mathews Phosa) of his reportage for comment. The fact that he asked him so late amounted, for all intents and purposes, to not having asked him 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, recently 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 stop 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 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.

### ***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.***

When this office directs the publication of a correction or an apology, we always state 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 in an attempt to minimise the harm to their image. Clearly, that is against the spirit of self-regulation and of good, sound, ethical journalism.

***1.11 [The media shall] prominently indicate when an online article has been amended or an apology or retraction published and link such to that text, while the original article may remain.***

The reason for this provision is that the correction of mistakes should not go unnoticed – and then 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. There is one exception, though, as can be seen in the next sub-section.

***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 at them and potentially harm their future careers. This sub-section makes it important to understand what constitutes defamation.

In short, “unlawful defamation”, is the unnecessary lowering of someone’s public image. This implies that, if a statement is true (and it should also be in the public interest, according to the courts), it cannot be defamatory. A defamatory statement is an inaccurate one that, of necessity, unnecessarily lowers that person’s public image. (Please turn to Section 3.3 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.

But yet again, 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.

## ACTUAL CASES

The directors of Integrated Capital Management (ICM) 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 ago – 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 pictures.

***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 somebody 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 CASES

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.





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



## 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 so financial reporters. For example, some journalists succumb to the temptation to write favourably about shares they own in order to boost the value of those shares.

**“Political”:** This problem is even more common. Each and 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.

All of these amount to conflicts of interest.

But this article goes further: Not only should journalists consider their own positions, they 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:** Our office used to be adjacent to that of Sanef. Remember, members of Sanef are one party to a complaint – the complainant is the other party. 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 had their doubts as to our office’s independence (because of Sanef’s close 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.

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 child pornography.

It is that serious.

## ACTUAL CASES

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).

The newspaper 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 it had 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 the newspaper’s right to advocate a cause. However, in the 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).

The editor allowed non-professional considerations to influence or slant his reporting – with devastating effects.

### 2.2 *[The media shall] not accept any benefit which may influence coverage.*

This sub-section is closely linked to the previous one.

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 favourable to the then Premier of the Western Cape, Ebrahim Rasool. In exchange, he reportedly requested indemnity against any possible criminal charges. This is journalism at its worst.

But let's look at this clause more closely. It does not say that journalists may never accept anything – it merely states that reporters should not accept gifts etc. “*where this is intended or likely to 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, that might be a different matter.

**“Intended”:** Sometimes it is clear that a gift is intended to influence your reporting. However, most givers would always deny any such intentions. “Just come with us to a game resort for the weekend – no strings attached.” In many of these cases the journalist would be unsure of the intentions behind an invitation. The question then should always be: “But why this invitation?”

That is why the next few words, “...or likely to influence coverage”, are so important. Even if the giver does not intend to influence journalists, it may still be likely to influence their reportage. 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.

### ***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, state it.

### ***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).

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.

## ***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 public interest.***

**Privacy:** Privacy does not mean the same thing to everybody; one needs to distinguish 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 these people accountable. They have no grounds to complain if the media reveal their private matters when these matters have a bearing on their public duty.

This means the media should not think that public officials have no privacy at all. The litmus test is whether a certain action impacts their image and performance. This, of course, is a grey area. For example, when the President of the United States has an extra-marital affair, 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 may vary – which, in itself, should alert the media to be careful when making decisions whether to expose private matters or not.

To a lesser extent, but still so, *public figures* should also be held accountable for their actions. They are role models, especially for the youth, and the media therefore have the right to report on their private lives – again, if those impact on their roles in society.

*Private citizens* have the most right to privacy. For example, if a lone individual has an extra-marital affair, publications should (normally) ignore it as it is of little or no significance to the public. (However, if the president has such an affair, or some celebrity, that would in all probability be news – especially if it impacts their public image or work performance.)

So, always beware: Expose private matters only in cases of a legitimate public interest. If you are going to invade somebody’s privacy, always ask if it really is in the public interest to do so.

This begs the question, when is private private?

The concept of privacy is complicated, and it is a rather modern one. But let's try to simplify it: A person normally has the right to privacy in her or his home, as well as to private facts such as matters of health, sex and finance. One can also have a legitimate expectation of privacy in a public place, for example eating in a remote corner in a tea garden, or in a (public) restroom.

As always, be careful not to cause unnecessary harm. For example, do not to (unnecessarily) disclose a subject's address or identifying details, as such information may be abused and even endanger lives. Care should be taken to minimize / avoid such risks, depending on the circumstances.

Always expose private matters only in cases of a legitimate public interest.

## ACTUAL CASES

I have had complaints from angry citizens that the media photographed their houses without their consent. I have consistently dismissed these complaints, as their houses were in public areas. It would have been a different matter, though, if a journalist had entered the premises without permission, or "stole" pictures through windows (unless a public interest was evident).

Also, a person once said that a journalist took a picture of her while she was shopping and complained that her privacy had been invaded. She had no leg to stand on – the moment she left her home, she entered a public space.

Once, a famous sportsman was kissing a woman in a park (he was married to another woman). The media reported this matter, not only because he was a celebrity, but also because the park was a public place.

### *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 sub-section, privacy is specifically applied to the bereaved. For example, if a family asks the media not to take pictures 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 sub-section, 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 of the fact 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 in the operative words here.

I have seen a journalist clothed like a Hillbilly taking pictures in a church where everybody else were 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 the "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.

## ACTUAL CASES

The family of a deceased complained the statement that the latter had died on a "smokkeljaart" (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 respect the dignity of people who were bereaved and their 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” is not the same thing, although they swim in the same pond.

“Dignity” is the right someone has 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 are 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 umpteen such complaints. (The relation 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 receive a complaint about defamation, I always turn 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 a very unwelcome court case. It can, in short, be described as a false, written statement that unnecessarily lowers a person’s reputation.

The defence against defamation in South African law rests on two pillars: The statement must be true; and it must be in the public interest.

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 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 have 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 J.A. 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;
- 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 stating 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, or was said in Parliament, or it was otherwise reasonable to publish it; and
- You cannot defame a dead person. Defamation laws are designed to protect peoples’ interests – and a dead person does not have interests anymore.

## ACTUAL CASES

In one instance, two male farm workers were accused of killing a famous right-wing leader (also male). However, some journalists 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 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.***



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...”

**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.

**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 of one month old is raped, clearly that child cannot give consent. But when the child is about to become an adult, the reporter should also ask that person for his or her permission. 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, leave out.***

**Public interest:** The preamble to the Code already 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, 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, 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.





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## 4. Protection of Personal Information\*

This section is mainly aimed at getting in line with POPIA (see the discussion under Section 1.5 above).



“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.

Journalists would do well to thoroughly study this part of the Act. I have had quite a few cases where subjects have complained that personal information published about them was not in the public interest. Be careful – one can easily fall into this trap. Public interest does not always outweigh personal interest.

## ACTUAL CASES

X identified a certain prominent politician and his wife in their divorce proceedings – leaving him and his children humiliated and embarrassed. The reportage intruded into their personal life, irrespective of the fact that it was illegal to identify the couple.

### *The media shall:*

- 4.1 take reasonable steps to ensure that the personal information under their control is protected from misuse, loss, and unauthorized access;*
- 4.2 ensure that the personal information they gather is accurate, reasonably complete and up to date;*
- 4.3 take steps to verify the accuracy of their information and, if necessary, amend it where a person requests a correction to be made to his or her personal information;*
- 4.4 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;*
- 4.5 inform the affected person(s) and take reasonable steps to mitigate any prejudicial effects where it is reasonably suspected that an unauthorized person may have obtained access to personal information held by the media.*

### **Note the following:**

- The possession of personal information is not prohibited as such, and neither is its use – the media should ensure that such information is not misused or lost, and that it does not fall into the wrong hands. (See discussion under Section 1.5 of the Code above);
- Inaccurate, incomplete and out-of-date personal information can cause a subject irreparable harm;
- The person who knows best what his or her personal information is, is the subject her- or himself. Therefore, if someone requests a correction to be made, the media should always take this seriously and verify (and correct, if necessary) that information;
- The disclosure of personal information may 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; and
- The issue of only disclosing “sufficient personal information” is a highly complicated one, and begs for serious consideration and deliberation before making an editorial decision.

## 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, it is not necessary to state that person’s sexual orientation (unless, of course, it is relevant to the matter).

However if, for example, a white male in his forties is alleged to have raped a woman and the police are on his trail, it would for obvious reasons be in the public interest for the media to mention his race, sex and age.

### ACTUAL CASES

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 sub-section defines hate speech – which amounts to causing physical harm, or the incitement to do so. It is not about hurtful speech, such as calling someone names.

The Equality Act widens the definition of hate speech. However, the Press Council has decided to stick to the Constitution’s definition.

The Code does not only say that the media have 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 speech has its boundaries and is not absolute, as the duty to report and comment has to be “balanced” against the obligation to avoid hate speech.

### ACTUAL CASES

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 allows the media to (strongly) advocate its 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.



## ACTUAL CASES

The same example used under Section 2.1 applies here. (Please go back to that sub-section for the necessary context.)

I have already indicated that the editor 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, the editor indicated in his first text that that was the “latest news” – only to realise later that he 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.

This editor also reported unfairly as he misrepresented the envisaged development by falsely comparing it to another one.

The headline of an editorial read: *Tumi Morake: A victim of South Africa’s ‘Bell Pottinger’ – Solidarity and AfriForum thrive on ethnic mobilisation and false narratives. Now they have a popular radio presenter in their sights.*

AfriForum denied that it has ever targeted, attacked or vilified Jacaranda FM breakfast show presenter Tumi Morake, that it has “harked back” to the time of apartheid, and that it has resorted to “racially divisive” tactics.

The problem was that the publication equated AfriForum with Solidarity, 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 AfriForum as much as it wants to. However, the Press Code does list a few conditions to such speech. The one in question is whether any facts were distorted – which the editorial did in ascribing Solidarity’s opinions and actions to AfriForum.”

### 7. Protected Comment

**General observation:** Many publications, together with 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. Different conditions regulate the publication of comment in hard news articles.

#### 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.

#### 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 the highest court in our country. Judge Edwin Cameron of the Constitutional Court has 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 have not agreed with the content of such 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...:** 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 the 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 that a journalist was malicious. But there were exceptions, and those were extremely serious...

**Public interest:** These words were inserted to ensure that an editor does not put a purely personal matter into the public domain.

**Fair account of all material facts:** It is intrinsically unfair to select some facts, to omit others, and then to shoot down the creature that you have created. Only once you have put all the relevant cards on the table, you may proceed to express an opinion – whether extreme, unjust, etc. (but within the boundaries as set out above, of course).

**Presented as comment:** Always indicate an opinion piece as such. I have encountered very few problems with this section of the Code – but again, there were exceptions.

## ACTUAL CASES

A municipality complained that a cartoonist “intended to cause maximum harm to the image of the Nelson Mandela Bay Municipality and its employees”. It 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 the complainant, 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. I am always wary of any such cartoons (even if they are not critical of the prophet or the Islam religion), as the Muslim community worldwide is dead against any picture 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 with regard to 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. To some this may seem like splitting hairs, but it certainly is not – the first statement points to a verb (the media act like dogs); the second to a noun (the media are 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 Professionals 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.

- 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 Kleinmond 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.





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## 8. Children

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



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.”

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 her or his “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.

### *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.*



A “child” is a person under the age of 18 years.

This article should be read as meticulously as it was formulated. The word “therefore” links the powerful preceding section to the one under discussion, as does the words “applying the spirit of this section.”

But there is more. 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.

This is the principle: 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. No contact with the child, therefore!

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 picture, the media are free to report on the matter. For example, two schools compete in their annual athletics clash. The journalist takes pictures of children on the pavilion, cheering their teams on. You don’t need anybody’s permission to publish those pictures, 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 re-consider and re-re-consider 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 4.8, as the same arguments are valid here. Especially note the comments about the child also needing to give consent.

## ACTUAL CASES

Jason Rohde has been in the news since his arrest after the death of his wife on the Spier wine estate outside Stellenbosch. He was accused of strangling his wife; his defence was that she had committed suicide.

A magazine published a picture of the Rohde family, including his three daughters – two of whom were minors at the time (they were 16).

I took into account the context – not only had their father been arrested on suspicion of killing their mother, but the magazine also did not do anything to stress that no murder had been established at the time of publication, let alone that their father was guilty.

I wrote: “If the publication of this picture did not add to the children’s trauma, I would be most surprised. [The magazine’s] argument that the picture was on Mrs Rohde’s Facebook page and therefore accessible to the public, and that Mrs Rohde had waived the children’s right to privacy (in doing so) is poor – the fact that a picture 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 a number of other publications published the pictures in question before [the magazine] did so, is irrelevant...”

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

In conclusion, I stated: “I cannot agree with [the magazine’s] assertion that its ‘contribution, if any, to the harm suffered by the minors are ... negligible’. On the contrary. And if there was any public interest in the publication of a picture of the minors I am yet to be enlightened about it.”

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\*.***



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.”

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.

### ***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 4.8 are applicable here. Especially, see the comments about the child also needing to give consent.

I have not had 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 sensationalized and glamorized, 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 on the basis of 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 CASES

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 picture 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 picture has caused them. Personally, I would only have published this picture 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 over-kill. Anything does not go. This clause asks for “care and responsibility” and refers to “text” as well as “pictures”.

**Text:** Let me use an extreme example to try and make a point, and return 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.

**Pictures, 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 pictures:**

- 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 pictures;
  - publish big pictures; and
  - use pictures 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 picture – yet the family still complained. I dismissed the complaint because the body had not been identified, nor was the extent of the injuries revealed.

A newspaper published a picture of the Marikana massacre, when the police shot and killed 34 miners and wounded scores more. Naturally, it was big news at the time. The people in the picture were all dead. I found that the newspaper was justified in publishing this picture 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 was said about violence.

Nudity is not necessarily the same as sex. Note that the Press Code does not prohibit the publication of nude pictures – that decision is left up to the publication itself. As I have stated under Section 8.1.2 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 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 pictures were “hazed over”, it was “pretty graphic and explicit for any not wanting to see pictures 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 picture was blurred, so the vital parts were not clear – but it was clear enough to fathom what was transpiring). Another picture 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 noted that the Code does not prohibit pornography – only child pornography is out of bounds. I then balanced the sex scenes with the country’s Bill of Rights (which is also included in the preamble to the Code), which provides freedom of expression to everyone (including the media).

Then came an extremely important distinction. 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 pictures were not of legitimate “importance” to readers – they were, however, of “legitimate interest” to the public (given the uniqueness of the matter).

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.

Cause for Justice 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 picture 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 pictures 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 picture contained explicit sex, I would have expected [the publication] to warn readers about it.”

## 10. Headlines, Captions, Posters, Pictures and Video / Audio Content

### **10.1 Headlines, captions to pictures and posters shall not mislead the public and shall give a reasonable reflection of the contents of the report or picture 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 light of the story itself (as a defence for a badly written headline). This is only partly true. For example, Judge Phillip Levinsohn has said in a Supreme Court case in Swaziland (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 be interpreted as such (which is also what this section of the Code states).

## ACTUAL CASES

One headline read: SIU probes Pule Mabe’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.

A story 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.

Another story 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, and the text reported this matter as an allegation.

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.

A newspaper’s main front-page headline read that “spy tapes” had exposed Ronnie Kasrils as the mastermind behind the manipulation of the NPA (which resulted in the withdrawal of corruption charges against the then President Jacob Zuma). Posters also read: “Spy tapes expose Kasrils”. I directed the newspaper to apologise to Kasrils 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. Kasrils 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 the newspaper 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.

Premier of the Western Cape Helen Zille 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...

In another instance, a poster claimed that the wife of the then State Security Minister Siyabonga Cwele was guilty of drug smuggling. The fact that she was later convicted of this felony did not justify the publication to state it as fact at that stage – the court case had not even begun. This was trial by media.

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

The manipulation of pictures 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 picture 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 picture, so the publication manipulated it.

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

This is the point: If, for practical reasons, a picture has to 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.

## ACTUAL CASES

Five colleagues were socialising in a bar after work. The story was about an alleged extra-marital relationship between two of them. The publication then cropped the picture 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 picture). 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 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 whistle-blowers – and anonymous ones, at that. 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 at all possible, is important because unnamed people:

- can say whatever they like;
- 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. The newspaper 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.

In another unfortunate case, 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 be dangerous;
- 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.

### ***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.

However, circumstances alter cases. For example (an extreme, thumb-sucked one), if a source tells you off the record that Parliament is going to be blown up the next day, I believe that this information should be published in the public interest. In this (extreme) case, consequences weigh much more than principles and certainly, public interest would override your pledge not to tell. But such an exception would be few and far between.

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 sub-section. 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 further some or other agenda?; and
- 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 have not had any such complaints during my stint of more than nine years as Press Ombud.



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

- |     |   |     |
|-----|---|-----|
| 60. | A child is a person under the age of ...  | (1) |
| 61. | The SA Constitution states: “A child’s best interests are of paramount importance in every matter concerning the child” – “yes” or “no”   | (1) |
| 62. | 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) |
| 63. | 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) |
| 64. | Under certain circumstances, the media may publish child pornography – “true” or “false”  | (1) |
| 65. | The Press Code prohibits the publication of brutality, gratuitous violence and suffering – “true” or “false”  | (1) |
| 66. | The Press Code prohibits the depiction of violent crime and explicit sex – “true” or “false”  | (1) |
| 67. | If a headline reflects the content of an inaccurate story, the media are in breach of the Code – “true” or “false”  | (1) |
| 68. | Pictures can be manipulated either by ... or by ...   | (2) |
| 69. | There is nothing wrong with manipulation a picture, as long as it ... and ...   | (2) |
| 70. | The media shall avoid the use of anonymous sources, if possible, because ... and ...  | (2) |
| 71. | The media shall ... which they have obtained from anonymous sources   | (1) |
| 72. | The media may under no circumstances publish information that constitutes a breach of confidence – “true” or “false”  | (1) |

**(Total: 23)**







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## 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.

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



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

- 73. Chapter 1 of the Code is about content generated by ... ; Chapter 2 of the Code is about content generated by ... (2)
- 74. The media are obliged to moderate all user-generated content in advance – “true” or “false” (1)
- 75. It is up to every publication to have a user-generated content (UGC) policy, or not – “true” or “false” (1)
- 76. A publication may remove any user profile in accordance with its UGC policy – “true” or “false” (1)
- 77. The media do not have to make their UGC policy public – “true” or “false” (1)
- 78. The media shall particularly carefully monitor online forums directed at ... (1)
- 79. 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)

*Notes:*

## THE ANSWERS

### A: Preamble

|    |  |   |
|----|--|---|
| 1  | The media exist to 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) | 2 |
| 8  | "Public interest" describes INFORMATION OF LEGITIMATE INTEREST OR IMPORTANCE TO CITIZENS   | 1 |
| 9  | Journalists should commit themselves to this 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 |

(Subtotal: 16)

## CHAPTER 1: Media-generated content

### B: Gathering, Reporting of News (Section 1)

|    |   |   |
|----|---|---|
| 12 | Another word for "truthfully" is HONESTLY   | 1 |
| 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) | 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 the matter is SUB JUDICE and it is LIKELY TO INFLUENCE COURT PROCEEDINGS                                    | 2 |
| 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 PROMINANCE a retraction, correction or explanation | 2 |
| 33 | An online article that has been amended for factual accuracy should INDICATE AS SUCH  | 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 |

(Subtotal: 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 where this is INTENDED or LIKELY to influence coverage  | 2 |
| 39 | The media shall indicate clearly when an outside organization has contributed to the cost of newsgathering because IT MAY LEAD TO SLANTED REPORTAGE, AND THE PUBLIC HAS A RIGHT TO KNOW | 1 |
| 40 | "Native advertising" is where SOMEONE PAYS FOR TEXT THAT IS PRESENTED AS NEWS   | 1 |
| 41 | Regarding public interest, 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" (1) – 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 A 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  | 1 |

(Subtotal: 23)

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

|    |   |   |
|----|---|---|
| 52 | The section on Protection of Information is mainly aimed at getting in line with the Act called POPIA   | 1 |
| 53 | Stereotyping is dangerous because it DOES NOT TREAT PEOPLE AS INDIVIDUALS   | 1 |
| 54 | “Hate speech” demonstrates a clear intention to be hurtful or harmful or to incite harm or to promote or propagate hatred – YES   | 1 |
| 55 | The media have the right and indeed the DUTY to report and comment on all matters of legitimate public interest   | 1 |
| 56 | The media should only disclose SUFFICIENT personal information to identify people   | 1 |
| 57 | 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 |
| 58 | Section 7, on “Protected comment” also applies to hard news stories – NO  | 1 |
| 59 | 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 | 9 |

(Subtotal: 18)

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

|    |   |   |
|----|---|---|
| 60 | A child is a person under the age of EIGHTEEN   | 1 |
| 61 | The SA Constitution states: “A child’s best interests are of paramount importance in every matter concerning the child” – TRUE  | 1 |
| 62 | 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 |
| 63 | 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)   | 5 |
| 64 | Under certain circumstances, the media may publish child pornography – FALSE  | 1 |
| 65 | The Press Code prohibits the publication of brutality, gratuitous violence and suffering – FALSE  | 1 |
| 66 | The Press Code prohibits the depiction of violent crime and explicit sex – FALSE  | 1 |
| 67 | If a headline reflects the content of an inaccurate story, the media are in breach of the Code – TRUE   | 1 |
| 68 | Pictures can be manipulated either by PHOTO-SHOPPING or by CROPPING   | 2 |
| 69 | There is nothing wrong with manipulation a picture, as long as it DOES NOT CHANGE OF ITS MEANING and THE PUBLIC IS INFORMED   | 2 |
| 70 | The media shall avoid the use of anonymous sources, if possible, because ... and ...  | 2 |
| 71 | The media shall CORROBORATE INFORMATION which they have obtained from anonymous sources   | 1 |
| 72 | The media may under no circumstances publish information that constitutes a breach of confidence – FALSE  | 1 |

(Subtotal: 23)

## CHAPTER 2: User-generated content and activities

|    |   |   |
|----|---|---|
| 73 | 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 |
| 74 | The media are obliged to moderate all user-generated content in advance – FALSE   | 1 |
| 75 | It is up to every publication to have a user-generated content (UGC) policy, or not – FALSE                                   | 1 |
| 76 | A publication may remove any user profile in accordance with its UGC policy – TRUE  | 1 |
| 77 | The media do not have to make their UGC policy public – FALSE   | 1 |
| 78 | The media shall particularly carefully monitor online forums directed at CHILDREN   | 1 |
| 79 | Normally, it is a defence for the media to show that they did not author or edit the content complained of – TRUE             | 1 |

(Subtotal: 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     |

“As journalists we commit ourselves to the highest standards...”

**Notes:**

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### ***Johan Retief - Press Ombud: Nov. 2009 – March 2019***

Johan Retief served as Deputy Press Ombud 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 Codice – 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 (chapters 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.



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, self-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 practices 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.

## 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 by letter, fax, or email with the Press Council's Public Advocate 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 Ombud and the Appeals Panel, if it reaches that level. In the complaint, state the name and date of the publication and the reasons 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.

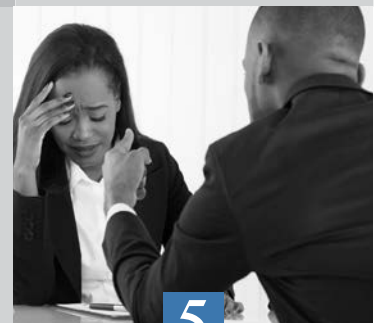


4

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

3

If no resolution is achieved within 15 working days of the publication receiving notice of the complaint, the Public Advocate will refer the matter to the Ombud for adjudication. The Ombud 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. Decisions will be by majority vote.



5

If either party is not satisfied with the decision of the Chair of Appeals, it may ask the courts to review it.

For more information on the PCSA, visit our website, [www.presscouncil.org.za](http://www.presscouncil.org.za) or call us on 011 4843612 or by fax on 011 4843619.  
Email: [enquiries@ombudsman.org.za](mailto:enquiries@ombudsman.org.za)

 Press  
Council



# South African National Editors' Forum (SANEF)

SANEF includes the most senior print, magazine, broadcast and other electronic media editors and media educators in the country. SANEF has committed itself to a programme of action to defend and promote media freedom and independence.

The primary objectives of SANEF include:

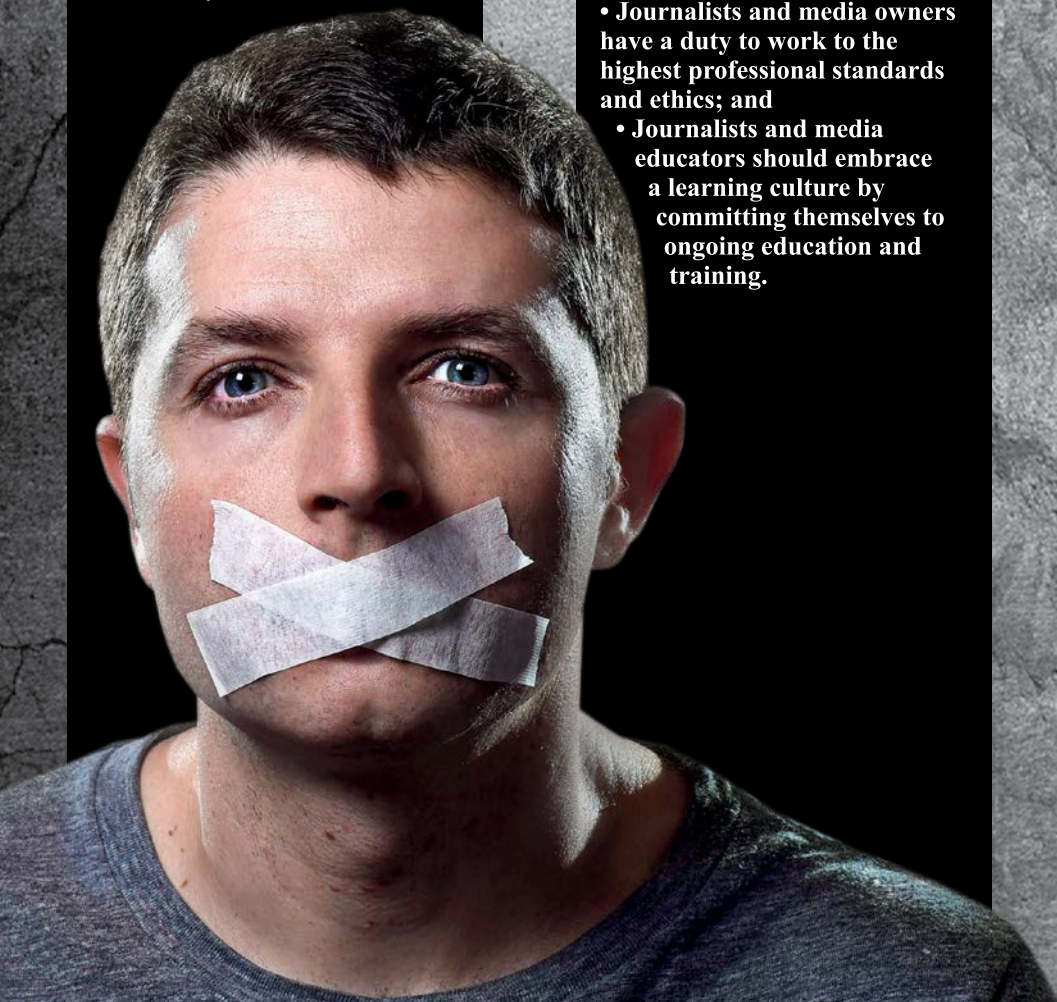
- The promotion of access to and dissemination of information in the media and a free, independent and pluralistic media; and
- The promotion or advocacy of human rights and democracy.

The Forum is founded on the belief and understanding that:

- Public and media scrutiny of the exercise of political and economic power is essential;
- The law related to the operation of media should be consistent with South Africa's Bill of Rights in its protection of freedom of expression;
- Journalists and media owners have a duty to work to the highest professional standards and ethics; and
- Journalists and media educators should embrace a learning culture by committing themselves to ongoing education and training.

The ancillary objectives of the Forum include:

- To nurture and deepen media freedom as a democratic value in all our communities and at all levels of our society;
- To foster solidarity among journalists and to promote cooperation in all matters of common concern among the print and electronic media;
- To address and redress racial and gender imbalances prevalent in journalism and news organisations in South Africa and to encourage the equitable spread of media ownership;
- To promote media diversity in the interests of fostering maximum expression of opinion;
- To help aspirant and practising journalists to acquire or develop new skills and enhance professionalism through media education programmes;
- To promote rules and regulations guaranteeing professional freedom and independence in broadcast media and all media funded by public authorities;
- To encourage government to ensure transparency and openness in administration and to pass laws ensuring maximum freedom of information; and
- To defend media freedom through all available institutions, including the Constitutional Court.



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.

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