

CASE NO: 3338

RULING BY THE NEW ZEALAND MEDIA COUNCIL IN THE COMPLAINT OF QUEENSTOWN LAKES DISTRICT COUNCIL AGAINST CRUX PUBLISHING

FINDING: NOT UPHELD

TO BE PUBLISHED ON THE MEDIA COUNCIL WEBSITE BY 1 DECEMBER 2022

Confidential to the parties until this date

Overview

[1] The Queenstown Lakes District Council (QLDC) complains about an editorial **Inside the cashed-up world of the Queenstown super-consultants** published by Crux on 10 June 2022. It falls to be decided under Media Council Principles (1) Accuracy Fairness and Balance (4) Comment and Fact and (12) Corrections. The complaint is not upheld.

[2] This is the sixth complaint made to the Media Council about this series of stories into QLDC spending, all by the council, its subsidiaries or contractors.

The Article

[3] The story is headed “Editorial/Analysis”. It describes Crux’s investigation of various aspects of the QLDC’s procurement processes and its continuing attempts to engage with QLDC on that issue. It then moves to describe other work done by three consultants who had been involved in work for the QLDC, that were the subject of earlier articles by Crux. The general thrust of the piece is that these consultants have been involved in a large number of projects for a number of different councils. In Crux’s view procurement processes at QLDC, the number of projects the consultants are involved in, and the amount the consultants have been paid, raises questions about procurement processes across the country generally.

The Complaint and the Response

[4] The QLDC acknowledges that the article is an opinion piece, but it considers Crux has expressed opinions presented as facts which are unfounded and/or inaccurate. It considers that the article does not clearly distinguish between fact and conjecture or opinion.

[5] For its part Crux highlights that the article is clearly labelled as an editorial but agrees that the statements made in it need to be factually robust. It stands by its comments. It also notes that since the Media Council last considered a similar complaint by QLDC, the QLDC has conceded that they had been in widespread breach of their own procurement rules. However, in its view QLDC continues to downplay subsequent and wider findings by the Auditor General’s Office.

[6] The QLDC has five particular complaints and Crux responds to each in turn:

- I. In paragraph three, the article states:

But when the QLDC refused to answer our questions and Crux found ourselves in a shit storm of Media Council complaints and *what turned out to be council lies - we knew that something was being buried.*" (emphasis added by QLDC).

QLDC states that this is presented as fact, but Crux has provided no evidence for such a serious accusation, rather it is merely the editor's perception.

Crux states that the statement about lying was very carefully considered and is based on QLDC, over an 11-month period, repeatedly asserting that the council was complying with their own procurement rules. However, this assertion was false and Crux points to documents it says support this view, in particular an email from the CEO of the QLDC to the then mayor in early 2021 noting that the council's adherence with its procurement rules had not been adequate.

II. In paragraph six – the article states:

As if council culture (as recently as 2020 and 2021) is some sort of accident beyond the control of the chief executive officer, the chief financial officer, and the small army of senior managers who have spent *hundreds of thousands of ratepayer dollars on themselves in leadership training and learning about, you guessed it, procurement.*" (Emphasis added by QLDC)

QLDC states that this is presented as fact, but no evidence or basis for the statement is provided.

Crux states that it is absurd for the QLDC to blame its own culture for the fact it failed to follow its own financial rules, particularly given the same management team has been in place for the whole episode. The QLDC's argument here appears to be that they did not spend money on leadership and procurement training. However, there are numerous reports of council expenditure on management training relating to procurement, transparency and financial controls. To the extent one of these sessions was not funded by the council Crux has offered to make that clarification. Crux points to information it has previously published that indicates some of the money spent on training (including a line stating "ArcBlue Consultants (Procurement) \$361,197").

III. In paragraph seven (leading into paragraph eight) the article states:

Crux's ongoing investigations into procurement have put pressure on the Office of the Ombudsman and the Office of the Auditor General – Crux has asked both to intervene in an effort to get some real answers and force the release of documents that have so far been withheld. While all of that happens (and it may take years to play out) Crux has been following the trail of three high profile Queenstown consultants as they make their way around the country earning vast (and we really do mean vast) amounts of money from different councils.

QLDC states that this fails to acknowledge that its position has been upheld by both the Office of the Ombudsman and the Office of the Auditor-General and there is no ongoing investigation or intervention. It believes this statement is deliberately misleading.

Crux states that the claim that there has been no investigation or intervention is false. It points to letters from both the Ombudsman and the Office of the Auditor General. These show that a new investigation has been opened into the QLDC's failure to release (among other things) information to Crux relating to procurement. Crux points to a detailed letter from the Office of the Auditor General to the QLDC addressing the council's procurement practices. Crux states that this makes it clear that within the scope of its powers, the Auditor General's Office found multiple failings around virtually every aspect of QLDC's management of procurement. Crux appears to suggest that although the QLDC may not characterise the work of the Auditor General as an 'investigation' and as 'not critical of the QLDC' (a position that appears to be supported by internal QLDC emails provided by Crux) it is not inappropriate for it to describe the work done by the Auditor General's Office as an 'investigation'.

IV. In paragraph ten – the article states:

QLDC was subsequently the focus of a highly critical investigation by the Auditor-General.

QLDC states that it believes this statement is both misleading and factually incorrect. QLDC responded to requests for information and no investigation ever took place. The subsequent findings and recommendations acknowledged the work undertaken by QLDC in rectifying historic procurement practice and sought no further investigation in general procurement practice or the procurement of ZQN7. (ZQN7 is the company Crux randomly chose to investigate and which prompted its ongoing concerns regarding QLDC's procurement practices).

Crux points to its response (above); in essence that it is not inappropriate to characterise the work of the Auditor General's Office as an 'investigation', in particular given the 'work' to improve practice done by the QLDC was only undertaken because of the media coverage of the issue by Crux.

V. In relation to the final paragraph QLDC states that the editorial's final comment that procurement rules are there for a reason to "stop corruption" are problematic. It considers that, although it is not directly stated that corruption is taking place, it could be argued strongly that the editorial's conclusion implies that it did, or is, taking place. This is reinforced by the general narrative tone running throughout the article.

Crux responds that corruption is an easily defined word and that it can back up its assertion that the behaviour of QLDC staff up to and including the CEO has been dishonest. This is particularly so in relation to statements made to Crux that procurement rules were being followed when they were not.

Discussion

[9] As with the other complaints the Media Council has considered in relation to this issue, the detail in this complaint demonstrates the complexity and depth of feeling on both sides as to the issues raised and how they have been reported.

[10] Clearly, the relationship between Crux and the QLDC is strained. That said, in this instance QLDC's resistance to engage with Crux's apparently genuine attempts to meet to discuss QLDC's request for a correction does QLDC little credit. While the relationship between the parties may have broken down, investigative journalism is critical to a healthy democracy. While journalists must act with integrity and in accordance with Media Council principles, public bodies must expect to be asked difficult questions.

[11] Putting all of that to one side, the Media Council's concern here is solely with the editorial in question and the concerns raised by the complainant. QLDC raise three Media Council principles: Media Council Principles (1) Accuracy Fairness and Balance (4) Comment and Fact and (12) Corrections. We consider that the complaint largely falls to be decided under (4) Comment and Fact, which states:

A clear distinction should be drawn between factual information and comment or opinion. An article that is essentially comment or opinion should be clearly presented as such. Material facts on which an opinion is based should be accurate.

[12] As both parties accept, this article was labelled "Editorial/Analysis". As such it was clearly presented as a piece of opinion. It follows that the primary question is whether the opinions expressed could be said to have reasonably been formed on the basis of underlying accurate information. We deal with each complaint in turn:

- I. Although QLDC has accepted that it did not follow its own procurement rules, it denies that at any point it has been dishonest. Crux disagrees and has reached its own firmly held belief that the QLDC has been dishonest and lied, essentially on the basis that the QLDC denied any problems with its procurement process over a long period and this was ultimately shown to be incorrect. While the Media Council expresses no view on this point and notes that the language used is strong, ultimately whether there have been lies this is a matter of opinion (on which otherwise reasonable people might differ) and it has not been shown that principle 4 of the Media Council principles was breached, or for that matter the general inaccuracy principle at principle 1
- II. It does appear that the QLDC has spent money on leadership training (including about procurement). This is hardly remarkable as most large organisations would spend money on learning and development. QLDC seems to be suggesting that evidence of all statements on which an opinion are based ought to be included in the editorial itself. We do not think that the bar should be set so high, particularly in a situation such as this where the editorial comes in a series of reporting.
- III. The editorial states "Crux's ongoing investigations into procurement have put pressure on the Office of the Ombudsman and the Office of the Auditor General – Crux has asked both to intervene ..." We do not agree with QLDC that this is misleading. It is simply a record of the fact that Crux has previously asked those organisation to intervene. As noted below opinions differ on the outcome of previous interactions with those institutions. To the extent that QLDC notes Crux's reliance on confirmation from the Ombudsman that it is opening an investigation (dated September 2022 (i.e. three months after the article complained of was published) we

note that this is simply confirmation that an earlier request for an investigation by Crux (presumably sometime after May 2022 (the date of QLDC response to the request for information) had been agreed to.

- IV. We consider that it is unsurprising that opinions might differ regarding the comments made by the Office of the Auditor General in relation to the QLDC's procurement practices. QLDC maintains that there was never an 'investigation', Crux considers this is semantics. We do not think it is unreasonable for Crux to hold the view that the Auditor General's engagement with the QLDC was an 'investigation' in the broadest sense of the word. As a letter from the Auditor General's Office to Crux regarding its powers and processes notes:

As you know, in 2020 we looked at QLDC's procurement practices relating to the engagement of consultants. At that time, we observed several deficiencies relating to the Council's procurement practices.

It is clear that the Auditor-General's office has considered the QLDC's procurement practices, raised a number of concerns and made a number of recommendations as to how the QLDC can improve its practice. It does appear there have been failings. This may not have been a formal investigation, and QLDC may have played a key and constructive role in the process, but we do not think it unreasonable to characterise it as an investigation for the purposes of an editorial.

- V. The final statement that procurement rules are aimed at stopping corruption, is simply a statement of fact. That is at least part of their purpose. QLDC consider that there is an implicit criticism of its behaviour by the use of this statement. Crux does not appear to deny this. Crux clearly believes that the QLDC has been untruthful and dishonest. While QLDC might be offended by this view, we do not think that in the context of an editorial Crux should be prevented from sharing it.

[13] The complaint is not upheld.

Council members considering the complaint were Raynor Asher (Chair), Ben France-Hudson, Jo Cribb, Judi Jones, Marie Shroff, Reina Vaai, Alison Thom, Richard Pamatatau, Hank Schouten, Rosemary Barraclough, Scott Inglis, and Jonathan Mackenzie.