Towards press freedom through self-regulation: Trends in South African press ombudsman cases (August 2007 – August 2011)

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Research thesis submitted in fulfillment of the requirements for the degree *Master of Arts in Communication (Journalism)* at the Potchefstroom Campus of the North-West University

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19 October 2012 (South African Media Freedom Day)

Declaration

I declare that this research is my own work. It was done in submission of a Masters of Arts in Communication (Journalism) at the North-West University Potchefstroom Campus. It has not been previously submitted for any degree at any other university.

Name: Gloria D.E. Edwards

Date: 19 October 2012 (South African Media Freedom Day)

Acknowledgements

- My greatest thanks to software engineer Charl Cilliers for designing the web application programme that formed the most essential tool which enabled me to capture and analyse research data. My appreciation for his unconditional support is endless.
- To my family I express the greatest thanks for their support.
- Lastly, I thank my supervisor, Prof. J.D. Froneman, for his guidance.

Keywords
Press ombudsman, self-regulation, press code, South African media, rulings, media ethics, media complaints, press freedom, press council, freedom of expression.

Abstract
Recent attacks on media freedom in South Africa, that includes the ruling ANC party's proposal for statutory regulation of the press, have seen press self-regulation fiercely contested and the ombudsman of the Press Council of South Africa (PCSA) defending the press' constitutional right to freedom of expression.

Extensive arguments have been made by government, the public and the press for other forms of press regulation, such as statutory and independent co-regulation. In addition no accurate, detailed trends arising from complaints the ombudsman has dealt with in recent years, have been freely available on which arguments in such a debate could be based.

This research analyses the complaints dealt with by the press ombudsman in recent years in order to evaluate the present self-regulatory system, which is based primarily on the theories of freedom of expression and social responsibility of the press.

The analyses involves determining what trends exist in complaints cases that the ombudsman, Joe Thloloe, has dealt with since he took office in August 2007, until August 2011 when a Review of his office was published by the PCSA.

The study takes a qualitative approach, with some degree of quantification, and utilises document analysis and qualitative content analysis as data collection methods to analyse 593 cases, with specific focus on government complaints which form 15% of all cases analysed.

The findings reflect that the ombudsman's approach in dealing with complaints was fair, that he displayed intolerance for transgressions and that his rulings were free of any obvious bias. This is evident in, amongst other findings, the very few appeals lodged against his rulings and even less successful appeals. In addition the press often voluntarily corrected their mistakes before prompted by the ombudsman. The findings also dispel some of the ANC's criticisms that have

led to its calls for statutory press regulation, such as the public and government's acceptance of the self-regulation system, complaints from government largely having involved accuracy and not privacy as the ANC claimed, and that government's failure to sign the legal waiver often resulted in cases being dismissed.

The findings also point to a significant increase in complaints, specifically from government, in the year 2010, which is the year in which the ANC renewed its calls for statutory regulation. This does not necessarily reflect a sudden decline in the quality of journalism but rather indicates that the ruling party differed fundamentally in its philosophical thinking regarding the press, which was perhaps informed by a developmental model of the press rather than the social responsibility model on which the present system is based. In this sense the government sees it fit to interfere or censor the press if it feels the system is not performing.

The findings show the ombudsman's office lacked proper record-keeping from which accurate statistics could be derived, leaving a gap for criticism against the ombudsman. In addition, most often complaints against newspapers involved accuracy and fairness (such as not asking for comment). As is evident in several complaints falling outside the ombudsman's mandate and the high number of dismissed cases, the findings also point to a lack of awareness or information of the system and of the ombudsman's roles.

In light of the theoretical frameworks that set out how the self-regulation system, which is entrenched in the notion of press freedom, can enhance the cause of press freedom by its ombudsman enforcing a socially responsible Press Code, the findings ultimately lead to the conclusion that the ombudsman's work has advanced the cause of press freedom in South Africa during the research period.

Sleutelwoorde
Persombudsman, self-regulasie, perskode, Suid-Afrikaanse media, bevindinge, media etiek, media klagtes, persvryheid, Persraad, vryheid van spraak.

Opsomming
Onlangse aanvalle op mediavryheid in Suid-Afrika, onder meer die regerende ANC se voorstel dat die pers statutêr gereguleer word, het daartoe gelei dat selfregulering van die pers heftig teengestaan is en die ombudsman van die Suid-Afrikaanse Persraad (SAPR) die pers se grondwetlike reg op vryheid van spraak verdedig het.

Uitgebreide argumente vir ander vorme van persregulering, soos verpligte en onafhanklike mede-regulering, is deur die regering, publiek en pers aangevoer. Daarby was geen akkurate, gedetaileerde tendense spruitend uit klagtes wat die ombudsman in onlangse jare hanteer het, vrylik beskibaar waarop argmente in so 'n debat gegrond kon word nie.

Hierdie navorsing ontleed die klagtes wat die ombudsman in onlangse jare hanteer het om sodoende die huidige stelsel van selfregulering – wat primêr op die teoretiese beginsels van vryheid van spraak en sosiale verpligting van die pers gegrond is – te evalueer.

Die analise probeer vasstel watter tendense te bespeur was in klagtes wat die ombudsman, Joe Thloloe, hanteer het sedert hy in Augustus 2007 sy pos aanvaar het, tot Augustus 2011 toe 'n hersieningsdokument van sy kantoor se werksaamhede deur die SAPR gepubliseer is.

Die navorsing volg 'n kwalitatiewe benadering, met 'n mate van kwantifisering, en benut dokumentêre analise en kwalitatiewe inhoudelike analise as metodes om data in te samel, om sodoende 593 klagte-sake te analiseer, met spesifieke fokus op klagtes van die regering wat 15 % uitmaak van alle klagtes wat ontleed is.

Die bevindinge wys die ombudsman se benadering in sy hantering van klagtes was regverdig, dat hy nie oortredings geduld het nie en dat sy uitprake vry van enige klaarblyklike partydigheid was. Dít is duidelik uit onder meer die weinige appèlle teen sy uitsprake en die selfs minder suksesvolle appèlle. Daarby het die pers gereeld vrywillig hul foute reggestel sonder tussenkoms deur die ombudsman. Die bevindinge verdryf ook sommige van die ANC se kritiek

wat tot sy oproep om statutêre persregulering gelei het, soos die publiek en regering se aanvaarding van die stesel van selfregulering, dat klagtes van die regering meestal akkuraatheid en nie privaatheid behels het soos wat die ANC beweer het nie, die feit dat regering se versuim om die akte van afstand te teken baie kere daartoe gelei het dat sake uitgegooi is.

Die bevindinge toon ook 'n betekenisvolle toename in klagtes, veral van die regring, in 2010, die jaar waarin die ANC sy oproep om statutêre regulering hervat het. Dít reflekteer nie noodwendig 'n skielike afname in die kwaliteit van joernalistiek nie, maar dui eerder daarop dat die regerende party fundamenteel verskil in sy filosofiese denke oor die pers, wat moontlik gevorm word deur 'n ontwikkelingsmodel van die pers eerder as die sosiale verantwoordelikheidsmodel waarop die huidige stesel gegrond is. Teen dié agtergrond beskou die regering dit as geregverdig om op te tree of die pers te sensor as hy voel die stelsel werk nie.

Die bevindinge toon die ombudsman se kantoor benodig behoorlike rekordhouding waaruit akkurate statistiek afgelei sou kon word, wat op sy beurt 'n gaping laat vir kritiek teen die ombudsman. Daarby het klagtes teen koerante meestal akkuraatheid en regverdigheid (soos om nie vir kommentaar te vra nie) behels. Soos duidelik uit etlike klagtes wat buite die ombudsman se mandaat val, asook die hoë aantal sake waarteen beslis is, wys die bevindinge ook na 'n gebrek aan bewustheid of inligting oor die stelsel en die rol van die ombudsman.

In die lig van die teoretiese raamwerk wat bepaal hoe die stesel van selfregulering, soos verskans in die begrip van persvryheid, die saak van persvryheid kan bevorder deur sy ombudsman wat 'n sosial verantwoordelike perskode implementeer, lei die bevindinge tot die gevolgtrekking dat die ombudsman se werk die saak van persvryheid in die navorsingstydperk bevorder het.

Table of contents

Declaration i

Acknowledgements ii

Keywords iii

Abstract iii

1. Orientation and research objectives 1

1.1. Introduction and problem statement 1

1.1.1. The present system 10

1.1.2. PCSA Review 13

1.1.3. Press landscape 17

1.1.4. Trends and theories 21

1.2. Research aims 23

1.3. Theoretical points of departure 24

1.4. Research methods and chapter layout 25

1.5. Chapter summary 25

2. Theoretical framework of the present system 26

2.1. Normative theories underpinning press freedom and responsibility 26

2.1.1. Theory of freedom of expression (and the press) 27

2.1.2. Theory of Social Responsibility (self-regulation) 32

2.1.3. Theory in practice 38

2.1.4. Chapter summary 43

3. Research methods 45

3.1. Research approach 45

3.2. Research methods 46

3.2.1. Document analysis 46

3.2.2. Qualitative content analysis: government complaints 51

4. Trends in findings of the press ombudsman (August 2007-August 2011) 53

4.1. Findings: Overall trends in the cases of the press ombudsman (August 2007 – August 2011) 53

4.1.1. Who were the complainants? 56

4.1.2. Have complaints increased? 58

4.1.3. Which newspapers had the most complaints? 59
4.1.4. What were the findings of complaints? 65
4.1.5. Who did the findings favour? 67
4.1.6. What were seemingly the reasons for complaints? 72
4.1.7. What were the sanctions? 73
4.1.8. Appeals 75
4.1.9. Turnaround times 78
4.2. Conclusions from overall trends 80
4.3. Chapter summary 85
5. Trends in complaints from government (August 2007 – August 2011) 86
5.1. Findings: Specific trends involving complaints from government (August 2007 – August 2011) 86
5.1.1. Government complaints overall 86
5.1.2. How did rulings affect complaints from government? 90
5.1.3. Trends in the nature of government complaints 94
5.1.4. Trends in the outcomes of government complaints 103
5.1.5. Trends in government cases appeals 109
5.1.6. Key rulings: The government's test 111
5.2. Conclusions from specific trends in government complaints 115
5.3. Chapter summary 120
6. Conclusions 121
6.1. Towards press freedom through self-regulation 121
6.2. Final conclusions 125
6.3. Contribution and limitations of study 132
7. Bibliography 134
7.1. Appendixes 142
Appendix A: The PCSA Constitution Prior Review 142
Appendix B: The PCSA Press Code Prior Review 147
Appendix C: The PCSA Complaints Procedures Prior Review 150
Appendix D: Newspapers subscribing to the PCSA 153
Appendix E: SAARF AMPS January – December 2011 157
Appendix F: The PCSA Constitution Reviewed 2011 159

Appendix G: The PCSA Press Code Reviewed 2011 165
Appendix H: The PCSA Complaints Procedures Reviewed 2011 168
Appendix I: Adopted PCSA documents 2013 171

List of Tables and Figures

TABLES:

Table 1: Ten biggest newspapers according to readership (2011). 19
Table 2: Official case register vs. actual cases captured. 54
Table 3: Top 10 newspapers with the most complaints (August 2007-August 2011). 60
Table 4: Top 10 newspapers with the most complaints including findings (August 2007-August 2011). 64
Table 5: Top 10 newspapers with the most complaints from government (August 2007-August 2011). 87

FIGURES:

Figure 1: Complainant types (August 2007-August 2011). 57
Figure 2: Complaints (January - December 2008-2010). 58
Figure 3: Overall Findings (August 2007-August 2011). 66
Figure 4: Public complaints findings (August 2007-August 2011). 68
Figure 5: Business/Organisation complaints findings (August 2007-August 2011). 69
Figure 6: Politician/Prominent Person complaints findings (August 2007-August 2011). 70
Figure 7: Government complaints findings (August 2007-August 2011). 71
Figure 8: Reasons for complaints (August 2007-August 2011). 73
Figure 9: Sanctions (August 2007-August 2011). 74
Figure 10: Appeals outcomes (August 2007-August 2011). 75
Figure 11: Government complaints growth (January-December 2008-2010). 89
Figure 12: Government complaints findings (August - December 2007). 91
Figure 13: Government complaints findings (2008). 91
Figure 14: Government complaints findings (2009). 91
Figure 15: Government complaints findings (2010). 91
Figure 16: Government complaints findings (January - August 2011). 92

1. Orientation and research objectives

1.1. Introduction and problem statement

"Press Freedom will never be under threat in South Africa for as long as the ANC is the majority party" - Nelson Mandela, 19 November 1997.

In July 2010 the proposal of the ruling ANC party for Parliament to investigate the establishment of a statutory Media Appeals Tribunal (MAT) to act as appeals body for the self-regulatory press ombudsman, not only sparked extensive debate about self-regulation of the press (Berger, 2011:36; Duncan: 2010:1; Reid, 2012), but also cast a renewed spotlight onto the freedom of the press as protected by the South African Constitution (Berger, 2010:291).

In addition to this threat on media freedom, was another legislative intervention that would limit the media's access to government information, giving the government the right to classify any type of information it wanted and therefore increasing the possibility of politicians or government officials covering up corruption and fraud with public money. Breaching this legislation could even mean a 25-year jail term for journalists who expose “top secret” information (South Africa, 2010).

This legislation, the Protection of Information Bill, aptly dubbed the Gag Bill or Secrecy Bill by the media, was passed in Parliament on Black Tuesday, the 22nd of November 2011 (Parker, 2011). However, as this study was being concluded contestations for amendments to this bill were still in progress.

In addition, from a global perspective South Africa’s world ranking in terms of press freedom has fallen in recent years, with the World Press Freedom Index of 2012 showing South Africa ranks 42nd out of 179 countries worldwide (Reporters Without Borders, 2012). The country had ranked 33rd in 2009 and 38th in 2010.

The possible advent of a MAT that could mean state-regulation of the press and the Secrecy Bill that could in essence censor the press, together threaten the freedom of the South African press. It also subsequently could perhaps undermine, replace or even make redundant the present self-regulatory system, as debates around alternative regulation, including statutory and co-regulation, persist. The Secrecy Bill debate has been subject to discussion in Parliament while the MAT debate is set to reach Parliament in due course.

Since press freedom is not absolute, then a logical deduction can be made that, if one had to limit a publication's right to freedom of expression, one would be limiting each citizen's right to freedom of expression as well (PCSA, 2011:23; Berger, 2010:291). It is in this light that the initial proposal for a MAT was seen as counterproductive and anti-democratic (Duncan, 2010:1) and highly criticized by the journalism industry, media lobbyists and advocates for the protection of freedom of speech. Some have even labelled the MAT a violation of human rights, with reference to the ACHPR's Declaration of Principles on Freedom of Expression in Africa (ACHPR, 2002), which protects press councils from political interference.

It would seem that the South African public is not as aware of the impact that these attacks on freedom of the press have on their own freedom of speech and freedom to be informed by a free press. Members of the South African public are divided on the MAT and Gag Bill. According to the research survey company TNS, a survey of 2000 adults living in urban areas in February 2011 showed that 31% of the public were in favour of both the MAT and Gag Bill, while 36% were against it and 33% did not have an opinion on the matter (Anon, 2011). While a similar survey in September 2010 showed that 81% of the public saw the need for independent, unbiased news providers across television, radio and newspaper platforms, according to TNS the large percentage of respondents who indicated that they did not know how they felt, indicated a lack of information on what these measures actually mean for the protection of freedom of speech (Anon, 2011).

Journalism bodies, such as the Right2Know Campaign, Freedom of Expression Institute, Media Monitoring Africa, International Federation of Journalists, SANEF and the PCSA itself, are all of the belief that the MAT threatens freedom of the press and are therefore opposed to statutory regulation. In response to the MAT and Protection of Information Bill, SANEF established the Coalition for Free Speech in 2010. The coalition, a joint venture between media, big business and civil society, is tasked with informing all sectors of society about the importance of freedom of speech and of the press. At the time, SANEF chairperson Mondli Makhanya noted the essential need for the "current debate on media freedom to be contextualised within the framework of a broader free speech culture in South African society" (Anon, 2010).

Several alternatives to regulation of the press have been discussed during the debate. Apart from self-regulation or statutory regulation, co-regulation where the state and press take joint responsibility for regulation, as well as a fourth possibility, independent regulation, was also raised in the South African debate (PCSA, 2011:18). The latter option would see a non-governmental institution, unrelated to the media, taking responsibility to regulate the media.

However, Berger (2010:291) argues that even if self-regulation were in the hands of non-media or even non-governmental bodies, the character of self-regulation would be affected as press freedom is so essential to democracy.

In response to public dissatisfaction with the current self-regulation system, the Press Freedom Commission (PFC), tasked with leading a series of hearings on the issue, recommended an independent co-regulatory mechanism free of state participation, in which members of the public outside the press industry regulate the press in order to ensure the PCSA's independence (Anon, 2012b). Perhaps an indication of its acceptance of such an independent co-regulatory system, the ANC indicated in June 2012 at its policy conference that it was "largely satisfied with suggestions made (by the PFC) to improve accountability in the print media" (Anon, 2012a). These suggestions

included amongst others that a person not directly affected by an article may lodge a complaint about the article, that newspapers face fines for transgressing the Press Code and possible expulsion from the PCSA for repeated transgressions. Despite calling for a statutory MAT two years earlier, the ANC now felt the PFC was on the right path to addressing issues within the print media.

Shortly after, in October 2012, as this study was being concluded, the PCSA announced it will be replacing the current system of self-regulation with a system of independent co-regulation. This is further discussed later on in this chapter.

However, since an argument can be made that the ANC has not yet abandoned the notion of statutory control of the press as Parliament still continues its investigation, and keeping in mind the party's welcoming of the PFC's suggestions happened in the run-up to its presidential elections which could be seen as an attempt at winning public favour, it can be said that the issue of press freedom still hangs in the balance and the debate persists.

Journalists participating in the debate who are opposed to a MAT often cite in their defenses the South African Constitution for which so much blood was shed in the apartheid years. Indeed with merit, as it was former president Nelson Mandela that on 14 February 1994, (Mandela, 1994) before becoming president, told the International Press Institute Congress that "freedom of expression, of which press freedom is a crucial aspect, is among the core values of democracy that we have striven for". He time and again assured journalists that the ANC party would protect this freedom. Despite even Justice and Constitutional Minister Jeff Radebe in July 2010 echoing the assurance that the government will not repeat the apartheid censorship of the press (McDonald, 2011:122), it can be argued that Madiba's, or even the ANC-ruled government's promise was not kept for long.

Wasserman (2011:585) notes how journalists have been invoking history to support their defenses and validate their professional values against the recent threats on media

freedom. Journalists do this, Wasserman contends, to ensure journalism's "special status" in post-apartheid South Africa and to justify the ideological values of the profession, such as being independent and a watchdog of power. Wasserman concludes however, that invoking the past can only contribute towards the contemporary debate if it is done so "inclusive of all its complexity and contradictions" (Wasserman, 2011:585).

As McDonald (2011:130) notes, on the one hand, the national and international press believe the ANC's latest attacks on media freedom "threaten to undermine the Constitution, marking the return to apartheid-era censorship", while on the contrary, the ANC argues that these interventions are to secure the future survival of our democracy and ensure the country moves away from the "nightmare of the apartheid past".

However, McDonald contends that the current media freedom debate should not be viewed against the backdrop of apartheid censorship as has been the case. Though especially the MAT bears significant resemblance to the apartheid-government's call for a press council in the sixties (McDonald, 2011:123), McDonald is of the opinion that the threats posed by these interventions on freedom of expression and the press, need to be informed by the post-apartheid legislative framework and the ANC's "changing attitudes to the print media since 1994" (McDonald, 2011:122). Since there is "no moral equivalence" between the apartheid- and democratic governments, McDonald (2011:125) sees no point in the comparison. He argues that drawing these historical parallels only creates cynicism and other "dubious feelings", and distracts from the more recent, relevant past.

Academic Julie Reid (2012) agrees that most recent arguments for and against self-regulation has been fairly emotive. Reid (2012) however argues that most countries in the world practice self-regulation. In a South African context, however, Reid (2012) contends that concerns of press accountability should not be debated without considering the wider political context in which the state of press freedom is being contested.

In this light it is necessary to consider the origin of the calls for a MAT in order to understand its context and impact on self-regulation and freedom of the press. Academic Jane Duncan (2010:1; 2009:13) argues that the MAT proposal marked a shift in the ANC's policymaking on the media which had in the past been politically progressive.

Like Duncan, several others, such as Guy Berger and Peter McDonald, agree that, where the ANC's media policy was first concerned with transformation and public interest, its thinking had changed to a concern over what it labelled media accountability.

Duncan (2010:4) explains that the ANC first in 2002 at its 51st National Congress considered a publicly funded media model to advance the articulation of the needs of the marginalised. This discussion document, entitled "Media in a democratic South Africa", was not concerned with media accountability or the behaviour of the press, but rather with the inclusiveness of the entire public. Yet despite the establishment of the Media Development and Diversity Agency (MDDA) to address such issues, Duncan (2010:4) contends the ANC had largely failed to implement such a model or address transformation. McDonald (2011:125) notes another failure in 2006, when amendments to the Publications Act of 1996 were successfully contested, as it could amount to pre-publication censorship.

Yet by 2010, the ANC's focus was no longer on socio-economic issues, but rather on editorial content and even journalists' behaviour. McDonald (2011:127) notes how the ANC's internal discussion document of 2010, entitled "Media transformation, ownership and diversity" suggests the ANC's thinking had changed significantly, now politically focusing on editorial content.

How then did this changed political climate within the ANC result in the attacks on media freedom? It is necessary to consider the origin of this politically changed view towards the press, that some argue is behind the recent interventions.

The call for a statutory MAT was first made in 2007 at the ANC's Polokwane Conference. Berger (2010:289) is of the opinion that at the time both the Thabo Mbeki and Jacob Zuma political camps "had axes to grind with the press" and felt that the newly established press ombudsman and self-regulatory system were inadequate to address their interests.

According to Berger (2010:289) the press ombudsman's independent performance played a critical role in convincing the ANC to temporarily suspend the call for a MAT. However, it was a series of political exposés that put the ANC in a bad light, coupled with what Berger calls a "narrow reactive practice of self-regulation", that led to the renewed contestation of the system by the ANC in 2010 (Berger, 2010:289).

With the renewed calls, the ANC defended the MAT as an attempt at raising journalism standards with the intention to strengthen self-regulation, rather than being unconstitutional (Duncan, 2010:2; McDonald, 2011:130; Berger, 2011:299). However, some poked holes in the ANC's critiques of the ombudsman and self-regulatory system and saw the ruling party's arguments as counterproductive and a smokescreen to protect ANC leaders from criticism (Duncan, 2010:4), as well as an attempt by the ANC to protect its own interests (McDonald, 2011:130).

What followed was a fierce contestation of several of the ruling party's critiques against the self-regulation system. The press ombudsman himself, claiming to have ruled more often in favour of ANC complainants than not, dispelled the ANC's critique that, as a journalist himself, he was biased towards the media (Edwards, 2011). One of the ANC's major critiques was the waiver requirement of the system, in which a complainant waives his/her constitutional right to take a complaint to court if he/she disagrees with the ombudsman's ruling (ANC, 2010:28). The PCSA however, obtained legal opinion

that the self-regulatory system “was one of private arbitration and was regulated by law and by the Constitution of the country” (PCSA, 2011:49). In addition, the PCSA contended that the allegation that a waiver removes a complainant’s legal rights is false, stating: “Complainants and publications still have the further option of taking the rulings of the Press Appeals Panel on review to the High Court” (PCSA, 2011:50).

Nevertheless, in its Review of its office, the PCSA suggested slightly amending the waiver and changing its name to a “complainant’s declaration” (see Appendix C for the current and Appendix H for the proposed new waiver). Duncan (2010:3) adds to this argument by contending that access to justice is within the powers of government to address and warns against “judicialising” a voluntary system.

Since the PCSA’s complaints procedures fall within the judicial and constitutional framework of the country, the PCSA is of the opinion that it does have the force of the law to enforce proper sanctions for transgressions of the Press Code, unlike is argued by the ANC, which has labelled the ombudsman “toothless” for not imposing hefty fines (PCSA, 2011:28).

Another ANC claim was that the press is committed to a neo-liberal viewpoint informed by market fundamentalism, in which the press is driven by capitalism to rather expose elite corruption than report on fundamental issues, such as political alternatives (Duncan, 2010:4). Yet Duncan (2010:5) contends one cannot blame journalists for declining journalism standards when they are, through self-regulation, concerned with “nothing else than to protect their craft”, and therefore not in control of their work environment (Duncan, 2010:5). As is the case with transformation and racism, while the media have a responsibility to do their part, Duncan (2010:4) contends this issue cannot be resolved by a press council or a MAT, stating that “press councils are not meant to deal with systemic problems in the media”.

It would also seem that now, the ANC deems dignity or privacy of a person more important than freedom of expression (Duncan, 2010:1). The ANC, at its Polokwane

congress, made the point that “freedom of expression shall not be elevated above other equally important rights such as the right to privacy and more important rights and values such as human dignity” (ANC, 2007:pt125). Haraszti (2008:14) sums up the situation aptly by arguing that: “Time and again, the road to unnecessary legal interference is paved with good will, and prompted by the public’s real need for standards in journalism. Many undue limitations are intended to “help” enhance ethics and quality, or “balance” freedom of the press against other important values, like state security, social peace, or personal rights”.

Seen in this light, the raising of journalistic standards may indeed be within the ANC’s intentions with statutory control of the press. Taking a closer look at the intentions behind statutory control, Berger (2011:41) contends the term statutory could simply mean an official recognition of a self-regulatory body, or that the body is created under legal statute, and not necessarily a means to censor the press.

However, while the ANC argued its intentions with a MAT was to strengthen and support self-regulation, Berger (2010:299) notes that the adding of the adjective “statutory” to the words “media tribunal” would see the Press Council “subordinated in terms of appeals against its rulings”, ultimately translating into statutory control. As Haraszti (2008:15) notes: “True ethics standards can be created only by independent media professionals, and can be obeyed by them voluntarily”. Whether the ANC’s intentions are good-willed or not, such lawful impositions will severely limit press freedom and in turn, hamper free flow of information in society, which is essential for democracy.

While the verdict is still out on exactly what a statutory MAT would entail and the matter still debated in Parliament, the issue had indeed raised extensive debate surrounding the current self-regulation system of the press. For while the core role of the ombudsman is to deal with complaints and not prevent them, there is a merited call for a more proactive approach to self-regulation.

The PCSA itself is of the opinion that the debate should revolve around the effectiveness of self-regulation (PCSA, 2011:29). Nonetheless, the recent attacks on press freedom through self-regulation have largely contributed in forcing the PCSA to relook at its operations, resulting in a Review of its office, which is discussed later in this chapter.

1.1.1. The present system

The history of self-regulation in South Africa dates back to 1950 when the apartheid government first ordered commissions of inquiry into the press with the proposition of statutory regulation (Berger 2010:294). A voluntary press council known as the Press Board of Reference was established in response in 1962 by the Newspaper Press Union, which later became the non-statutory Media Council (PCSA, 2011:26).

However, Berger (2010:295) notes how the council under apartheid was flawed, abused by the government at the time and unrepresentative of the population. In addition, journalistic compliance with the system was low. This legacy, Berger (2010:295) argues, scrutinised by the Human Rights Commission and Truth and Reconciliation Commission in the late nineties, perhaps informed the ANC's skepticism of the press that has remained all these years after democracy.

Two years after the end of apartheid in 1994, the council system was replaced by a Press Ombudsman's Office and an Appeals Panel in 1996. The office was set up by the South African National Editors' Forum (SANEF), Print Media South Africa (PMSA), the Media Workers' Association of South Africa and the South African Union of Journalists (Berger, 2010:295). The system was, however, limited in enforcing reprimands and corrections and journalistic compliance was still poor.

A restructuring of the system in 2007, prompted by a need for more public participation in the self-regulation system (PCSA, 2011:37), led to the old system being replaced by the current Press Council of South Africa (PCSA), with its ombudsman and Press

Appeals Panel (PAP). The establishment was a joint venture between the South African National Editors Forum (SANEF), the Newspaper Association of South Africa (NASA), the Association of Independent Publishers (AIP) and the Forum of Community Journalists (FCJ) (PCSA, 2011:7). In August of that year, the first black ombudsman Joe Thloloe, a veteran journalist well-known for his integrity (Berger, 2011:296), took office.

The current PCSA consists of six press and six public representatives while the PAP consists of a different set of six press and seven public representatives, the latter including its chairperson, retired judged of the Supreme Court of Appeal, Judge Ralph Zulman (PCSA, s.a.). Today, around 700 newspapers subscribe to the PCSA.
The self-regulatory system was put in place as a measure of advancing the press' social responsibility in serving the public, in that it maintains high ethical journalistic standards and independence when informing and shaping public opinion, which is so essential to a democracy.

Several amendments to the Press Code had been made through the years, but Berger (2011:296) notes how, significantly, Thloloe and the PCSA prioritised the promotion and preservation of freedom of expression and of the press as its main objective, with promotion of ethical journalism as the second goal. It also indicated an intention to create public awareness and understanding of the system. In addition, to ensure its independence the council is not funded by the state but entirely by the local media themselves through PMSA and has "deliberately shied away from seeking money from donors" (Krüger, 2009:35).

The PCSA believes the current system is independent and legitimised, in that editors, publishers and the public voluntarily make use of the system. It is also not fully self-regulatory as it is inclusive of the public sphere, since substantial input from outside the press is obtained through public representatives on both the Press Council and the Press Appeals Panel (PCSA, 2011:28).

The PCSA describes itself as "a self-regulatory mechanism to provide impartial, expeditious and cost effective arbitration to settle complaints" (PCSA, 2011:7). Its complaints procedures meet the criteria for private arbitration and the PCSA is therefore in line with Section 33 of the Arbitration Act of 1965. This is a non-state process, which enables ordinary courts to enforce the rulings of the ombudsman and the Appeals Panel. Decisions of the PAP can also be challenged in the High Court on review if gross misconduct on behalf of the ombudsman or panel members is suspected (PCSA, 2011:28).The main aim of the PCSA is to promote and preserve the right of freedom of expression, including freedom of the press (PCSA, 2011:37). Freedom of the press is protected under the freedom of expression clause of the Bill of Rights, which states, inter alia: "Everyone has the right to freedom of expression, which includes freedom of the press and other media" (South Africa, 1996).
The ombudsman's functions fall under private arbitration, which involves parties agreeing that their dispute will be settled by a non-state arbitrator. For this reason a complainant, upon laying a complaint with the ombudsman's office, first signs a waiver of Section 34 of the Constitution of South Africa that prohibits him from taking legal action when the self-regulation route has been chosen.

However, while the ombudsman deals with ethical issues not covered by law, this does not mean there aren't any laws that govern the press. Apart from laws such as defamation, privacy and court reporting to protect human rights, there are two instances where the state overrides the freedom of expression (Retief, 2002:222). The first is Article 16 of the Constitution in which free speech is prohibited on issues of propaganda for war, incitement of violence, advocacy of hatred based on race, ethnicity, gender or religion. The second is Section 29 of the Films and Publications Act 65 of 1996 that, among others, protects against child pornography.

The core function of the press ombudsman is to deal with complaints regarding possible transgressions of its Press Code in line with the PCSA's Constitution and Complaints Procedures. The ombudsman will first try and settle a complaint amicably by mediating between parties. If this does not succeed he will make a ruling based on the complaint,

the newspaper's defense and the complainant's response to the newspaper's defense. He will then impose sanctions, such as printing corrections, where necessary. The current Constitution of the PCSA spells out the ombudsman and PAP's roles, powers and jurisdiction, the latter notably excluding newspapers that do not subscribe to the PCSA, as well as online publications (see Appendix A). The Press Code outlines the Articles of ethical transgressions that can potentially be breached by a newspaper (see Appendix B). The Complaints Procedures contain the rules for lodging complaints and outline how complaints are to be dealt with, including a list of sanctions the ombudsman is permitted to hand out with his rulings (see Appendix C).

Briefly explained, the current Complaints Procedures require that the ombudsman first attempts to settle, or arbitrate and conciliate, in a given complaint (PCSA, s.a.). If a complaint is not settled within 14 days, the ombudsman will proceed to either decide a matter based on written submissions from both parties, or hold a hearing to make his ruling. With written submissions, a newspaper is requested to respond to a complaint, and in turn the complainant needs to respond to the newspaper's defense. It is this correspondence that the ombudsman uses to make his ruling. Either one of the parties may apply for leave to appeal within seven days of the ruling, upon which the PAP will hold an appeals hearing.

1.1.2. PCSA Review

Despite the present system having adapted and improved since the fall of apartheid, it cannot go without mention that some of the recent criticisms levelled against the self-regulatory system and ombudsman are not without merit (Duncan, 2010:6). Therefore, arguing that political motives exist behind the attacks on press freedom does not justify a complete dismissal of the debate.

In fact, the issue had indeed raised several poignant questions about the present system. Questions involving the passiveness as opposed to reactiveness of the

ombudsman, accessibility of the ombudsman's office to the general public and the effectiveness of sanctions were all brought to the fore. Since public buy-in and public opinion are key to responsible and effective self-regulation (Berger, 2010:294), the PCSA's lack in creating public awareness further hampered its effectiveness. In addition the PCSA does not analyse trends in the judgements it makes (Duncan, 2010:4), leaving itself open for criticism.

As McDonald (2011:124) notes, "there can be no doubt about the gravity of the recent developments". Berger (2010:304) contends that, at the initial calls for a MAT in 2007 the threat alone seemed to motivate the "beefing up" of the Press Council, in that it made some unbiased and respected rulings against press and in favour of governmental complainants. Then, by 2010 when the self-regulation system came under much contestation yet again, the issue forced the ombudsman into a public consultation process to review its function and roles, Constitution, Complaints Procedures and Press Code, in an attempt to strengthen and improve the effectiveness of the self-regulatory system.

In his foreword to the PCSA Review of August 2011, Raymond Louw, the chairperson of the PCSA, states the Review was undertaken partly due to the ombudsman's five-year term coming to an end, but also due to criticisms leveled at the Council by the ANC and governmental representatives (PCSA, 2011:3). In addition to the PCSA's self-evaluation, SANEF also promised it would conduct an independent review of the self-regulation system (Berger, 2011:36).

The PCSA Review was released in August 2011 after several public consultation sessions and the receipt of 58 written and oral submissions from academics and organisations throughout the country. A Task Team was formed by the Press Council in August 2010 to produce the Review, which contains recommendations for reform and amendments to the Constitution (see Appendix F for proposed new document published in the Review), Press Code (see Appendix G), and Complaints Procedures (see Appendix H).

The Press Code (see Appendix B) used by the ombudsman during the research period (prior Review) includes eight Articles dealing with journalistic ethics, including: Reporting of News; Discrimination and Hate Speech; Advocacy; Comment; Headlines/Pictures; Confidential Sources; Payment for articles and Violence.

The government was invited to be part of the Review but declined (Edwards, 2011). However, the government did contribute via a letter (PCSA, 2011:13) in which it repeated several concerns, including but not limited to "inaccurate, unfair and irresponsible reporting" and the "inadequate powers" of the ombudsman to discourage this practice. The ANC indicated it would "await the outcomes with interest" (PCSA, 2011:14) but nevertheless ask Parliament to investigate "the effectiveness of the existing self-regulatory mechanism".

The PCSA agrees that, while its core function will remain dealing with complaints, it should take a more proactive approach in preventing the press from making mistakes and be more effective in raising journalism standards (PCSA, 2011:31). Government control over regulation of the press is, however, not the answer.

Some important suggestions for reform that were published in the Review include, but are not limited to, an IT system to analyse trends and turnaround times in cases, extending the ombudsman’s jurisdiction to online publications, and creating and maintaining more public awareness of the system. Other issues of critique, such as, but not limited to, the waiver, the sanctions and the fact that the ombudsman does not accept third-party complaints, that is, only a person who has a direct personal interest may lodge a complaint, had remained unchanged save for minor improvements that would make these more accessible or understandable by the general public. Since the turnaround time of outcomes on complaints was also criticised, it was suggested that the time frame of responses in the process be shortened. Notably, the suggested new Press Code published in the Review changed significantly with several articles being amended and four new articles added, bringing the number of articles in the proposed

new Press Code to 12. This was done to address issues concerning children; privacy, reputation and dignity; independence and conflict of interest; and confidential and anonymous sources (see Appendix G).

The full Review process was not yet finalised and the suggested new documents not yet adopted at the time of commencing this study. The complete Review process consisted of three steps, the first being the PCSA Review which had been published, the second was to hand over the Review to the independent Press Freedom Commission (PFC) in order to conduct its own investigation. The third step involved the PFC spending six to eight months compiling a South African Press Freedom Report, containing its recommendations for reform.

During its investigation the PFC commissioned a media academic team from the department of communications sciences at the University of South Africa (UNISA), led by Dr Julie Reid, to conduct a study on press regulation for a research report. Reid (2012) explains that the most significant part of the report included a useful inventory of foreign systems of press regulation systems. The study examined the top 50 countries which scored the highest in the world in terms of their ratings regarding press freedom according to Reporters Without Borders and Freedom House rankings. It was found that 70% of these top 50 countries practice self-regulation, a fact which Reid argues can be seen as “painting a clear picture” on the worldwide accepted standard of regulation of the press, despite all the arguments for and against self-regulation.

The report also made several recommendations for improvements to the current self-regulation system, including that the Press Council should accept third-party complaints from persons not directly affected by a particular newspaper’s article/s; that the ombudsman’s mandate be extended to online publications and that the South African context must be considered when choosing the best form of press regulation in the country (Reid, 2012).

Significantly, the Review did not include several of the PFC's initial suggestions, such as the admission of third-party complaints and the issuing of fines. This may have led to the ANC party still not being satisfied with the published Review and persisting with the calls for a statutory MAT.

However, as was stated earlier, as this study was being concluded, in October 2012, the suggested new documents published in the PCSA Review of August 2011 were further amended (to include several of the PFC's suggestions) and adopted by the PCSA. The PCSA announced on 3 October 2012 that it will be replacing the current system of self-regulation with a system of independent co-regulation and that this new system, and the new adopted documents (see Appendix I), will come into force on 1 January 2013. These changes are discussed in further detail in Chapter 6.

Since the documents prior Review (Appendix A, B and C) were used by the ombudsman in dealing with complaints during the research period under review, they inform the analysis and interpretation of the research object data of this research project.

1.1.3. Press landscape

Around 1 230 publications subscribe to the Press Code, of which about 700 are newspapers, including commercial mainstream, community, independent and tabloid newspapers (PCSA, 2011:7)[1]. This study deals with complaints against newspapers in

[1] General definitions of the different types of newspapers may vary. However, for the purposes of this research, these newspapers shall be defined as follows: Mainstream: commercially owned newspapers printed daily, weekly and weekends, that are disseminated via the largest distribution channels, reflecting current affairs and prevailing currents of thought, influence or activity (Chomsky, 1997). Community newspapers: newspapers serving a particular geographical community with local news and entertainment that affect them, such as the Springs Advertiser serving the town of Springs. Independent newspapers: non-commercial owned newspapers belonging to the Association of Independent Publishers that may focus on similar content to mainstream, or provide alternative news content. Tabloid newspapers (yellow press): focus on sensationalism and celebrities with a clear collapse of boundaries between news and entertainment (Sparks & Tulloch, 2000:91).

the period August 2007 until August 2011. (For a list of newspapers that subscribe to the PCSA see Appendix D).

Several South African newspapers have their own ombudsmen or public editors such as the Sunday Times, City Press and Mail & Guardian (Berger, 2010:290; cf. Froneman, 2011:137-142). In addition, such newspapers and many others, for example the Sowetan and The Star, have established their own press codes as well (Retief, 2002:244). Nevertheless they still voluntarily subscribe to the South African Press Code. This is an indication of the willingness of the press to maintain high journalistic standards through self-regulation in an effort to enhance press freedom.

As was the case globally, the South African media fell prey to globalisation, privatisation and homogeny in the late nineties with the advancement of electronic communication[2]. In America, for instance, only six firms dominate all media, including General Electric, Viacom, Disney, Bertelsmann, Time Warner and News Corp (Bagdikian, 2000:x). Similarly in South Africa, although in recent years ownership has reached some stability, only a handful of media conglomerates obtained ownership and control of the South African print media.

There are two categories of print media in South Africa: the major media players and the independent publishers, the latter being members of the Association of Independent Publishers (MDDA, 2009:12).

The four major companies that own South Africa's press are Naspers (Media24); Avusa; The Independent Newspapers Group and Caxton Publishers & Printers Ltd.; (MDDA, 2009:15; Burger, 2010:96). There are also some private newspaper players such as

[2] Globalisation is generally seen as the elimination of state-enforced restrictions on exchanges across borders and the increasingly integrated and complex global system of production and exchange that has emerged as a result (Palmer, 2002:1); also referring to mass media corresponding to the logic of industrial mass society, which values conformity over individuality (Manovich, 2001:41). Privatisation refers to the notion of private commercial enterprises gaining control over the mass media. Homogeny in news refers to a lack of variance in ownership of mass media that filtered through to editorial content in that commercialised interests impact on news being limited to an unrepresentative narrow spectrum of politics and conforming to similar notions of thought (Bagdikian, 2000:x).

M&G Media Ltd.; Natal Witness Printing & Publishing Company (Pty) Ltd.; and most recently, TNA (The New Age) Media.

It is important to consider readership figures when interpreting the findings of this research, as this may perhaps have some bearing on the amount of complaints against any given newspaper. This point is discussed further in 4.1.3. of the Findings section.

According to the Media Development and Diversity Agency (MDDA), Naspers is the biggest print media company based on circulation, media assets and market capitalisation (MDDA, 2009:14), while Caxton owns the most newspaper titles (MDDA, 2009:21). The South African Advertising Research Foundation's (SAARF) All Media and Products Survey (AMPS) measures readership figures of most South African newspapers. Latest figures indicate that around 17 million (48.9%) of adult South Africans read newspapers (SAARF, 2011).

Ten biggest newspapers according to readership in 2011:

NEWSPAPER	READERSHIP
Daily Sun (daily)	5.5 million
Sunday Times (weekly)	3.6 million
Soccer Laduma (weekly)	3.1 million
Sunday Sun (weekly)	2.4 million
City Press (weekly)	1.74 million
Sowetan (daily)	1.72 million
Sunday World (weekly)	1.5 million
Rapport (weekly)	1.4 million
Die Son (daily)	1 million
Ilanga Langesonto (weekly)	950 000

Table 1: Ten biggest newspapers according to readership (2011).[3]

[3] For a full list of the latest (January to December 2011) readership figures of South African newspapers, see Appendix E.

Transformation and diversity in particular the print media in South Africa have long been issues of contention in media circles. It is argued that the South African print media landscape still leans towards white dominance in ownership and control (McDonald, 2011:125; MDDA, 2009:21). This leads to yet another merited concern on the part of those on the critics' bandwagon, an argument that has been seen in the post-apartheid ANC's discussion documents on the media since the year 2000. One should not omit to mention that, in the same speech in which Nelson Mandela promised media freedom in 1994, he also hit hard at the press for its white-controlled ownership (Mandela, 1994).

Eighteen years into democracy, not much has changed. As Netshitenzhe (2004:3) notes, "concern has justifiably been expressed regarding the further concentration of ownership in the newspaper industry" in the country's first democratic decade.

The MDDA, itself established to enhance diversity in the media, concurs, stating that the post-apartheid print media landscape has not transformed in its ownership and control, despite interventions by the state through Black Economic Empowerment (BEE) initiatives (MDDA, 2009:21).

The ANC, in its discussion document entitled "Communications and the battle of ideas" note how BEE transactions in the print media have not translated into a diversity of views (ANC, 2007:pt94).

McDonald (2011:125) notes that transformation of the media has "rightly been an ANC priority for at least a decade". Indeed the ANC of 2000's biggest criticism on the media was to raise journalistic standards and, with merit, to tackle human rights issues such as, but not limited to, racism, ownership and diversity, including pluralism in ownership (McDonald, 2011:127; Berger, 2002:173).

The ANC's contention that a statutory MAT would also address transformation issues in the media may however be invalid. Duncan (2010:4) argues that neither a self-

regulation system nor a MAT can adequately address transformation, since this is an issue of ownership and diversity in the media, and therefore does not justify regulation of content.

Nonetheless, as is evident in the ANC's 2010 discussion document on "Media transformation, ownership and diversity" (ANC, 2010), transformation is no longer at the center of the ANC's issue with the media. As McDonald (2011:128) notes, "most significantly, the 2010 document is silent about racial stereotyping, or indeed, race as such, the issues that had been paramount a decade earlier. On the question of editorial content, which still features prominently, the ANC's concerns are now more directly, and narrowly, political".

Berger (2010:297) also notes how press freedom and self-regulation, which were not contested before 2007, was now in the ANC's firing line. It is this shift in the ANC's thinking, many academics and analysts believe, that brought with it a renewed attack on press freedom through self-regulation.

1.1.4. Trends and theories

The debate has sparked rigorous theoretical arguments for and against self-regulation. The theories of freedom of expression and responsibility of the press to self-regulate are mutually complementing principles (Hong-won, 2008:129). They form the basis of South Africa's present press regulation system and guide the arguments in this research project.

Press freedom is protected under the South African Constitution. The liberal theory of freedom of expression and of the press entails a press having the right to inform its citizens, free of state interference, in order for citizens to make informed decisions in a democratic society. With this freedom comes responsibility, therefore the concept of self-regulation finds itself grounded in the normative media theory of social

responsibility. This theory entails the free press acting responsibly towards the public it serves by means of self-regulation, whereby the press voluntarily set up and subscribe to a code of ethics, thus ensuring responsibility and in turn maintaining that freedom. (See Chapter 2 for a full discussion of the theories underpinning the present self-regulatory system).

In addition, due to a lacking administration system, the press ombudsman is not currently able to provide an accurate detailed analysis of the cases it has dealt with in recent years, upon which arguments in the present debate (or about any new system) could be based. It can therefore be argued that the contemporary media freedom debate, in so far as contesting the ombudsman's biases and effectiveness, persists without a platform of accurate, detailed trends that exist in the cases the ombudsman has dealt with. Without such analysis, it can be argued that one cannot get a clear understanding of the present system and its flaws and successes and therefore one cannot make informed decisions surrounding the debate around the future of press regulation.

An analysis of the trends in the cases that the press ombudsman has dealt with could therefore, against the theoretical backdrop of freedom of expression and the press' obligation to self-regulate, assist in providing valuable insight into the present system. Understanding trends that exist in cases the ombudsman has dealt with in recent years could benchmark informed decisions about the transformation or future of press regulation. It could prove useful especially in comparison with the new system of independent co-regulation which will replace the current system of voluntary self-regulation in January 2013, or during debates should the ANC persist with its proposal for statutory regulation.

This research is therefore relevant and topical and could add to the current media freedom debate that has reached Parliament as well as provide valuable insight into the possible positive advancement of press freedom through self-regulation.

The above background and context in light of the theoretical framework has led to the formulation of the following main research question:

What were the trends in cases dealt with by the South African press ombudsman during the period August 2007 – August 2011 and how did press freedom and socially responsible self-regulation manifest itself?

1.2. Research aims

Against this backdrop, the following specific research questions (SRQ) resulted from the main research question:

SRQ1: What are the theories that underpin press freedom and responsibility in South Africa?

SRQ2: What were the overall trends in the findings of the press ombudsman during the research period August 2007 to August 2011?

SRQ3: What were the specific trends in the cases which involved government?

SRQ4: To what extent can it be argued that the self-regulatory press ombudsman advanced the cause of press freedom in South Africa by enforcing a socially responsible press code?

The following research aims (RA) provide a framework for the study:

RA1: To determine what theories underpin press freedom and the press' responsibility to self-regulate.

RA2: To determine what overall trends exist in the cases of the press ombudsman during the period August 2007 – August 2011, providing an overall interpretation of the trends in all cases in this period, analysed according to the indicators as set out in the research methods of this project.

RA3: To determine what specific trends exist in all the cases which involved complaints from government in the research period (which amount to 15% of all cases), providing

an in-depth analysis of such cases according to the indicators as set out in the research method section of this project.

RA4: To discuss how the self-regulatory system, through its ombudsman, advanced the cause of press freedom in South Africa by enforcing a socially responsible press code.

1.3. Theoretical points of departure

Two theories underpin the concepts of press freedom and self-regulation and form the guiding arguments of this research.

The theory of freedom of expression guarantees a citizen's (and the media's) right to speak and write freely without state interference, provided that this expression does not harm others. Freedom of expression also means the public has a right to be informed by a free marketplace of ideas, meaning a diverse views and news sources, to allow citizens to choose what they want to read and believe about current affairs. In liberal or free press theory, the press is expected to publish a range of views in the public interest in a free marketplace, informing the public, scrutinising government, expressing public opinion and encourage public debate. It is therefore imperative that the press be allowed to publish without fear of censorship or state interference. In South Africa the freedom of the press is guaranteed under the freedom of expression clause in chapter 2 (Bill of Rights), section 16, of the South African Constitution.

The theory of social responsibility includes a system of self-regulation of the press, accepts that journalists are accountable (responsible) to society and are therefore expected to practice a form of responsible self-restraint that is compatible with democracy. Press freedom is not absolute, as with this freedom comes responsibility. The social responsibility model of the press thus implies that the press should regulate itself in a manner which constitutes and balances both ethical conduct and freedom of the press. This function is performed by self-regulation systems which handle ethical issues not covered by law. (See Chapter 2 for a full discussion of the theories).

1.4. Research methods and chapter layout

In order to reach the above research aims an analysis is undertaken of cases that the ombudsman has dealt with between August 2007 when Thloloe took office, until August 2011, when a Review of the ombudsman's office was published by the PCSA.

This research takes a qualitative approach, with some form of quantification, by utilising the methods of document analysis and qualitative content analysis of 593 cases that the ombudsman has dealt with in the period, first analysing cases overall and then focusing specifically in detail on complaints lodged by government complainants, which account for 15% of the total number of cases analysed. (See Chapter 3 for a full discussion of the research method).

Having set out the background, problem statement and research aims in Chapter 1, the theories underpinning press freedom and responsibility in South Africa, as well as how these theories relate in practice, are discussed in Chapter 2. Thereafter Chapter 3 sets out the research method. The overall findings of cases the ombudsman has dealt with in the research period are presented in Chapter 4, thereafter the findings of cases which involved complaints from government are focused on in detail in Chapter 5.

In Chapter 6 final conclusions in the light of the theoretical frameworks are discussed prior to setting out the contributions and limitations of this research.

1.5. Chapter summary

The above chapter has aimed to inform the reader about the problem statement that has led to this research project, set within the context of the two theoretical arguments that form the basis of this research. The overall and specific research questions and aims, as well as the guiding arguments, research method and chapter layout were then set out in order to provide the reader with a clear understanding of the point of departure and specific aims of this research project.

2. Theoretical framework of the present system

2.1. Normative theories underpinning press freedom and responsibility

This chapter seeks to highlight two essential normative theories (or models), namely the theory of freedom of the press and the social responsibility theory (which includes press self-regulation), in order to describe the theoretical framework of the present system. A brief discussion surrounding how these theories relate in practice then follows. The aim is to provide an understanding of the normative framework that the present system of press self-regulation is based upon. This is done in order to aid in answering the overall research question, but also more specifically RQ1, and to reach RA1.

Since the press' responsibility to self-regulate is grounded in the notion of a free press, the liberal theory of freedom of the press is outlined in the first section as a preamble to the normative media theory of social responsibility, which is focused on in the second section.

This research draws on these two theories, which are "mutually complementing principles" (Hong-won, 2008:129), in order to address and contextualise the research question of how press self-regulation relates to advancing the cause of press freedom.

Once the theoretical frameworks provided a clear understanding of the free press' responsibility to self-regulate, the third section briefly outlines the theory in practice, which has seen the establishment of voluntary self-regulatory systems guided by press councils across the world and in South Africa.

2.1.1. Theory of freedom of expression (and the press)

The liberal theory of freedom of expression has its origin in the concept of natural rights of a citizen, of which freedom of speech, and of the press, forms part (Siebert *et al*, 1956:44). The libertarian theory is one of four theories of the press, as coined by Siebert, Peterson and Schramm (1956), with the others being authoritarian, social responsibility and Soviet Communist concepts of what the press should be and do.

Freedom of expression describes the right of citizens, and of the press, to speak and write freely without state interference, provided that this expression does not harm others.

The earliest account of the battle for the ideals of freedom of expression dates back to 399BC, when Socrates was sentenced to death for speaking against the government (Pearson and Polden, 2011:25). Since the English government repressed ideas from the 13th century, Pearson and Polden (2011) argue that the history of freedom of expression is as much a history of censorship, as it is in times when such freedoms are threatened that intellectuals need to defend it.

The battle for freedom of the press dates back to 1644 when, in response to government's suppression of printing licenses, the poet John Milton called for freedom of the press through his speech to parliament, entitled Areopagitica (Pearson and Polden, 2011:25; Siebert *et al*, 1956:44).

Milton's argument focused on the notion of a free marketplace of ideas, a concept developed by John Stuart Mill, and the self-righting process of truth, in which truth prevails over falsehood when the two freely compete (Siebert *et al*, 1956:44).

Others who continued to defend freedom of expression during the 18th century include political theorist John Locke, who argued that freedom of expression was central to government's duty to serve its people; and Sir William Blackstone, who in 1765 defined

press freedom as “the absence of previous restraints upon publications” (Pearson and Polden, 2011:26).

The notion of press freedom became entrenched in England as a component of the libertarian social philosophy, with Sweden being generally regarded to be the first country to constitutionally ordain press freedom (Oloyede, 2005:101).

By the late 1790’s, press freedom was included in the American Declaration of Independence, the United States’ Constitution and its Bill of Rights.
Today, as is the case in South Africa, press freedom is enshrined in the constitutions of most democracies around the world (Oloyede, 2005:101; Siebert *et al*, 1965:51).

McQuail (1987) outlines several characteristics of the press and its freedom under libertarianism, of which one is to attack government officials or political parties without fear of censorship or punishment.

Freedom of expression also means the public has a right to be informed by a free marketplace of ideas, that is, diverse views and news sources, to allow citizens to choose what they want to read and believe about current affairs and in order for them to make informed decisions when voting (Hachten, 2005:31). The free flow of information is therefore essential in a democracy. The libertarian theory assumes man’s inalienable right to seek truth from competing ideas and therefore requires the protection of free expression which allows the free flow of ideas.

Retief (2002:219), however, argues that the concept of a free marketplace of ideas has been largely misunderstood. Since the concept is not rooted in truth always triumphing, those defending freedom of speech do not have to claim that speech needs to always be protected, but rather claim only that, allowing government to hold the monopoly on speech will likely hamper progress towards truth.

Nevertheless in liberal or free press theory, the concept still expects the press to publish a range of views in the public interest, free from state or commercial interference. This libertarian view is based on certain values or ideals that are inherent in a free press, which include, amongst others, that an independent press serves as a check on abuses of power by government, much like a watchdog of power; and that the press makes self-government possible by publishing public information and scrutinising government (Hachten, 2005:31).

Curran (2003:346) lists four key functions of the press in liberal theory, which include informing the public, scrutinising government, expressing public opinion and encouraging public debate. In this sense, the press is not an instrument of government but a device for presenting ideas on which the public can base their decisions (Siebert *et al*, 1956:51; Curran, 2003:346). This is why it is important for the press to be allowed to inform the public without fear of censorship or state interference. This notion of the press as serving the public interest has also become the legal justification for protecting press freedom (Hachten, 2005:33).

As Siebert *et al* (1956:52) note, effective press freedom under libertarianism is ensured through independence from state control, financial independence and reflecting a multitude of voices on public issues in a democratic society.

However, the commonsense view of the theory of freedom of expression is tainted with theoretical assumptions that can be contested (Duncan, 2011:94; Krüger, 2009:9). For example, the related notion of a free marketplace of ideas has been criticised as some believe that truth does not always prevail in the clash of ideas, due to manipulative communications such as public relations (Hachten, 2005:35). However, Hachten (2005:35) believes that even if communication channels are manipulated, diversity of information sources and alternative views still ensure press freedom.

Another example relates to freedom of the press implying property rights, as in the right to profitably own, produce and disseminate information through news media, although

the perception of this right may differ between socio-political systems (Oloyede, 2005:103). Curran (2003:348) argues the assumption that anyone may freely start a newspaper has been an illusion since the industrialisation of the press, since the majority of people cannot afford to do so. This is a critique on the liberal theory notion that the property right, exercised by publishers on behalf of society in the name of public interest, ensures that the press is free, diverse and representative (Curran, 2003:347).

Generally, the concept of freedom of expression is defined as a negative freedom, since it imposes a negative obligation on the government to refrain from interfering or censoring the press. However, Duncan (2011:94) notes that this makes it difficult to impose positive obligations on authorities to provide resources to enhance freedom of expression.

In addition, market forces, such as ownership, advertising and government policies, can also censor information (McChesney, 1998:3; Duncan, 2011:94). As Karl Marx (1845, cited in Duncan, 2011:94) explained: negative freedom, that is the lack of forces that prevent an individual from doing what they want, is limited to those who own the means of production.

The many economical, organisational and political influences on ideological ethical norms of the press, such as objective, independent, fair and unbiased reporting, have been extensively contested by several academics and political economy theorists (example McNair, 1998, Lichtenberg, 2000; Herman and Chomsky, 1988; McCombs, 2004).

Duncan (2011:95) argues that freedom of expression as a negative freedom (free from governmental control) is necessary but not enough to ensure freedom of expression, which should involve positive freedom to “democratise access to information and redress of information inequalities”.

In a South African context, it is argued that a purely liberal concept of media freedom is not sufficient to respond to ANC's attacks on press freedom and self-regulation (Duncan, 2011:95).

Looking at the contemporary South African context, Hadland (2007:2) argues that the relationship between the state and the media has significant relevance to interpreting media theory. Hadland refers to a new comparative media theory published in 2004 by Dan Hallin and Paolo Mancini, entitled "Comparing media systems: three models of media and politics", as a wider ranging conceptual framework compared to the four theories of the press conceptualised by Siebert *et al*. Hallin and Mancini theoreticised that the news media cannot be understood without understanding the nature of the state, political parties, the relationships between economic and political interests and the development of civil society among other elements of social structure. They identified three new models under which countries can be classified, namely the liberal, democratic corporatist and polarised pluralist model. Hadland (2007:5) contends that South Africa falls within the latter model, in which new democracies developed an environment in which party politics and the media were often closely integrated.

It is in this sense and with the focus on positive freedoms, that Duncan (2011:98; 2009:1) points out the ruling party's failures in implementing some of its media policies, in particular those concerned with addressing structural problems in the media, such as concentration in ownership and transformation.

Whether liberal theory of freedom of expression may or may not prove a sufficient argument against the attacks on press freedom, and whether its notions seem however ideological, it remains generally accepted and at the core of the justification for the free press.

Freedom of expression is also seen as a "self-regarding" right, while freedom of the press is an "other regarding right" (O'Neill, 2004, cited in Berger 2010:290). In this

sense journalists' freedom is based on the ideals of truth-telling, independence and public interest.

Since the press' 'other-regarding' right impacts on the rights of others, as the press have the duty and ability to form public opinion, (Berger, 2010:290; Retief, 2002:213; McCombs, 2004:239; Krüger, 2009:10), this responsibility requires the free press to act accountable to the public it serves. Press freedom is therefore not absolute, as with this freedom comes great responsibility.

Theoretical statement 1: *The theory of freedom of speech (which includes press freedom) informs the notion that the press has a responsibility to act socially accountable. This responsibility requires the free press to have a system of self-regulation, which often functions in the form of a press council.*

2.1.2. Theory of Social Responsibility (self-regulation)

The normative media theory of social responsibility accepts that journalists are accountable to society and are therefore expected to practice a form of responsible self-restraint that is compatible with democracy.

Normative theories describe how the media are expected to operate within a democracy (McQuail, 1987:109). McQuail outlines six normative media theories that have developed from the four theories of Siebert *et al* (1956). They are the authoritarian theory, free press theory, democratic-participant media theory, soviet media theory, social responsibility theory and development media theory (McQuail, 1987:111). McQuail (1987:111) justifies the adding of the development media and democratic-participant theories by arguing that media systems often exhibit alternative, even inconsistent, philosophical principles. In South Africa the development media theory may perhaps be considered in light of the recent attacks on press freedom, which is discussed later on.

Social responsibility theory attempts to reconcile independence and freedom of the press with their obligations to society (Oloyede, 2005:104).

Prior to the 20th century, private publishers of newspapers were not concerned with moral responsibilities under libertarian theory. However, the turn of the century saw social responsibility theory conceptually replacing pure libertarianism (Siebert *et al*, 1956:74).

As explained in the previous section, libertarian theory is linked to a negative freedom, a "freedom from external restraint", whereas, according to Siebert *et al* (1956:93), social responsibility theory rests on the concept of positive liberty, a "freedom for", which calls for the "presence of the necessary implements for obtaining a desired goal". In this sense, social responsibility theory is concerned not only with the freedom of those who own the media, but also with that of the public it serves.

Several factors contributed to the rise of social responsibility theory, such as the technological and industrial revolution in America, fierce criticism against the growing media and the development of journalism as a profession (Siebert *et al*, 1956:77; Krüger, 2009:15). Journalists view the concept of self-regulation on a framework of ethics of their profession (Krüger, 2009:13). For just as other professions sought to legitimise their professional status through a sense of public responsibility, journalists nurtured the idea based on ethical ideals. While there are several variations and extensions, Krüger (2004:12) defines the four principles of ethics as truthtelling, independence, minimising harm and accountability. The latter is included as an ethic in line with self-regulation theory, in which journalists are not merely concerned with the standards of their work but also with their responsibility towards the public to self-regulate.

Journalists have long recognised the need for responsible journalism which accompanied the privileged position of the free press. The US Society of Professional Journalists published a code of ethics in 1926, but only in 1973 was it revised to include

accountability (Krüger, 2009:14). Even Blackstone recognised this importance in 1765 when he argued that freedom of the press could tolerate no restrictions before publication, but the press should be subject to laws like defamation and contempt (Pearson & Polden, 2011:26).

The first formal sign of self-regulation in practice dates back to 1947 when the US Hutchins Commission was established in America (Krüger, 2009:9; Siebert *et al*, 1956:75). Following the professionalisation of journalism and an influential report of the commission entitled "A Free and Responsible Press", publishers and editors started regarding their right to exercise their freedom as attached to a social responsibility and developed codes of ethics in the public interest (Siebert *et al*, 1956:83; Krüger, 2009:10).

Among the key principles of social responsibility as identified by McQuail (1987:117) are high standards of performance; journalists' requirement to be accountable to society, employers and the market; and that the media should practice self-regulation within the legal framework of a particular democracy.

McQuail (1987) further identified several obligations of the press under social responsibility theory, including: providing the public with a truthful, comprehensive and intelligent account of the day's events in a context which gives them meaning; serving as a forum for the exchange of comments and criticism; projecting a representative picture of the constituent groups in society; being responsible for the presentation and clarification of the goals and values of society; and providing full access to the day's intelligence.

The social responsibility model of the press implies that the press should regulate itself in a manner which constitutes and balances both ethical conduct and freedom of the press. This function is performed by self-regulation systems, such as a Press Council, which handle ethical issues not covered by law.

Academics like Park Hong-won (2004) and Jean-Claude Bertrand (2005) distinguish between self-regulation systems and systems of media accountability. As Hong-won (2004:1) notes, social responsibility intended to prevent big media companies from gaining political power through market monopoly, however the theory failed to do so since it is limited to moral responsibility. He contends that the notion of accountability makes up for that which social responsibility theory lacks by including moral and legal responsibility. Bertrand (2005:5) argues that while self-regulation forms part of media accountability, the latter is a wider concept. While regulation involves political authority and self-regulation involves the media, accountability involves the press, profession and public. Observing that there are at least 80 different Media Accountability Systems Bertrand (2005:11) advocates that press councils normally gather representatives of those three groups in order to adjudicate complaints against the media, and can therefore be the "ultimate media accountability system" (Bertrand, 2005:6).

Zlatev (2008:57) however contends that while press councils should be inclusive, the involvement of representatives of the public, state and media owners or publishers, should be limited in order to ensure a council's independence. Having representatives of the public involved enhances a press council's credibility, transparency and accountability (Zlatev, 2008:58). In South Africa, the present Press Council consists of an equal number of press and public representatives. The local press' voluntary subscription to the self-regulation system, that is, the Press Council's Press Code, is South Africa's answer to the social responsibility theory that requires media to self-regulate.

The theory of social responsibility and its notion of self-regulation have been globally contested Krüger (2009:9). As Gore and Horgan (2010:523) note, there is "an inherent suspicion about any group that appears to regulate from within".

While the normative social responsibility approach seeks to define an ideal, Krüger (2009:10) points out that in reality, the press are subject to many failings, such as the affect that commercial owners may have on editorial content.

Social responsibility's requirement for the press to serve the public interest can only be achieved if independence from commercial and political pressures and the support of the public are ensured (Bertand, 2005:5), and as already mentioned, the levels of such independences have been contested by political economy theorists.
Krüger (2009:10) does contend, however, that such critiques do not undermine the normative claim of the ideal.

In addition, McQuail (1987:110) argues that no media system is governed by any one 'pure' theory of the press nor does the practice always follow the appropriate theory closely and most systems reflect a combination of different theories.

The same can be said of the press in a South African context.
Looking at McQuail's development media theory in its application to South Africa as a developmental country, one of the arguments for this separate theory (or model) is that all institutions in such a society should abide by its "devotion to economic, political and social development as a primary national task" (McQuail, 1987:120).

McQuail (1987:121) outlines the main principles of development media theory as: the media's acceptance and implementation of positive development tasks in line with national policy; that media freedom is open to restriction according to economic priorities and developmental needs of society; that the media should prioritise news that links to other developing countries which are close geographically, politically or culturally; that journalists have certain responsibilities linked to their freedoms when gathering and disseminating information; and lastly and importantly, that the state, in the interest of developmental means, "has a right to intervene in, or restrict, media operations, and devices of censorship, subsidy and direct control can be justified".

In this sense the South African government may use its rights to restrict or censor the media if it perceives such restrictions as in the country's developmental interest.

Similar to the arguments of Duncan (2011:95) and Hadland (2007:2), who contend that a purely liberal concept of media freedom is not sufficient to argue the ANC's attacks on press freedom, Fourie (2005:13) argues that classic normative media theory is no longer suitable to measure media performance, quality and ethics in postmodern societies.

In a South African context in particular, Fourie (2005:13) argues that the country's First World media system is a departure point for revising the application of classic normative media theories for interpreting media theory, media policy and media audiences in this country. In this sense, the theoretical approach should be the difference and diversity of the local media, considering the changing nature of society and media landscape in the country (Fourie, 2005:29).

Supporting Hadland's (2007:2) argument that the relationship of the state and media has significant relevance to interpreting media theory, Fourie (2005:29) advocates for new communications research on normative theory, since opposing views around the role of the media in South African society has resulted in "tension between media and the government, within the media itself, and between media and the public". It follows then, he argues, that the different roles the media can play for its diverse public, cultures and groups, should be considered instead of basing normative theory on a single worldview.

Theoretical statement 2: *The theory of social responsibility, squarely rooted in the theory of freedom of the press, in practice requires the press to regulate itself to ensure it is accountable towards the public it serves. Thus, by a press council (through its ombudsman) enforcing a socially responsible code of ethics, professionalism and ethical standards of the press are encouraged. This system in turn could advance the cause of press freedom.*

2.1.3. Theory in practice

McChesney (1998:9) contends that Jurgen Habermas' notion of the public sphere, which is a place where citizens interact devoid of business or state control, has paved the way for an operating principle for the press in democracy. Hong-won (2004:128) argues that the basic definition of the role of the press in a democracy, is found in the balance of freedom and responsibility.

The theories discussed in chapter 2 in practice have resulted in the establishment of press councils to perform the self-regulatory function and help maintain high ethical standards in journalism in the interest of press freedom. Oloyede (2005:101) argues that, regardless of ideological differences in the various socio-political systems of the world, press freedom - "a logical extension of man's inalienable freedom of expression - is today a universal phenomenon". This freedom of the press is protected under the right to freedom of expression in the Constitutions of most democratic societies around the world. This freedom of expression and therefore of the press, is a basic human right, as set out by Unesco's 21-year-old Windhoek Declaration with the Washington Declaration (PCSA, 2011:22).

As discussed, the notion of self-regulation is informed by the idea that the press has a duty to act responsibly in its free and independent publishing of the news, opinions and information in the public interest. Since the free press performs the right of the public to be informed in order for it to make informed decisions in a democracy, it should do so in a responsible and independent manner, free from any commercial and or state interference. This is why non-statutory self-regulation systems are considered to firstly, have the potential to be the best method of regulation, and secondly, are considered one of the best ways to enhance the cause of press freedom. However, it is imperative to consider South Africa's political-socio-environment when applying normative theory to its press.

Since the press' responsibility is to, free of state or commercial interference, inform the public and shape public perception and behavior (Retief, 2002:213), with this freedom

comes accountability to the public it serves. In this sense the press has a duty to act socially responsible by maintaining high ethical standards and reporting fairly, accurately and independently.

Independence is therefore crucial to the press' social responsibility. Therefore, the press usually practices a form of self-restraint that is compatible with democracy, also referred to as self-regulation, by abiding by a set code of ethics. This self-regulation model is widely seen as the best alternative to achieve this goal, since other forms of regulation may hamper the press' independence. As is the international consensus, the African Union's Commission on Human and People's Rights (ACHPR) Declaration of Principles on Freedom of Expression of 2002 states "effective self-regulation is the best system for promoting high standards in the media" (ACHPR, 2002). Self-regulation can therefore not exist when there is no press freedom, according to the International Federation of Journalists, (IFJ, 1999), and in turn, self-regulation could enhance the cause of press freedom.

Haraszti (2008:9) defines media self-regulation as a "joint endeavor by media professionals to set up voluntary editorial guidelines and abide by them in a learning process open to the public". He contends that self-regulation ensures "the independent media accept their share of responsibility for the quality of public discourse in the nation, while fully preserving their editorial autonomy in shaping it".

Berger (2010:290) explains that self-regulation differs from state regulation in that it is voluntary. It involves media institutional authority that has the right to impose sanctions on voluntary subscribers who might breach the ethical code of conduct or articles of the Press Code. Self-regulation also avoids the dangers of political control (IFJ, 1999), such as the press becoming a mouthpiece for government.

According to the New Zealand Ministry of Consumer Affairs, self-regulation occurs when the rules that govern market behaviour are developed, administered and enforced by the people whose behaviour is to be governed (PCSA, 2011:17). This differs from

government regulation in that the latter occurs when the government makes the rules, as well as differs from co-regulation in which government and those whose behaviour is to be governed are both responsible for the governing of such behaviour.

A self-regulation system functions within the legal parameters of media freedom in a particular democratic political order (Berger, 2010:289). The system differs from law enforcement and can function as an alternative specialised court or perform a mediatory and advisory function that handles ethical issues not covered by law (Berger, 2011:41). This is not to say that journalists are not governed by legislation in a democratic system. For example laws dealing with defamation, reporting on vulnerable groups and pornography impact on journalism (Krüger, 2009:11; Retief, 2002:220).

As explained, in practice the self-regulation model entails the industry establishing a body to handle complaints concerning ethical transgressions against the press. These institutions commonly referred to as press councils, in turn set up a press code or code of ethics or code of practice, to which the press voluntarily subscribe.

Most press councils focus on print media as, historically, governments have been more involved in broadcasting regulation since the frequency spectrum is a limited resource (Krüger, 2009:16; Berger, 2010:290). In South Africa, broadcasting standards are regulated by the Broadcasting Complaints Commission (BCCSA), which functions like a press council. This study focuses on newspapers only.

The general dual aims of press councils are seen as the upholding of journalistic standards and defending press freedom (Krüger, 2009:12). While Berger (2011:44) believes there is no one-fits-all model to self-regulation, he points out there are ideological general features that make non-statutory press councils credible and determine their success. These include independence of the council; respect from member newspapers on the judgements it makes; and public awareness of the system and how to use it (Hadland, 2007, cited in Berger, 2010:294).

According to Zlatev (2008:46), the main duties of a press council are to accept complaints; verify that they fall within the code of ethics; to review complaints thoroughly; serve as mediator between complainant and newspaper; make fair rulings based on regulations (and impose sanctions such as printing corrections or apologies); single out the media for breaching ethics guidelines; secure transparency and publicity of decisions taken; analyse and comment on media trends and provide guidance about the code's requirements; suggest amendments to the code of ethics; set journalistic professional standards; and defend press freedom.

These duties or functions are usually carried out by an ombudsman, the term having been derived from the Swedish word for 'representative' and the name given to a mediator who investigates citizens' complaints (Maurus, 2008:68). Maurus (2008:71) lists additional roles of an ombudsman, such as ensuring that individual's rights are not violated and their privacy respected.

According to Maurus (2008:68), newspapers have had informal internal ombudsmen since 1913 until the model was adopted in the 1920s by the Detroit News in Michigan. However, today only 2% of daily newspapers in America have internal ombudsmen. In South Africa, as with many other countries, the ombudsman's position is located within the country's Press Council.

The Swedish Court of Honour, formed in 1916, is generally seen as the first press council to be established (Krüger, 2009:15). The court consisted of three esteemed journalists who heard complaints from the public and held newspapers to account. Scandinavian countries then set up press councils, with Europe following suit. At the same time, the concept of self-regulation spread through the African continent, with the exception of South Africa, which only set up a system in the early 60's.

Gore and Horgan (2010:523) note that press self-regulation is regarded more acceptable now than ever before. Press councils now exist in most European countries and have grown in new democracies in Eastern Europe. They are of the opinion that in

Australia, Canada, Australasia, South America and Africa, “self-regulation of the press - and indeed, the media - shows its worth” (Gore and Horgan, 2010:524).

The New Zealand Press Council’s review of press councils around the world in 2007 found that 86% of press councils surveyed are non-statutory (PCSA, 2011:18).

While in some countries, such as the Philippines, local citizens’ press councils have been formed to consider complaints (Duncan, 2010:6), in other countries journalists’ unions act as press councils, such as in Iceland, Russia, Croatia and Slovenia (Krüger, 2009:17).

However, this situation is changing. In Holland, for example, the press council resulted from within a journalists’ union but is now independent, while the Turkish Press Council, founded by journalists, now involves publishers as well (Krüger, 2009:17).

Whereas the press in America (save for a handful of states like Minnesota) and France is not regulated at all (PCSA, 2011:17; Krüger, 2009:16), examples of countries with statutory press councils are India, Denmark, Zimbabwe and Botswana. Notably in India, the number of press representatives in its council outweighs that of parliamentary, legal, university and cultural representatives (PCSA, 2011:19). In Denmark, the independence of its statutory press council is ensured by having all media under its jurisdiction and its council cannot be taken on appeal to an authority outside of the council (PCSA, 2011:20). The PCSA (2011:20) notes that journalists and editors in that country are reportedly unhappy with statutory control but accepted the law since it protected press freedom.

On African soil, freedom of the press has been severely hampered in Zimbabwe and Botswana. While Zimbabwe has a Voluntary Media Council, established in 2007, the PCSA (2011:20) is of the opinion that journalists are divided and a volatile political environment contributes to a failing effective self-regulation system, with the council lacking support from the state-controlled media.

Botswana followed Zimbabwe's route of replacing self-regulation with statutory regulation in 2008 through a Media Practitioners' Act that would see journalists being registered and even face hefty fines for transgressors of the Act, but the media in that country are challenging this move in court (PCSA, 2011:21).

As is the case with South Africa, press councils in several countries across the world and on our continent, were only set up after governments threatened statutory regulation (Krüger, 2009:28; Berger 2010:295). Other examples include Canada, Cyprus, Fiji, Germany, Israel, Kenya, the Netherlands, New Zealand, Tanzania and the United Kingdom (Berger, 2011:43).

The contestation of a self-regulatory system in South Africa is therefore not that unique, and practicing self-regulation through the Press Council brings South Africa "in line with the international mainstream" (Krüger, 2009:40).

However, this does not mean that other forms of regulation, such as the PFC's suggested independent co-regulation which has been adopted by the PCSA in October 2012 and will be implemented in January 2013, cannot work in South Africa.

It can be argued that, whether the ANC persists with its calls for statutory regulation of the press, and in light of the recent replacement of the present system by a system of independent co-regulation, it is imperative to understand trends that exist in the present system, in order to aid in debating the transformation or future of regulation of the press in this country.

2.1.4. Chapter summary

Chapter 2 has reviewed the two (macro) theoretical arguments that form the basis of the present system of self-regulation within a constitutional democracy that guarantees media freedom, i.e. the notions of freedom of the press (media) and the notion of press

self-regulation. Understanding the broader theoretical frameworks, and how they apply in practice, provides clear context for and an understanding of the current media freedom debate in which the freedom of the press and self-regulation of the press are contested. These theoretical points of departure, described widely as the normative media theories or models of a free press and of social responsibility, have informed this research.

This chapter has aimed to provide a clear understanding of the theoretical basis of this research as well as context of the formulation of the research question. This was done in order to aid in answering the overall research question and more specifically RQ1 and reaching RA1, which involves determining what theories underpin press freedom and self-regulation.

With this in mind, this research sets out to comprehensively answer the overall and remaining specific research questions through a qualitative research analysis of the trends that exist in cases that the press ombudsman has dealt with in the research period. The research methods and findings are thus presented in the following chapters.

3. Research methods

3.1. Research approach

This study utilised mainly a qualitative research design**,** with some form of quantification**.** In an outline of the features of qualitative research, Bogdan and Biklen (1992:12) explain that qualitative research takes the form of words or pictures rather than numbers, as opposed to quantitative research, which involve numerical interpretation of findings. Qualitative research enables the researcher to discover underlying meanings and patters of relationships (Babbie, 1992). Silverman (2006:271-314) names four main methods used in qualitative research, namely observation; analysing texts and documents; interviews and focus groups; and audio/video recording. Document analysis entails the capturing and interpretation of case content in terms of a researcher's categories, or indicators, in a way which will produce reliable evidence.

This research rested on the method of document analysis of each case that the press ombudsman has dealt with in the chosen period, in order to obtain object data to address the research question, which was to determine what overall trends exist in such cases. Following the capturing of case files, an analysis was done to provide an overall view of the trends in all cases in the period.

An in-depth qualitative content analysis of cases which involved complaints from government was then done to determine what specific trends existed in such cases. Government cases were highlighted since it is government that has been one of the ombudsman's fiercest critics when challenging the self-regulation system, and since government is the decision maker when it comes to legislation that regulates media.

In the light of the media freedom debate and based on the theoretical framework, it is envisaged that this research may contribute towards understanding the trends in the

findings of the press ombudsman in the research period, specifically those complaints lodged by government. This research may also contribute towards a better understanding of the advancement of the cause of press freedom through self-regulation of the South African press.

3.2. Research methods

This section outlines the research methods used in conducting this research study.

3.2.1. Document analysis

The document analysis involved the analysis of 593 cases that the press ombudsman, Joe Thloloe (or his deputy Dr. Johan Retief), dealt with since he took office in August 2007, up until the end of August 2011, when the PCSA Review was published. This was done in order to determine what overall trends exist in such cases.

The advantage of using institutional documents, as was the case in this research, is that they are permanent and can be consulted repeatedly. They also enable the researcher to track history, policy and practice (Bertrand & Hughes, 2005:133).

Making use of technology to assist with research has been introduced to academic research as a new technique since the advent of computers and a rise in technology and telecommunications (Opdenakker, 2006). Having considered the various advantages of making use of technology in research (Bampton & Cowton, 2002; Gibbs *et al*, 2002; Cramer & Matthews, 2008:301), it is argued that the web application was a convenient, less time-consuming and more accurate method to collect and analyse research data. This also minimises human error and therefore increases the reliability of the research.

The press ombudsman's office relies on a case register, which lists only the names of parties involved, dates that complaints were received, as well as the outcome. Since the case register is not detailed, and the ombudsman's office does not have a proper electronic filing or administration system from which data can accurately be analysed, each case file needed to be analysed.

Thus, a professional software engineer was commissioned to create and design a computer application programme, entitled the Press Council Database (PCD), which enabled quicker and easier manual data capturing and analysis.

The application is web-based and involves a platform on which the researcher manually captured data into the provided bars that have been predetermined in terms of the nine indicators below. The indicators were built into the PCD and the data capturer then read each case file and entered the data into the programme.

The database within the PCD enabled the researcher to extract research data through a built-in search function, enabling manual analysis of object data both in terms of the nine indicators below as well as in-depth analysis of cases which involved complaints from government (discussed further in the point 3.2.2.).

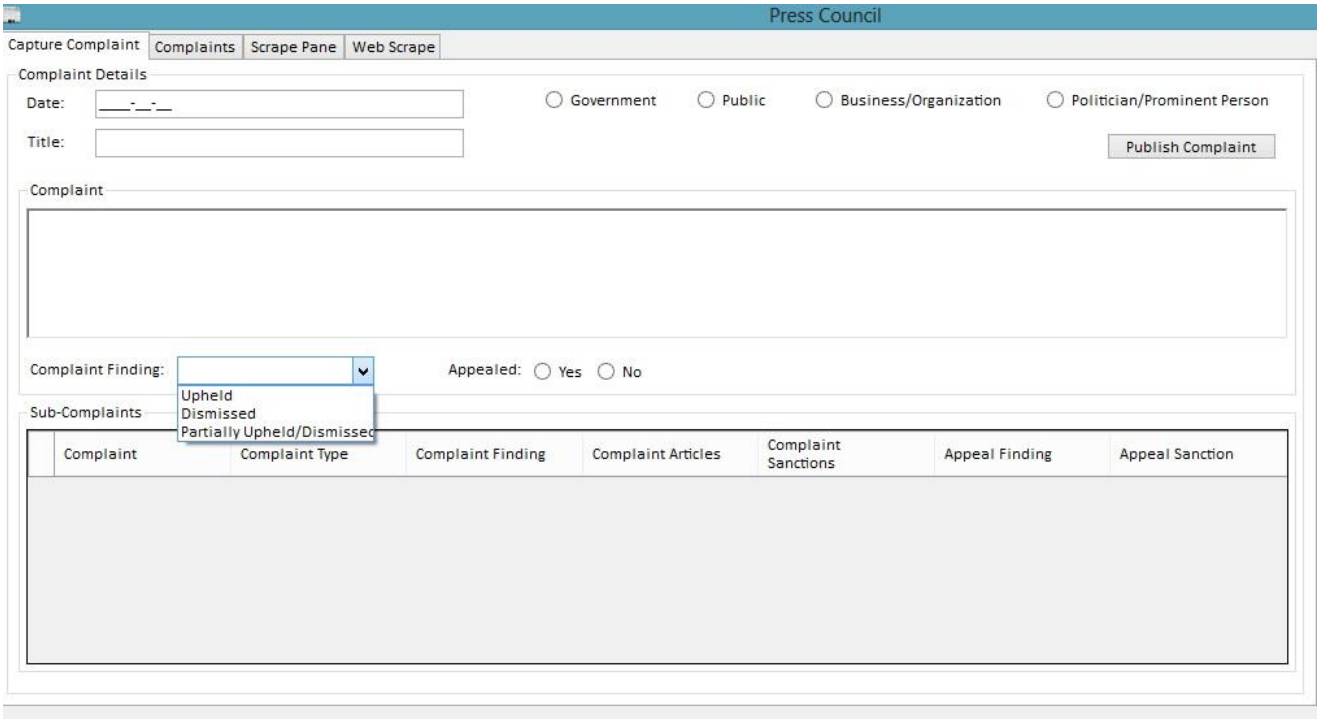
Based on the probabilities within a certain case, content analysis of each case document was done according to the following indicators:

- Who was the newspaper (which newspaper is involved);
- Who was the complainant (public, business/organisation, politician/prominent person or government. See explanation of complainant categories in chapter 4 under point 4.1.1.)
- Which article of the Press Code was allegedly transgressed (based on the current Press Code (see Appendix B));
- What was the finding of each case (upheld, dismissed, lapsed, withdrawn, settled, partially upheld/dismissed – based on the current Complaints Procedures (Appendix C));

- What was the sanction (caution/reprimand; publish correction/retraction; publish apology; publish findings; publish complainant's response etc. – based on the current Complaints Procedures (Appendix C));
- Where cases were subsequently referred to the Press Appeals Panel (PAP), further analysis was done in the light of the following questions:
- How many cases were sent to the PAP;
- What were the appeals findings (upheld, dismissed, lapsed, withdrawn, settled);
- What were the appeals sanctions (caution/reprimand; publish correction/retraction; publish apology; publish findings; publish complainant's response etc.).

The following images of the PCD reflects step by step how data capturing and analysis was done according to the abovementioned indicators:

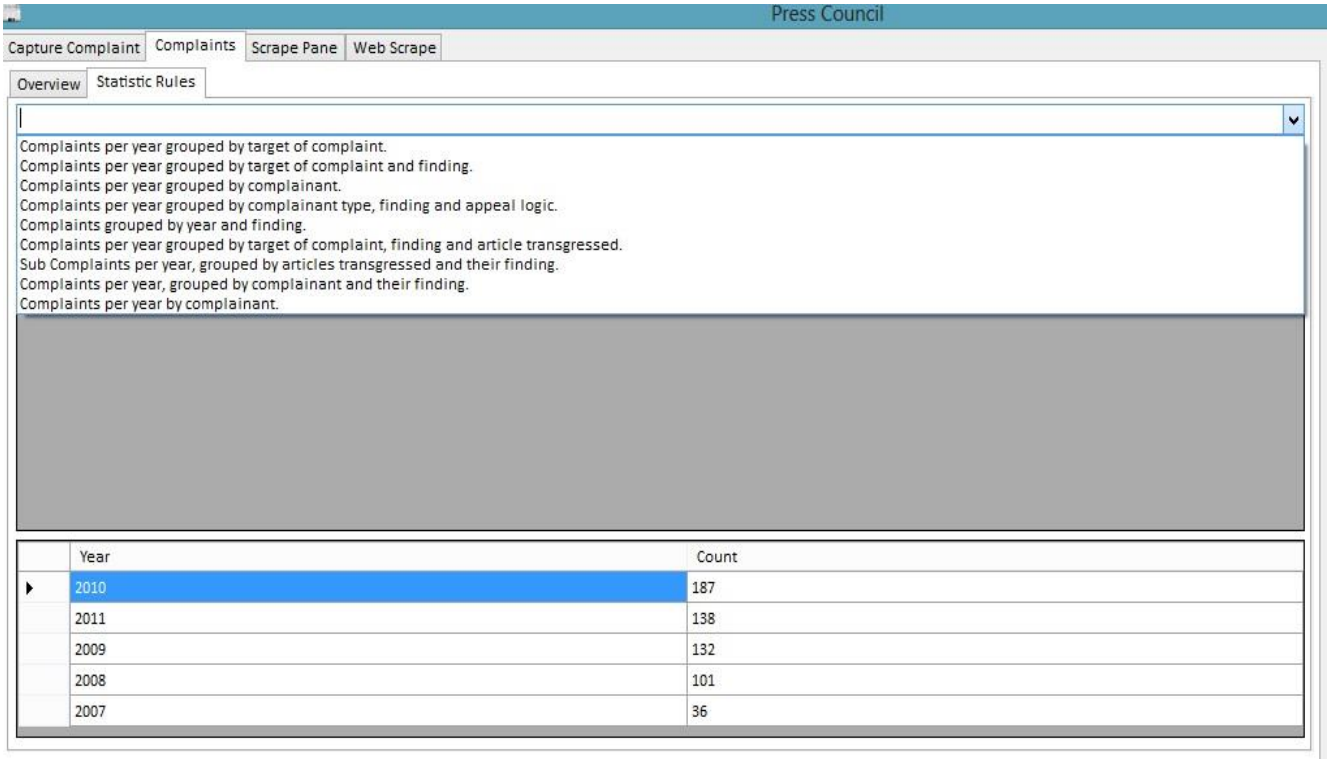
Image of home-screen of Press Council Database:



Firstly the data from each case file was captured into the PCD as can be seen in the image above.

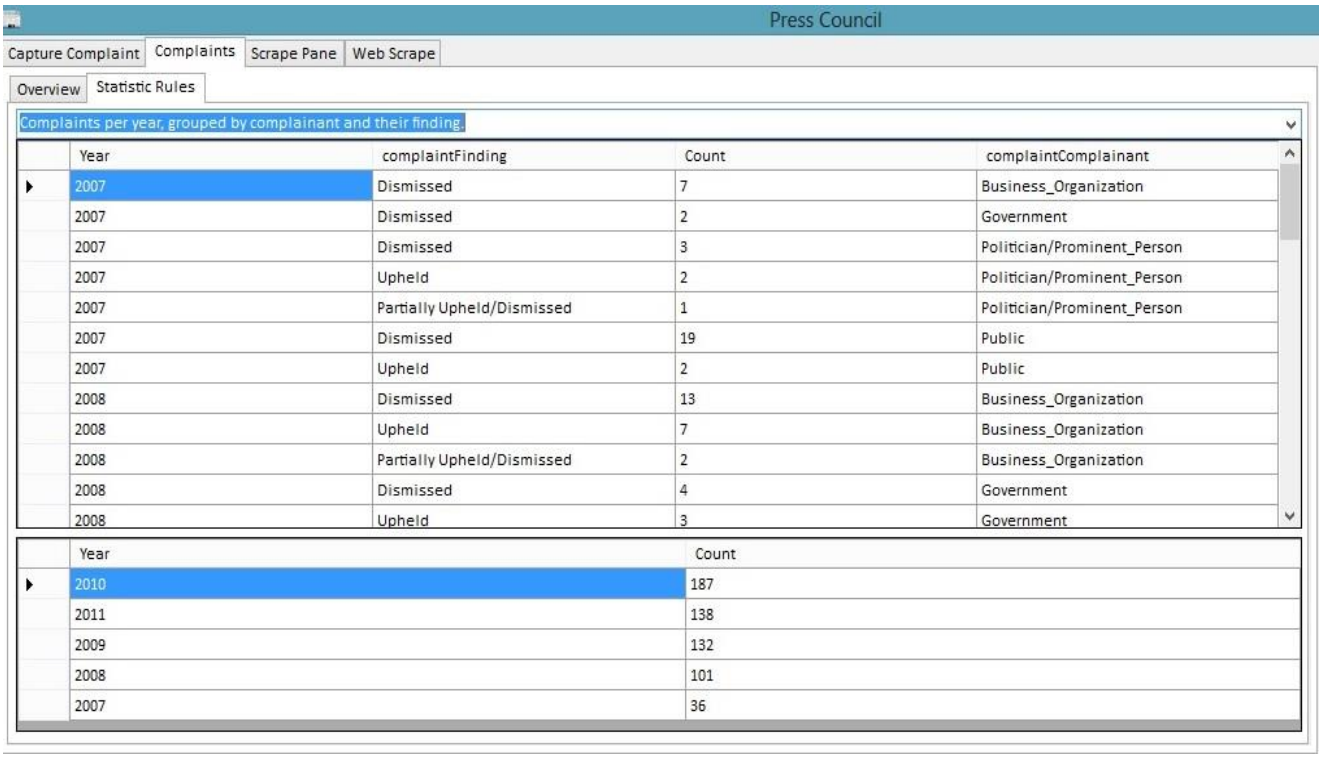
Several statistic rules with various possibilities based on the abovementioned indicators were then set up in order to extract and analyse the various statistical information and combinations available in the PCD, for each year under review, as can be seen from the image below:

Image of statistic rules screen in the Press Council Database:



As an example, the following image shows the analysis of the statistic rule grouping complaints by the year, complainant type and the finding in order to determine the trend concerning the outcomes of complaints per year and per complainant type:

Image of the statistic rule grouped per year by complainant type and finding:



Year	complaintFinding	Count	complaintComplainant
2007	Dismissed	7	Business_Organization
2007	Dismissed	2	Government
2007	Dismissed	3	Politician/Prominent_Person
2007	Upheld	2	Politician/Prominent_Person
2007	Partially Upheld/Dismissed	1	Politician/Prominent_Person
2007	Dismissed	19	Public
2007	Upheld	2	Public
2008	Dismissed	13	Business_Organization
2008	Upheld	7	Business_Organization
2008	Partially Upheld/Dismissed	2	Business_Organization
2008	Dismissed	4	Government
2008	Upheld	3	Government

Year	Count
2010	187
2011	138
2009	132
2008	101
2007	36

Following this an overview of all captured cases including their findings and outcomes and appeals findings and outcomes that were stored in the database of the PCD could be viewed and singled out for analysis as can be seen in the image below. Space was also left in order to capture a summary of each complaint and its outcome (as seen in the “text” column in the image below, by hovering over the column with the mouse, the text is highlighted for case ID number 624 and displays the details of the Coega Development Corporation’s complaint below. By also clicking on a specific case this opened the specific case file for analysis). However this part of the data was only analysed where cases involving government complaints were involved.

Image of overview screen of cases captured in the Press Council Database:

This method enabled the researcher to determine what overall trends existed in cases the press ombudsman has dealt with in the period August 2007 to August 2011.

3.2.2. Qualitative content analysis: government complaints

Following the analysis of overall trends as set out in 4.1.1, special focus was given to complaints lodged by the complainant type grouped “government” in the period August 2007 – August 2011. Such cases amounted to 15% of all cases lodged in this period.

Government cases were chosen for the in-depth study in the context of the theoretical frameworks of this research, since government is both the decision-maker when it comes to media policies and laws, as well as one of the self-regulation system’s fiercest critics in the current media freedom debate.

By leaving specific space for a summary of the case complaints and findings to be captured into the IT programme, this enabled the researcher to extract contextual

qualitative data for the in-depth analysis of government cases (as is explained and can be seen in the image of the overview screen of cases captured in the PCD in point 4.1.1.).

Thus, whereas the analysis as set out in 4.1.1 provided an overall view of cases, the analysis of government cases involved the same indicators, but also included a more in-depth qualitative analysis according to specific indicators, which included:

- Trends in the nature of government complaints;
- Trends in the outcomes of government complaints;
- Trends in appeals involving government complaints.

The method enabled the researcher to determine what specific trends existed in the government cases the press ombudsman has dealt with in the period August 2007 to August 2011. The analysis led to several trends being found under the nature of complaints, which were then discussed in deductive category application that included the broad categories Comment, Voluntary Corrections, Reporting & Sources, Tabloids and Damaging Reputations under the “trends in the nature of complaints” indicator; and Waiver and Lack of Awareness/Understanding in the “trends in the outcomes of complaints” indicator. Appeals in government cases were specifically discussed as such cases proved indicative of how and how often government complainants, despite its criticism against the ombudsman, displayed dissatisfaction with the ombudsman’s rulings. In order to further contextualise the findings, some key rulings on government complaints made by the ombudsman was then discussed in the specific context of the media freedom debate and theoretical frameworks as set out by this research.

4. Trends in findings of the press ombudsman (August 2007-August 2011)

The findings of the overall research in trends are presented in the following chapter in the light of the context and theoretical frameworks discussed.

This section seeks to aid in ultimately answering the overall research question and specifically RQ2 and to reach RA2 which involves determining what overall trends exist in cases the ombudsman has dealt with in the research period.

4.1. Findings: Overall trends in the cases of the press ombudsman (August 2007 – August 2011)

The official case register of the ombudsman's office, in which all cases are recorded with a case number by date and the outcome, showed that there were a total of 705 complaints cases for the period August 2007 to August 2011. This case register is often consulted as the source from which figures are drawn for presentations by the PCSA, the ombudsman or his deputy.

However, the case register was found to be unreliable in that it often lacked basic detail on cases and was in some places inaccurate. It also did not include sub-complaints and therefore data derived purely from the case register would not be a true reflection of cases the ombudsman has dealt with. Any given case may include a number of sub-complaints of which the outcomes may differ. Therefore the indicator "partially upheld/dismissed" was used where necessary in this research, as a more accurate way to describe the outcome of the case.

It was therefore necessary to look at the details of each case file and consider not only the complaint but its sub-complaints and the findings and sanctions thereof.

Furthermore, the amount of cases in the case register is unreliable since it did not rule out missing cases.

ACTUAL NUMBERS:

Official case register compared to actual cases captured:

YEAR	Official Case Register Count	Magazine cases	Missing cases	Scrapped cases	Unknown cases	Actual Cases Captured
Aug – Dec 2007	52	4	12	-	-	36
2008	126	3 (plus 1 online)	21	-	-	101
2009	151	6	11	1	1	132
2010	212	7	15	3	1	186
Jan – Aug 2011	164	3	11	-	12	138
TOTAL	**705**	**24**	**70**	**4**	**14**	**593**

Table 2: Official case register vs. actual cases captured.

As Table 2 illustrates, according to the case register there were a total of 705 complaints during the research period. This study focused on newspapers only. Thus, the total 23 complaints against magazines, and the 70 complaints that are missing, as well as the few scrapped cases (4), were subtracted. There were also a number of unknown cases (14), due to the discrepancy between the number of cases in the case register and the number of cases captured. These cases were noted as an amount in the case register (lacking much detail), but the actual case files could not be found and could therefore not be captured. This could be due to either the inherent risk of manual data capturing and/or a lack in proper record-keeping at the ombudsman's office.

Thus, the actual total number of cases for the period captured is 593. This figure includes 36 cases received in the period 1 August to 31 December 2007; 101 cases in 2008; 132 cases in 2009; 186 cases in 2010; and 138 cases in the period 1 January to 31 August 2011.

During the period 1 August 2007 to 31 December 2007, the case register noted a total of 52 complaints lodged. Four of these complaints were against magazines and a further 12 cases against newspapers are missing. The remaining 36 cases were captured.

During 2008, the case register noted a total of 126 complaints lodged. Three of these complaints were against magazines, one against an online source (which falls outside the ombudsman's mandate) and a further 21 cases against newspapers are missing. The remaining 101 cases were captured.

During 2009, the case register noted a total of 151 complaints lodged. Six of these complaints were against magazines and a further 11 cases against newspapers are missing. One case had been scrapped and another is unknown. The remaining 132 cases were captured.

During 2010, the case register noted a total of 212 complaints lodged. Seven of these complaints were against magazines and a further 15 cases against newspapers are missing. Three cases had been scrapped and one is unknown. The remaining 186 cases were captured.

During the period 1 January 2011 to 31 August 2011, the case register noted a total of 164 complaints cases lodged. Three of these complaints were against magazines and a further 11 cases against newspapers are missing. A further 12 cases are unknown. The remaining 138 cases were captured.

4.1.1. Who were the complainants?

Complainants were grouped according to those who generally make use of the self-regulation system.

Members of the public were grouped under the complainant type “public”. This group included ordinary citizens, in other words individuals who did not represent a business or organisation or political party. This group included ordinary individuals who were directly affected by a particular newspaper article/s (third-party complaints were not accepted by the ombudsman during the period under review in this research).

The complainant type “business/organisation” included complaints from individuals representing either a business or an organisation that was directly affected by a particular newspaper article/s.

The complainant type “politician/prominent person” included complaints from individuals who were very prominent people in society, for example a minister’s wife, and politicians themselves, for example ministers. These would however be complaints that directly affected these individuals and therefore such complaints were lodged in their personal capacity.

For the purposes of this research, the complainant type “government” included the ruling ANC party, as well as national, provincial and local governmental departments and other extensions of government such as parliament. These included the president’s office, ministers, members of Parliament, provincial premiers, governmental departments, municipalities, members of executive committees and affiliates such as the ANC Youth League. Such complaints were made by individuals representing or on behalf of the party or government department, where they felt the party or department has been affected by a particular newspaper article.

The distinction between this group and the complainant type “politicians/prominent person” was decided upon the content of each complaint. If the complaint was lodged

on behalf of the ANC party or government based on the contents of a story, the case fell under government complainants; whereas if a story affected a complainant (politician/prominent person) directly, the case was counted under the politicians/prominent person group.

It must be noted that other analysts, and even the ombudsman himself, may have grouped politicians together with government and even ANC party complaints when conducting their respective analysis and therefore their figures will differ from the findings of this research.

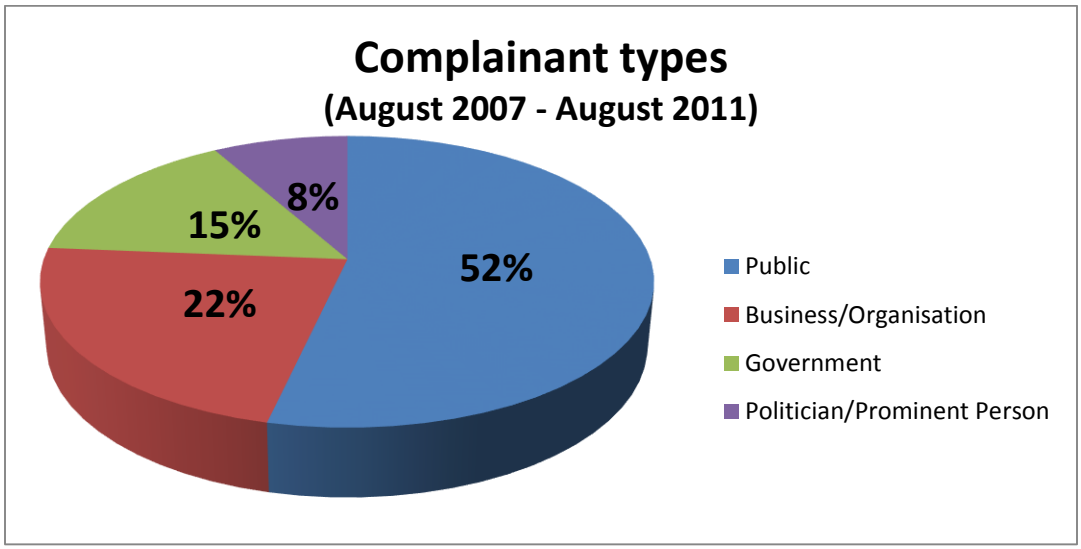


Figure 1: Complainant types (August 2007-August 2011).

As Figure 1 illustrates, just over half (52%) of all cases received by the ombudsman during August 2007 to August 2011 were from the public. This was followed by businesses/organisations (22%), while complaints from government made up 15% and politicians/prominent people complained the least (8%).

In the light of criticism against the PCSA for its lack in creating public awareness of the system and limited access to members of the public, the results reflect the contrary. Also interesting to note is the relatively small number of government complaints, in the

light that it is government which has become the fiercest critic of the ombudsman and system of self-regulation.

4.1.2. Have complaints increased?

The analysis found that year on year, the number of complaints the ombudsman received has increased, with the year 2010 showing the most significant increase in specifically complaints from government. This is also the year in which the ANC's renewed calls for a statutory Media Appeals Tribunal (MAT) sparked extensive debate surrounding the ombudsman and self-regulation.

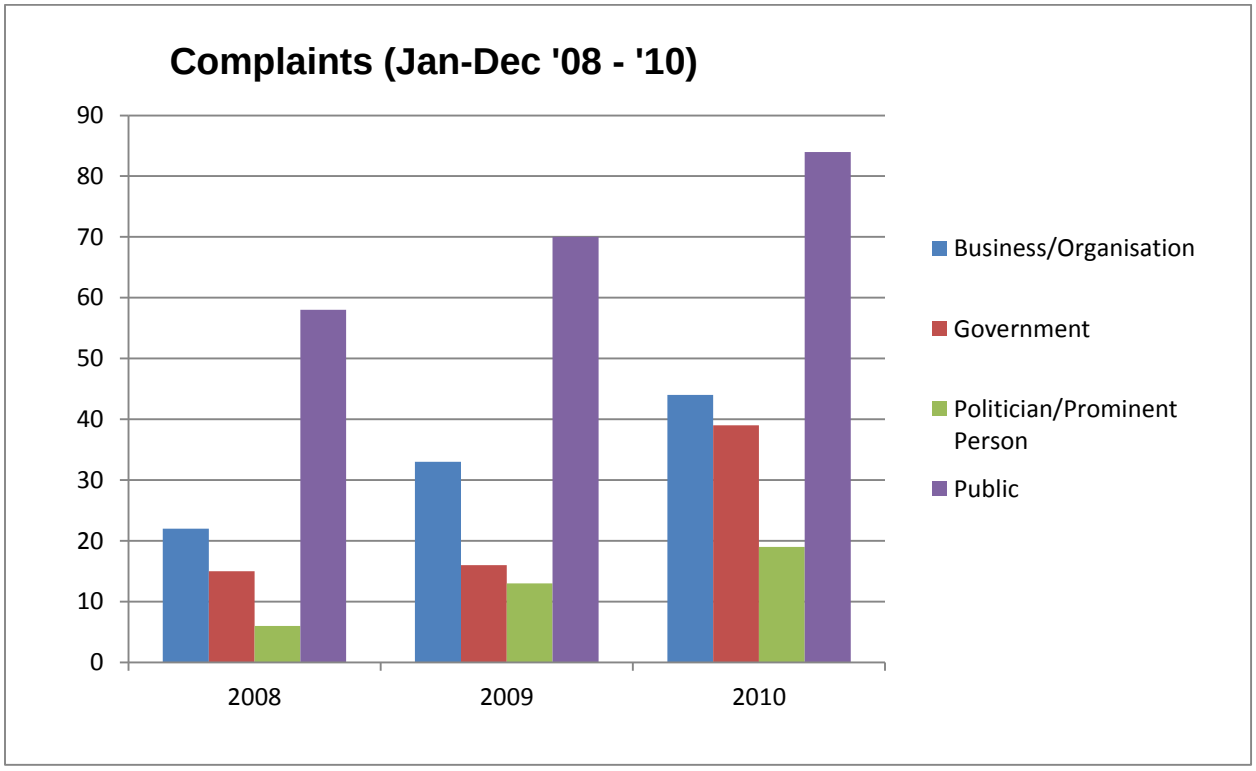


Figure 2: Complaints (January - December 2008-2010).

As Figure 2 illustrates, when comparing the full years of 2008, 2009 and 2010, the number of public complaints increased by 17% from 2008 to 2009, and increased by

17.6% from 2009 to 2010. Between 2008 and 2010 complaints from the public increased by 31%.

Similarly, complaints from business/organisations increased by 33% from 2008 to 2009 and increased by 25% from 2009 to 2010. From 2008 to 2010 these complaints increased by 50%.

The number of complaints from politicians/prominent people increased by 54% from 2008 to 2009 and increased by 32% from 2009 to 2010. In the two years 2008 to 2010 these complaints increased by 62%.

Complaints from government stayed level between 2008 and 2009, increasing only slightly by 6%. However, such cases increased significantly, by 59%, from 2009 to 2010. Over the two-year period 2008 to 2010, these cases increased by 62%.

It may be argued that this increase relates to the renewed calls by government for a statutory MAT in 2010. While the debate could have sparked overall interest and awareness, resulting in more complaints, one can argue that government took a more critical look during this time at the present system, from its philosophical viewpoint that is perhaps rather situated in McQuail's (1987:121) development model of the press than a social responsibility model, as discussed in Chapter 2. (This is discussed in more detail in the next chapter).

4.1.3. Which newspapers had the most complaints?

While complaints were made against mainstream, community, independent and tabloid newspapers, the results found that mainstream newspapers were most often the target of complaints (see Footnote 1 for definition of different newspaper types).

Newspapers with the most complaints:

NEWSPAPER	NUMBER OF COMPLAINTS	PERCENTAGE OF TOTAL COMPLAINTS (Aug '07 – Aug '11)
Sunday Times	53	8%
City Press	41	6%
Sowetan	37	6%
The Star	30	5%
Mail & Guardian	21	3%
Die Son	19	3%
Rapport	18	3%
Sunday World	16	2%
Beeld	14	2%
Daily Sun	14	2%

Table 3: Top 10 newspapers with the most complaints (August 2007-August 2011).

What is interesting to note in Table 3 is that the 10 newspapers with the most complaints against them in the research period are all mainstream newspapers, with Sunday newspapers featuring more than dailies.

The generally higher readership figures of Sunday newspapers compared to dailies (see Table 1 and Appendix E) may have had an influence on the number of complaints. The Sunday Times (owned by Avusa) for example, is the second biggest newspaper in South Africa in terms of its 3.6 million readership (see Table 1), and it had the most complaints (53) against it in the research period, as Table 3 illustrates. Similarly Rapport is the eighth most widely read newspaper with its 1.4 million readership (see Table 1) and had the seventh most complaints (18) against it. It may also be that the more edgy, investigative and often political nature of reporting in Sunday newspapers, which sees such newspapers like the Sunday Times report news "boldly and fearlessly" (Makhanya, 2006), could have meant that such newspapers were subjected to more complaints. (This argument is perhaps also placed into better context when looking at which and how many newspapers received the most complaints from government complainants. See such figures in Table 5).

On the contrary, as the findings show, one can argue that the correlation between readership figures and amount of complaints do not necessarily relate. The Daily Sun is a prime example. As the biggest newspaper in terms of readership in the country (SAARF, 2011), its position on the Top 10 newspapers with the most complaints against it in the research period, is at the bottom of the list, as is evident in Table 3.

Only two tabloids, the Daily Sun and Die Son, are in the Top 10. The Afrikaans tabloid Die Son's position in the Top 10 list outweighs that of some mainstream Afrikaans language newspapers.

The demographics of the Daily Sun may have an influence, since it can be argued that many of its majority black, working class readers who live in rural areas (SAARF, 2011; Froneman, 2006:22), do not have access to the system and are therefore limited in making use of it. The fact that this is a tabloid genre newspaper, although it redefined tabloidism locally with its uniquely African flavour (Froneman, 2006:22) may also have an influence, since the Daily Sun's content, according to a study by Froneman, focuses on "soccer, sex, horror, personal tragedies and traditional African beliefs" (Froneman, 2006: 21).

Since there is a common perception that tabloids are known to push journalistic boundaries or even "tend to disregard codes of ethics" (Zlatev, 2008:57), it can be argued that readers, aware of what they are reading, would be less prone to complain about ethical transgressions.

However, the converse of that is also true, that it may be argued that, since so many ethical transgressions are possible in tabloid journalism, such newspapers should have more complaints against them. After all in South Africa, most tabloids subscribe to the same Press Code as any other newspaper, and are therefore expected to maintain the same journalistic standards.

Wasserman (2010:xii) contends generalisations around tabloids are far too often made, specifically in a South African context. He notes there are moralistic dismissals of tabloids as an inferior form of journalism, or “junk journalism”, in that tabloids contain inappropriate content for a young developing democracy. However, he views tabloids not as journalistic products to be measured against good or bad performance, but rather as social phenomena that reflects society. Tabloids have after all, according to Wasserman (2010:1), “created a mass readership out of the poor and working class black majority who were previously ignored by the apartheid mainstream press”. Today more than seven million South Africans read tabloids every day and such readers value their tabloids (Smith, 2012). A recent study on Die Son’s readers showed that they are critical media users and that they take quality journalism seriously (Smith, 2012:241). In this sense the place of tabloids like the Daily Sun and Die Son, that publish stories that resonate with the interests of a certain set of readers, cannot merely be dismissed in their contributions as part of the country’s press.

What is in fact perhaps more vital to consider, is that the number of complaints against a certain newspaper does not necessarily make it a serial transgressor of the Press Code, since the findings on complaints have a bearing on whether the complaint reflects positively or negatively on a newspaper. Thus, in order to adequately place into context the newspapers with the most complaints against them, one needs to know the outcomes of such complaints, as is illustrated in Table 4 below:

Newspapers with the most complaints including findings:

NEWSPAPER	FINDING	PERCENTAGE OF FINDING
Sunday Times	Dismissed	60%
Sunday Times	Lapsed	11%
Sunday Times	Other	1%
Sunday Times	Partially Upheld/Dismissed	9%
Sunday Times	Settled	3%
Sunday Times	Upheld	7%
Sunday Times	Withdrawn	5%
City Press	Dismissed	39%
City Press	Lapsed	14%
City Press	Partially Upheld/Dismissed	17%
City Press	Settled	12%
City Press	Upheld	14%
City Press	Withdrawn	2%
Sowetan	Dismissed	48%
Sowetan	Lapsed	10%
Sowetan	Other	2%
Sowetan	Partially Upheld/Dismissed	8%
Sowetan	Settled	8%
Sowetan	Upheld	13%
Sowetan	Withdrawn	8%
The Star	Dismissed	50%
The Star	Lapsed	13%
The Star	Partially Upheld/Dismissed	16%
The Star	Settled	6%
The Star	Upheld	13%
Mail & Guardian	Dismissed	57%
Mail & Guardian	Lapsed	14%
Mail & Guardian	Partially Upheld/Dismissed	9%
Mail & Guardian	Settled	9%
Mail & Guardian	Upheld	4%
Mail & Guardian	Withdrawn	4%
Die Son	Dismissed	84%
Die Son	Partially Upheld/Dismissed	5%

Die Son	Upheld	5%
Die Son	Withdrawn	5%
Rapport	Dismissed	61%
Rapport	Lapsed	11%
Rapport	Partially Upheld/Dismissed	11%
Rapport	Upheld	5%
Rapport	Withdrawn	11%
Sunday World	Dismissed	43%
Sunday World	Lapsed	12%
Sunday World	Partially Upheld/Dismissed	25%
Sunday World	Settled	6%
Sunday World	Upheld	12%
Beeld	Dismissed	57%
Beeld	Lapsed	7%
Beeld	Partially Upheld/Dismissed	21%
Beeld	Upheld	7%
Beeld	Withdrawn	7%
Daily Sun	Dismissed	50%
Daily Sun	Lapsed	7%
Daily Sun	Other	7%
Daily Sun	Partially Upheld/Dismissed	7%
Daily Sun	Settled	7%
Daily Sun	Upheld	21%

Table 4: Top 10 newspapers with the most complaints including findings (August 2007-August 2011).

As is illustrated in Table 4, the Sunday Times is the newspaper with the most complaints against it in the research period. However, more than half of these complaints (60%) were dismissed, which is rather a favourable reflection on the newspaper. It could simply mean that the Sunday Times published more controversial issues, but not necessarily that it transgressed the Press Code that often. This trend is evident throughout the findings of complaints against the Top 10 newspapers with the most complaints against them, as Table 4 indicates.

4.1.4. What were the findings of complaints?

When interpreting the outcomes of cases the ombudsman has dealt with, it is imperative to note the distinction between cases and complaints. A given case file contained a main complaint, and it may have contained several sub-complaints, of which the outcomes may have varied. A total number of 593 case files were captured, which contained an additional total of 639 sub-complaints.

Note that, for the purpose of this research, when findings of the ombudsman are referred to, the collective term “ombudsman” may include the ombudsman himself, or his deputy, or an appointed panel.

The analysis of findings of cases entailed counting the main complaints including their sub-complaints, since the findings on sub-complaints often varied, which in turn influenced the overall outcome of any given case. Thus, a more accurate way of reflecting results in the findings of cases was to factor in a findings criterion for “partially upheld/dismissed” cases.

For example, a case file is received with a complaint against a newspaper regarding a published article. The complainant lists a number of sub-complaints regarding several potential transgressions of the Press Code which all relate to the same published story. The ombudsman for example dismisses some of the sub-complaints but upholds others and imposes sanctions accordingly. In such an instance, the overall finding of such a

case will be partially upheld/dismissed. Only where cases were upheld or dismissed entirely, was it counted as such.

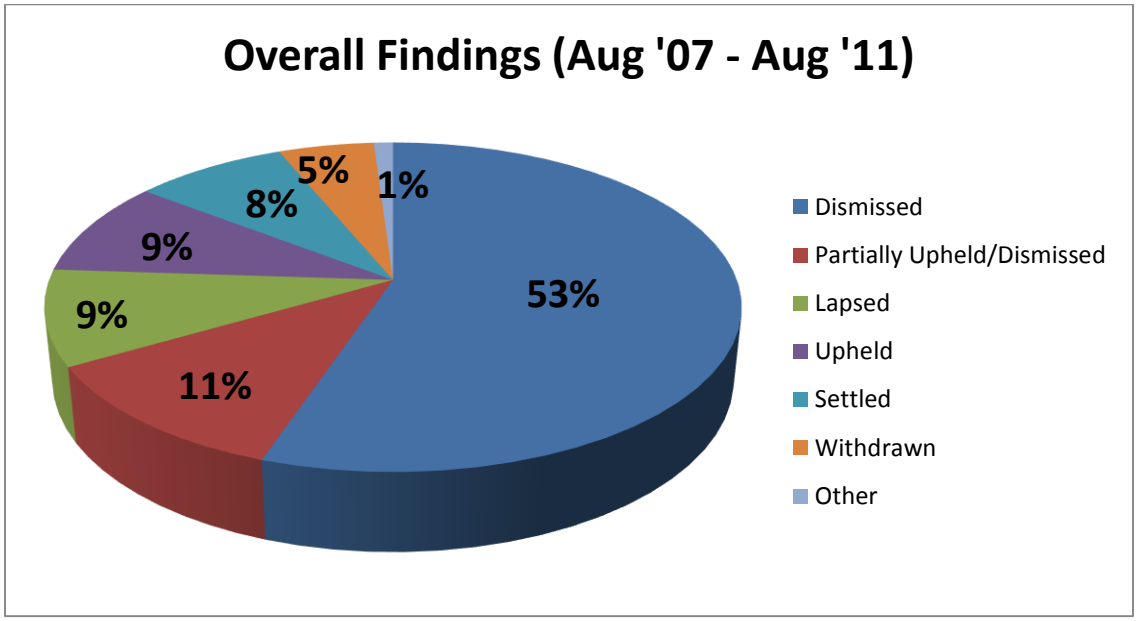


Figure 3: Overall Findings (August 2007-August 2011).

As is illustrated in Figure 3 more than half (53%) of all cases in the period August 2007 to August 2011 were dismissed.
While 11% of cases were partially upheld/dismissed, only 9% of all cases in the research period were entirely upheld. This may be regarded as fuel to the fire in the light of criticism leveled at the ombudsman for being biased toward the press in his rulings. However, one needs to consider the reasons behind findings of cases, which is discussed in Chapter 5, which focuses on government cases.

Other outcomes, or findings, of cases included 9% lapsed, 8% settled, 5% withdrawn and 1% grouped under an outcome termed “other”. The latter included the odd case where a case was not entertained for some reason, such as online articles or opinion pieces or advertisements which fall outside the ombudsman’s mandate.

While there could be a variety of contributing factors resulting in cases having lapsed, it was superficially observed that in several instances the complainant had failed to sign the waiver in due time, or the complainant failed to supply the ombudsman with a copy of the published article he/she was complaining about, or the complainant failed in due time to provide the ombudsman with a response to the newspaper's defense to the complaint. Not all cases were treated the same in terms of outcomes where the waiver was concerned. Sometimes the outcome of cases in which waivers were not signed were handled as lapsed and sometimes the ombudsman dismissed cases where waivers were not signed.

It is important to note that, where cases were settled, it was found that, in most such instances settlements entailed the newspaper having published a correction or apology whilst the complaint was still in progress. This voluntary correction of errors before being prompted to do so by the ombudsman reflected positively on the press, as it showed that the press was willing to maintain journalistic standards. This should also be seen as a positive reflection on the press ombudsman, as this means due to his mediation the parties agreed to settle prior to a ruling being made on the complaint. It can therefore be argued that settled cases are positive reflections on the proper functioning of the self-regulation system: firstly, the press ombudsman managed to mediate a settlement prior to proceeding with a case, secondly the press voluntarily maintained journalistic standards by fixing errors promptly and thirdly, the complainants were satisfied with the mediation process and remedy, or settlements, offered.

4.1.5. Who did the findings favour?

It has been established that of all complaints lodged in the entire research period, just over half of the ombudsman's findings were outright in favour of the press, as such complaints were dismissed in their entirety.

Note that, many cases are dismissed without the ombudsman writing a ruling. There are several reasons for this that included some complainants' unwillingness to sign the

waiver, a case not having any merit, full sets of documentation may not have been submitted in due time by a complainant and so forth. In the findings of this research thus, “dismissed” cases included the cases which were dismissed by the ombudsman without a ruling as well as the cases for which a ruling was written by the ombudsman. These results can therefore not be seen as a bias of the ombudsman towards to press.

Some 20% of complaints were partially or entirely in favour of the complainants. The analysis of the overall outcomes of cases per complainant type, showed how each of the complainants (public, business/organisation, politician/prominent person and government) was affected.

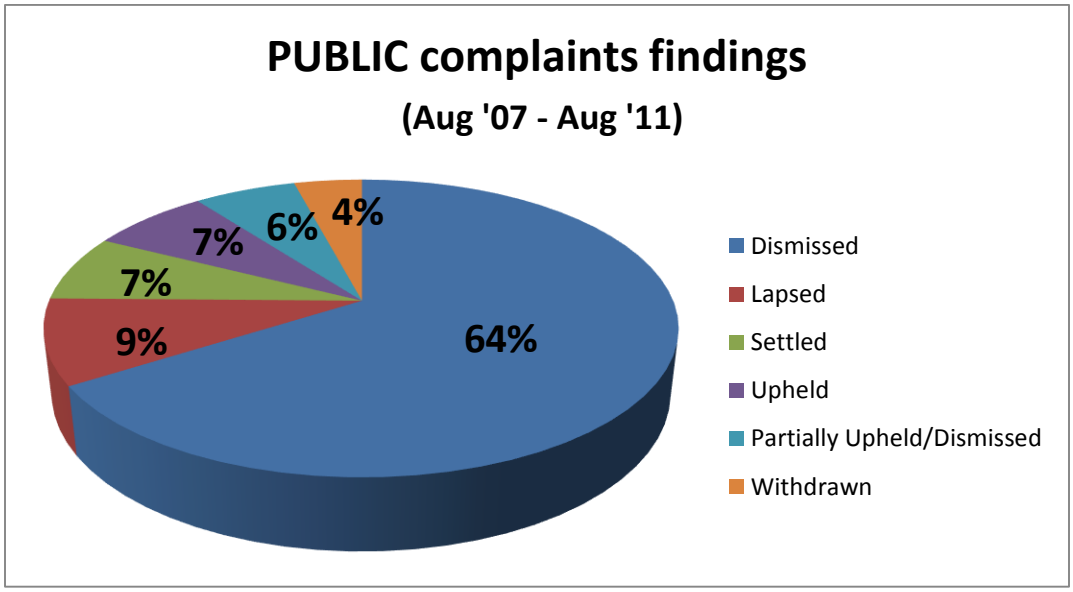


Figure 4: Public complaints findings (August 2007-August 2011).

Figure 4 illustrates that 64% of all complaints lodged by the public were dismissed by the ombudsman. This is significant considering that the majority of all complaints lodged with the ombudsman during the research period came from the public. Only 7% of all public complaints were entirely upheld while 6% were partially upheld/dismissed.
The fact that so many public complaints were dismissed, is perhaps an indication of a lack of knowledge on the public’s part about press ethics and the Press Code as well as

the ombudsman's mandate. It could also simply reflect that more than half the time, the public's complaints against the press for transgressing the Press Code simply did not hold any water.

A total of 9% of complaints from the public had lapsed while 7% were settled. Cases most often lapsed due to complainants not signing the waiver or responding to the ombudsman in the allocated timeframe during the process as prescribed by the Complaints Procedures (see Appendix C).

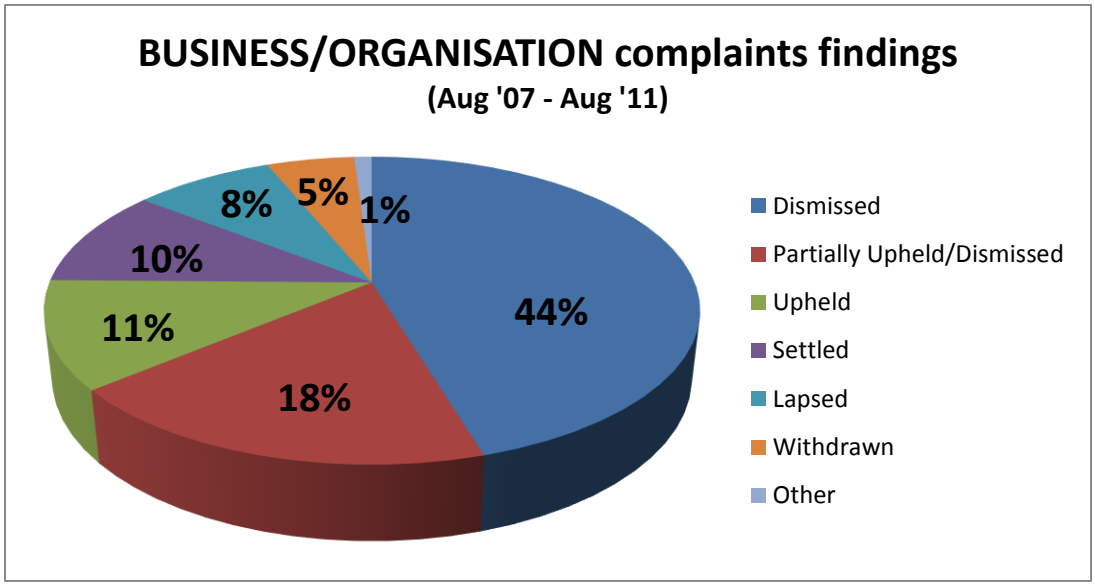


Figure 5: Business/Organisation complaints findings (August 2007-August 2011).

As is evident in Figure 5, 44% of all business/organisation complaints in the research period were dismissed. A total of 11% of such complaints were entirely upheld, while 18% was partially upheld/dismissed. In 10% of all complaints lodged by businesses or organisations, did the ombudsman manage to reach a settlement between parties prior to having to rule on the basis of the complaint.

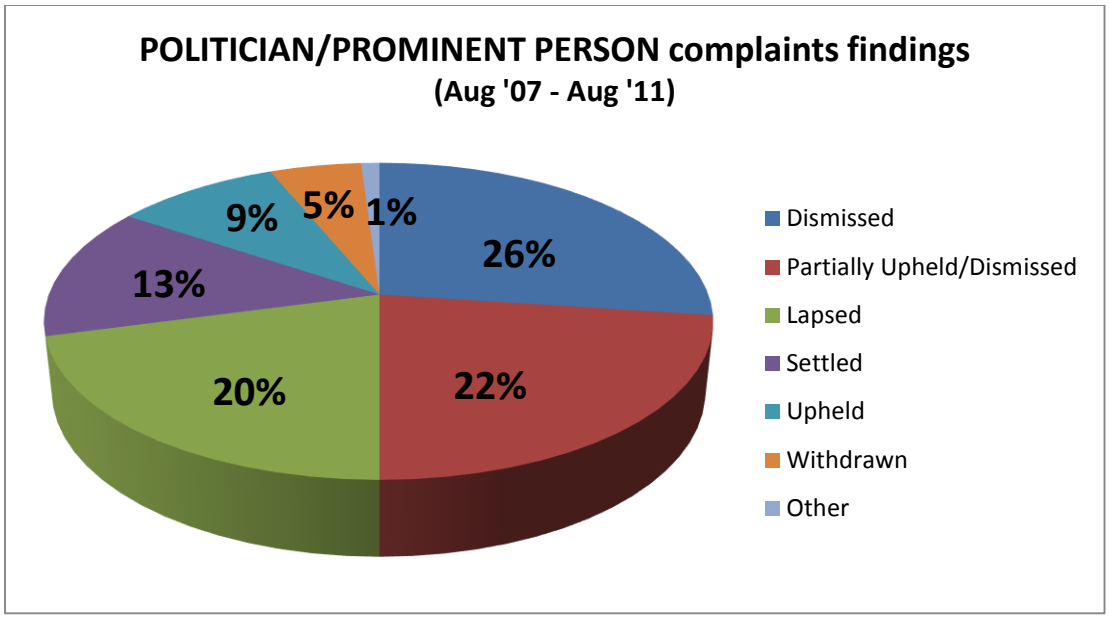


Figure 6: Politician/Prominent Person complaints findings (August 2007-August 2011).

The findings on complaints from politicians/prominent people showed more "balanced" results, as Figure 6 indicates. Only 26% of all such complaints were dismissed, while 22% were partially upheld/dismissed and 9% upheld entirely.

Worth mentioning is that the findings on complaints from politicians/prominent people not only largely favoured such complainants, but this complainant type holds the highest percentage of lapsed cases (20%), as well as the highest percentage of settled cases (13%) out of all complainant types.

The high percentage in lapsed cases could be owing to a number of factors, as previously explained. However, in instances where a complainant failed to sign the waiver, on the one hand it can be argued that politicians and prominent people were more unwilling than any other complainant type to waive their right to take legal action upon realising they might be unsatisfied with the ombudsman's ruling, or that legal action might have already been in progress at the time of the complainant realising a waiver needed to be signed. On the contrary, it can be argued that there may be merit

in the criticism leveled at the ombudsman for a lack of information regarding the waiver and on the ombudsman's role in the mediation process.

In addition to reflecting positively on the self-regulation system, it can also be argued that the high percentage in settled cases provided a good indication of satisfaction with the system, as well as politicians and prominent persons' willingness to accept the mediation process and be satisfied with settlements offered.

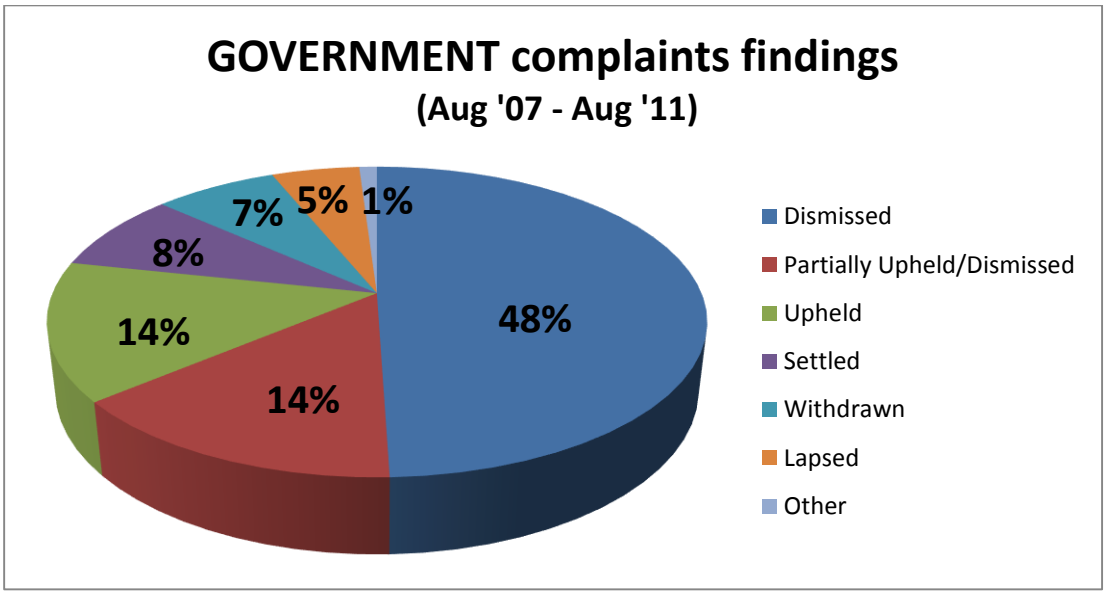


Figure 7: Government complaints findings (August 2007-August 2011).

Significantly, just under half (48%) of all complaints lodged by government were dismissed. Out of all complainant types, government complainants hold the largest percentage (14%) of upheld cases, while a further 14% of such complaints were partially upheld/dismissed.

At first glance of the overall findings of all complaints, one might be inclined to argue that the press ombudsman more often than not favoured the press in his findings. However, the outcomes of cases, especially in government complaints, contradict the ANC's critique that the ombudsman was biased toward the press and reflect a more fair

approach to findings on cases. (Findings on government complaints are discussed in more detail in the following chapter).

4.1.6. What were seemingly the reasons for complaints?

It was not possible to accurately determine which articles of the Press Code had been involved in all complaints during the research period. This was due to the improper record-keeping of case files in the ombudsman's office, as only about a third of all complaints (including sub-complaints) mentioned which articles had been involved in the case files.

However, in an attempt to ascertain the nature of complaints, certain indicators that are in line with some typical ethical transgressions were included in the data capturing programme. Based on an informed opinion on the nature of the complaint, the data capturer then selected from the series of indicators. These indicators were selected from accepted general ideological ethical principles in journalism and included fairness (for example not asking a complainant for comment); accuracy; truthfulness; misleading; and other (any other ethical transgression such as hate speech or inciting violence). It can be argued that these indicators vary widely in definition and that the capturing of such data was based on the data capturer's discretion.
Hence, it is not asserted that this section of results accurately reflect the reasons for complaints. Nonetheless, these results provide an interesting indication of common ethics involved in complaints in the research period, in an attempt to establish such trends.

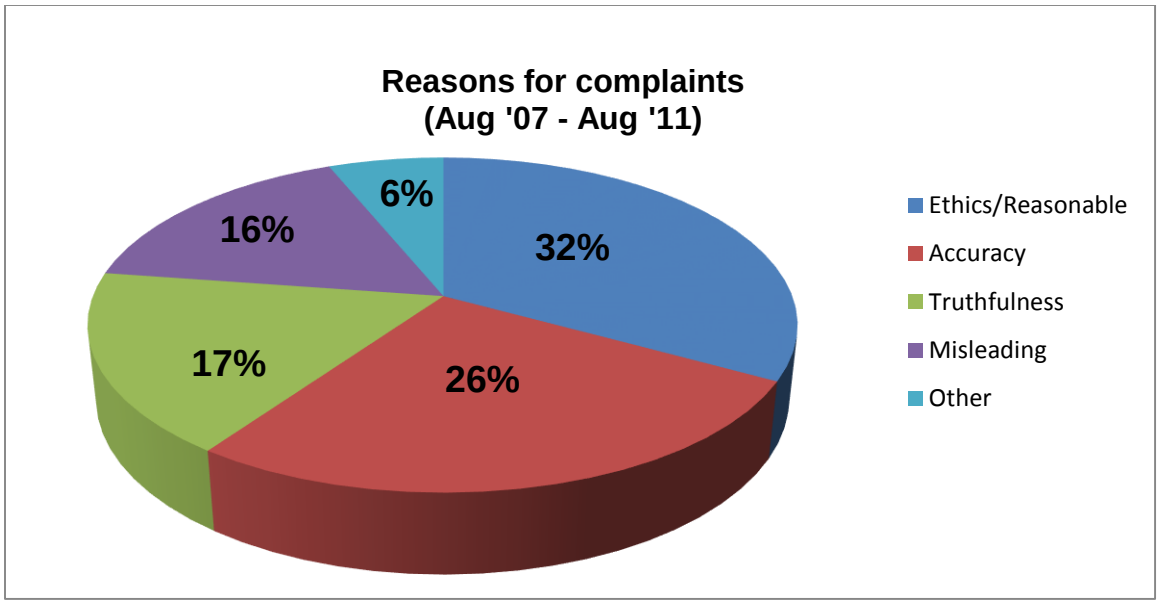


Figure 8: Reasons for complaints (August 2007-August 2011).

As Figure 8 illustrates, 32% of all complaints involved fairness, where for example a complainant was not asked for comment or comment was given but not published.

A total of 26% of all complaints challenged the accuracy in newspaper reports. A further 17% of complaints were concerned with truthfulness in reports, while 16% involved misleading statements, headlines, captions, photographs in reports. Six percent of complaints involved other reasons, such as but not limited to hate speech or inciting violence.

4.1.7. What were the sanctions?

In line with the Complaints Procedures (see Appendix C), the ombudsman can decide to hand out several sanctions when a complaint is upheld. The analysis of sanctions included complaints and sub-complaints. It was observed that in the majority of rulings, the ombudsman gave more than one sanction per upheld complaint. For example a newspaper may have been ordered to both publish the complainant's response as well

as an apology on one upheld complaint. Combination sanctions were included in the following analysis of sanctions.

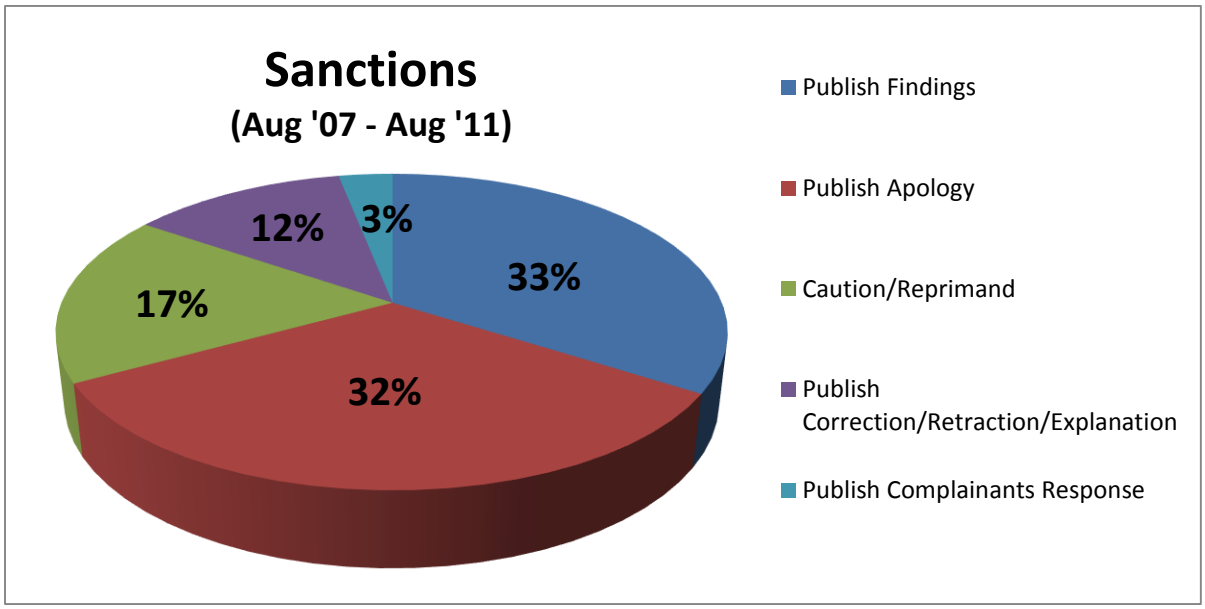


Figure 9: Sanctions (August 2007-August 2011).

The results reflected in Figure 9 found that publishing apologies (32%) and publishing the findings of the ombudsman (33%) were the two sanctions most often dealt out by the ombudsman in the research period. This was followed by cautioning/reprimanding (17%) newspapers for transgressing the Press Code, while the fourth most used sanction was ordering newspapers to publish a correction/retraction/explanation of the transgression (12%). Publishing a complainant's response accounted for three percent of all complaints sanctions and would have been linked to a complaint involving comment not obtained or not published in the original report. This is a reflection of how often newspapers fail to ask for or publish the comment of their subjects.

It was noted that in most instances where the sanction involved publishing an apology, or publishing a correction/retraction/explanation, the ombudsman directed the newspaper to publish such on the same page as the original story that contained the transgression/s of the Press Code. For example if the original story was published on

the front page of a certain newspaper the ombudsman would order the newspaper to publish the correction/apology on the front page as well.

4.1.8. Appeals

The analysis of appeals found that overall in the period August 2007 – August 2011, only 44 cases, or 7%, of the total 593 captured cases, were appealed. Appeals may have been lodged by either complainants or newspapers, as both have the right to appeal a ruling made by the ombudsman.

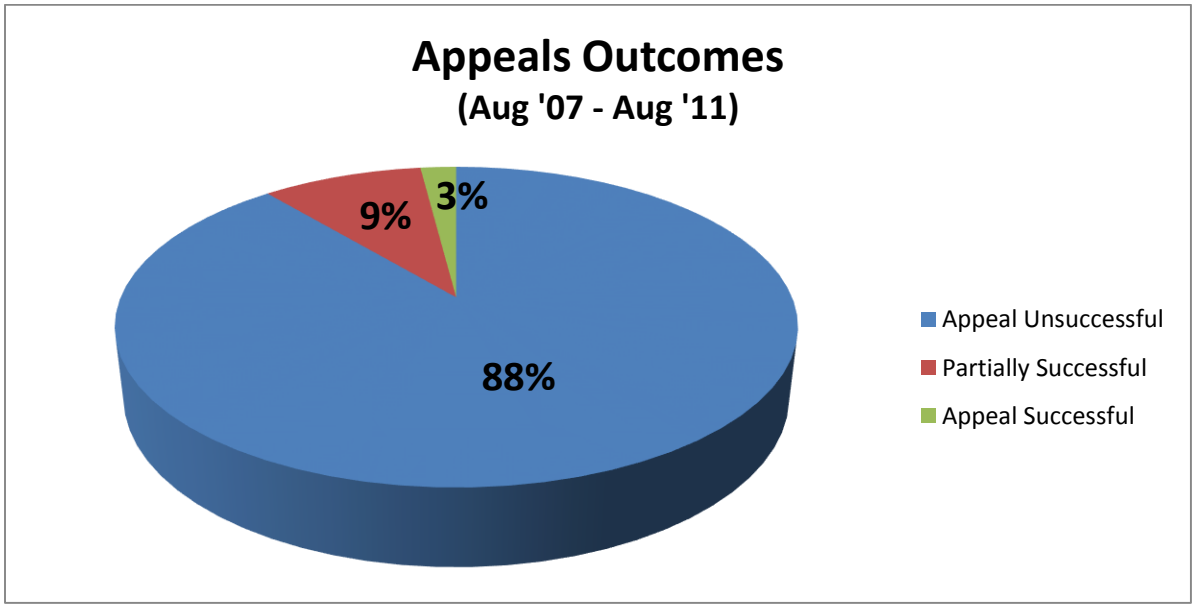


Figure 10: Appeals outcomes (August 2007-August 2011).

What is significant to note is that the majority (88%) of all cases that were appealed were unsuccessful. This means that the Press Appeals Panel (PAP) either dismissed outright the complainants'/newspapers' applications to appeal, or considered the ombudsman's findings during a PAP hearing and then concurred with the initial ruling of the ombudsman, thus the initial finding remained unchanged.

A total of 9% of appeals were partially successful. This meant that, upon the PAP hearing an appeal, some of the ombudsman's initial findings on sub-complaints of a given case were overturned, thus changing the ombudsman's original ruling on that sub-complaint from dismissed to upheld. Appropriate additional sanctions were then ordered by the PAP.
Worth mentioning is that, during the four-year research period, only two cases were successfully appealed. One appeal was lodged by a public complainant, resulting in the PAP overturning the initial finding of the ombudsman from dismissed (in favour of the newspaper) to upheld (against the newspaper). The other was lodged by a newspaper, resulting in the ombudsman overturning the initial finding from upheld (against the newspaper) to dismissed (in favour of the newspaper).

The case in which the newspaper (City Press) appealed, involved the ANC as complainant, and is discussed under the appeals section in government complaints in the following chapter.

The complainant appeal was the matter of a Mr. Horst Peschkes vs. the Sunday Times, received on 25 August 2011. The complaint was handled by Dr. Johan Retief, the deputy press ombudsman. In this instance, Peschkes complained about an article published in Business Times on 31 July 2011 headlined "Violence and anarchy cow men of steel - bargaining council deal on metalworkers strike pleases few".
Peschkes, as a member of the public working in the relevant industry, complained to the ombudsman that the article inaccurately stated that the Steel and Engineering Industries Federation of South Africa (Seifsa) was a dominant party in the bargaining council regarding the end of the strike. The article quotes the executive director of Seifsa, Dave Carson, as saying that the federation is the dominant party in the bargaining council. Sunday Times furnished the deputy press ombudsman with documentation to prove that the statement was true, however, the deputy ombudsman felt he did not need to peruse this documentation because the newspaper merely quoted a source on the statement and therefore did not represent the statement as a fact.

The deputy ombudsman felt it was the source's right to freedom of expression to make such a statement and likewise it was the newspaper's right to report on what the source had said, irrespective of whether the source was right or wrong. The deputy ombudsman stated that "it cannot reasonably be expected from journalists to check if everything that an interviewee reportedly said is factually correct". He added that his mandate did not extend to deciding the truthfulness of an interviewee's view. Retief did however, suggest Peschkes write a letter to the editor for his/her consideration to publish. The case was originally dismissed on 13 September 2011.

In the meantime the newspaper published a correction for inaccurately referring to Seifsa as an employers' organisation as in fact it is a federation of employers' associations, but it declined to publish a correction about Carson's quote.

Judge Ralph Zulman granted Peschkes leave to appeal and an appeals hearing was held on 5 October 2011. The PAP noted that Peschkes' support documentary evidence to the ombudsman was a letter from the Registrar of Labour Relations which stated that Seifsa is not an employers' organisation and therefore cannot become party to a bargaining council. This letter was not disputed by the newspaper. The PAP therefore felt that while the original article was published in accordance with the Press Code as the newspaper believed it to be factually correct, the published correction was not in fact done correctly. It also noted that the newspaper gave a prominent position and significant space in publishing the outcome of Peschkes' case being dismissed by the deputy ombudsman.

The PAP subsequently upheld the appeal, stating that "there is a responsibility to correct factually incorrect information published". Subsequently the Sunday Times was sanctioned to publish a correction with the appeals finding in the same position and size as the article reporting on the dismissal of the original complaint.

Interesting to note is that it was not the original article but a voluntary published correction that led to the successful appeal. It is therefore important for the press to take meticulous care in the manner in which they publish corrections, such as the prominence and wording thereof.

4.1.9. Turnaround times

It was not possible to accurately determine turnaround times on cases dealt with by the ombudsman in the research period. This was due to the record-keeping of case files in the ombudsman's office, as the date of outcome was not always available on case files nor in the case register.

One of the critiques on the ombudsman was slow turnaround times in reaching outcomes of complaints (ANC, 2010:30). In this light, however, it can be mentioned that it was superficially observed that some cases were handled speedily and in the permitted timeframe as stipulated in the Complaints Procedures (see Appendix C). On the several cases that did in fact include timeframes it was observed that such cases were indeed finalised within the allotted timeframes. However, there was also the odd case that took several months to be finalised, with reasons including that either the ombudsman or complainant had indicated other commitments such as leave halting the process. However, since not all cases included the dates when they were finalised, an accurate comparison of timeframes could not be determined.

One can argue that it would not be fair to solely blame the ombudsman's office for turnaround times, since the ombudsman cannot make a ruling prior to receiving and perusing all relevant documents from complainants, such as the newspaper article involved in the complaint, the signed waiver, and responses and defenses from both parties involved in a complaint. Although the Complaints Procedures stipulate the periods permitted for such responses, several factors may have influenced the response times of parties involved, including but not limited to illness, leave and

outstanding documents. In some instances the ombudsman rightly decided to close and dismiss cases when the permitted timeframe had lapsed. Yet in some instances, the ombudsman, being a mediator, allowed more time for responses where valid excuses were given, which in turn affected turnaround times but favoured the self-regulation process.

This should thus not necessarily be seen as a negative reflection on the ombudsman's office, since the process is mostly dependent on the involvement of other persons (complainants and newspapers) in the process.

Nevertheless, the PCSA indicated in its Review that it was committed to addressing the issue of turnaround times, by in future shortening timeframes for response communication and tracking turnaround time statistics (PCSA, 2011:57). In this sense the Review suggested that permitted timeframes for newspapers to respond to complaints be shortened in the new proposed Complaints Procedures (see Appendix H).

It may be useful to briefly compare some of the trends found in this research section to that found in the years prior to this research period.

A masters' degree study carried out in 2010 by Wits University student Olivia Kumwenda, based on a sample of complaints from the ombudsman's case register, showed that the number of complaints the ombudsman's office received had steadily increased between the years 1997 to 2005. However, Kumwenda (2010:31) noted a decline between 2005 and 2008. This, she contends, was linked to a lack of publicity and the public's perceptions that the system was biased towards the media. It can also be argued that the ANC's temporary suspension of calls for statutory regulation after 2002 perhaps added to this trend. In addition, around half of all cases received prior to 2007 were dismissed (Kumwenda, 2010:33), as were the cases received in the research period of this research project. Yet more amounts of cases were settled (around half) and had lapsed (almost a quarter) in the 10 years prior to the research

period under review in this research project. Kumwenda (2010:34) also noted the waiver issue and complainants' failure to respond to communication in reasons for outcomes (Kumwenda, 2010:34), indicating that the waiver matter has long been an issue of contention among complainants.

However, since Thloloe took office in 2007 and the office restructured, more public awareness, among other things, has perhaps aided in more people making use of the system, resulting in a stable increase henceforth, as this research findings show. Prior to 2007, the most complaints were received by politicians/prominent people (Kumwenda, 2010:36). However in comparison to this research period, the most complaints were received by the public. It can therefore be said that public awareness of the system's existence may have seemingly increased somewhat.

4.2. Conclusions from overall trends

The following **main conclusions were drawn from empirical findings regarding overall trends** that exist in ombudsman cases during the research period:

- **POOR RECORD-KEEPING:** While the official case register of the ombudsman recorded 705 cases in the research period August 2007 – August 2011, only 593 cases (with an additional 639 sub-complaints), with exception of cases involving other print media, were captured. There were 70 missing cases against newspapers. The majority case files were not electronically available. In addition, often case files lacked detail, which meant that turnaround times and reasons for complaints could not accurately be determined. It can therefore be said that the ombudsman's office lacked proper record-keeping. As a result, training interventions cannot be established to address potential problems, which in turn hamper the pro-activeness of the system (Duncan, 2010:6). This is a point the ombudsman has conceded to and aims to rectify (PCSA, 2011:10).
- **THE IMPORTANCE OF SUB-COMPLAINTS:** Any complaint may have a number of sub-complaints of which the outcomes may differ. There were 593

cases with an additional 639 sub-complaints, of which findings varied. To view the cases that the ombudsman has dealt with as simply upheld or dismissed (in favour of or against newspapers), would therefore give an inaccurate view of the outcomes of cases. This research has therefore considered sub-complaints (both overall and in specific analysis of government cases) to obtain accurate data, which led to the use of the outcome indicator partially upheld/dismissed. Trends found in the latter are perhaps an indication of the ombudsman's fairness in carrying out his rulings. As the ombudsman noted in one ruling: just because the majority of a case's sub-complaints may have been dismissed, does not take away from the seriousness of the one or two sub-complaints in that case that may have been upheld.

- **THE PUBLIC SUPPORTS SELF-REGULATION**: Contrary to the criticism of the ANC leveled at the ombudsman that the public do not have sufficient access to his office (ANC, 2010:30), the findings show more than half of all complaints lodged during the research period were made by ordinary members of the public (refer to public category definition under point 4.1.1.). In addition, the amount of government cases adds up to only 15% of all complaints. The fact that members of the public, businesses and organisations, politicians and prominent people, and government have made use of the ombudsman's office, as well as the fact that complaints have increased during the full comparative years in the research period in question, is indicative of citizens' trust and acceptance in the ombudsman's office to handle their complaints in a cost-effective and speedy manner, as opposed to choosing legal recourse. Thus, the system of self-regulation functioned well.
- **THE SIGNIFICANT YEAR 2010:** The number of complaints against newspapers overall, and specifically from government, increased significantly in the year 2010. This was also the year in which renewed calls for a statutory Media Appeals Tribunal sparked fierce contestation of the self-regulation system and rigorous debate surrounding press freedom. It was also the year of the Fifa World Cup and the year in which the Protection of Information Bill become a hot issue in the press. Awareness of and a more critical look at the present system

could've been sparked by the contestation debate, resulting in more complaints. (This is discussed in more detail in the following chapter).

- **BIGGEST NUMBER OF COMPLAINTS DOES NOT NECESSARILY EQUAL BIGGEST OFFENDER**: The most complaints were lodged against the Sunday Times, owned by Avusa. However, more than 60% of these complaints were dismissed. This trend was evident of all 10 newspapers which received the most complaints. The number of complaints against an individual newspaper does therefore not necessarily mean it is a serial transgressor of the Press Code. The outcomes of complaints should therefore be considered when interpreting the number of complaints.
- **OMBUDMAN'S FINDINGS FAIR**: The findings show that just over half of all 593 complaints were dismissed. This reflects the ombudsman's fair approach in his rulings, and could also mean that newspapers did not transgress the Press Code as much as critics of the system, like the ruling party, believed. This finding, as well as considering the small amount of appeals lodged and even smaller amount of successful appeals (see conclusion on appeals) indicate that the ombudsman's rulings were free of any obvious bias and the acceptance of most complainants of the outcomes of their complaints.
- **SETTLED CASES REFLECT POSITIVELY:** Settled cases reflect positively on both the ombudsman, for achieving his mediation role between parties; as well as on the press, as findings observed newspapers voluntarily published corrections and/or apologies when the ombudsman intervened, leading to cases being settled. In this sense, settled (and the 5% withdrawn) cases may also be a measure for satisfaction with the self-regulation system, however, only 8% of all cases were settled.
- **ACCURACY AND FAIRNESS THE MAJOR GRIPE:** The Press Code article potentially transgressed was most often not included on case files –another indication of poor record-keeping. Therefore the number of transgressions of specific articles of the Press Code could not accurately be determined for all cases in the research period. However, general indicators that were applied as measurement showed that overall, seemingly the majority of complaints

concerned accuracy in newspaper reports and ethical issues such as not asking a complainant for comment (reasonability).

- **SANCTIONS:** Overall in the majority of cases, the ombudsman either directed a newspaper to publish the findings of his ruling and/or an apology to the complainant. The ombudsman also often reprimanded newspapers. By directing a newspaper to publish findings and apologies, the ombudsman encouraged professionalism and maintained journalism standards, which are key duties of a press council.
- **ONLY TWO SUCCESSFUL APPEALS**: Only 44 (7%) of the total 593 cases were appealed. In the entire research period there were only two instances in which the Press Appeals Panel (PAP) overturned the original finding of the ombudsman. One was an appeal lodged by a newspaper against the ANC party in which the original finding against the newspaper was overturned, and the other was an appeal lodged by a public complainant in which the ombudsman's original finding against the complainant was overturned. In almost 90% of appeals did the PAP agree with the ombudsman's original findings. This is an indication of the independent PAP's trust in the ability of the ombudsman to make fair rulings, free of any obvious bias. It also reflects the majority of complainants' satisfaction with or acceptance of the ombudsman's original rulings.

  TURNAROUND TIMES DO NOT EQUAL A SLOW OMBUDSMAN: The dates on which cases were finalised were not available on the majority of case files and therefore turnaround times could not accurately be measured for the research period – another indication of poor record-keeping. The ombudsman has been blamed, by amongst others the ruling party, for slow turnaround times (ANC, 2010:30). However, criticism against the ombudsman for slow turnaround times on cases seems invalid. The ombudsman relies on communication responses from the parties involved, which may be where the delay lies, in order to proceed with a ruling. Nevertheless, the ombudsman is committed to addressing the issue (PCSA, 2011:57).

In Chapter 2 the theoretical framework of the present system was summarised in the following two statements:

Theoretical statement 1: *The theory of freedom of speech (which includes press freedom) informs the notion that the press has a responsibility to act socially accountable. This responsibility requires the free press to have a system of self-regulation, which often functions in the form of a press council.*

Theoretical statement 2: *The theory of social responsibility, squarely rooted in the theory of freedom of the press, in practice requires the press to regulate itself to ensure it is accountable towards the public it serves. Thus, by a press council (through its ombudsman) enforcing a socially responsible code of ethics, the professionalism and ethical standards of the press are encouraged. This system in turn could advance the cause of press freedom.*

In view of the empirical findings and theoretical statements, the following **theoretical conclusions regarding overall trends** can be made:

- In the period investigated, the South African press functioned in line with the main tenets of the freedom of the press theory as outlined in theoretical statement 1, including its emphasis on responsibility. The latter found expression in a system of voluntary self-regulation, which was administered by the Press Council's press ombudsman, who enforced a socially responsible Press Code. Support by the public for the system was evident in the number of complaints. However, the record-keeping was not satisfactory.
- While the press was exonerated in many instances, the press ombudsman did find against certain publications, ordering them to publish a number of corrections and apologies. In so doing the press ombudsman encouraged professionalism and ethical standards, as formulated in theoretical statement 2. Only a small number of appeals were lodged and in only two instances were the ombudsman's findings overturned on appeal, which confirmed the fairness of his findings.
- It can therefore be concluded that the system of self-regulation served the cause of press freedom during the research period as outlined in theoretical statement 2.

4.3. Chapter summary

This chapter has dealt with the findings of overall complaints lodged during August 2007 – August 2011, in order to establish the trends that exist in overall cases in the research period. Chapter 4 has presented the overall findings of and conclusions drawn from trends that exist, in light of the theoretical frameworks and background discussed earlier on. This has aided in answering the overall question and specifically RQ2 and in reaching RA2, which involved determining the overall trends in the research period.

5. Trends in complaints from government (August 2007 – August 2011)

The following chapter focuses on the specific trends that were found in complaints from government during the research period, in light of the context and theoretical frameworks set out in earlier chapters.
This chapter seeks to aid in specifically answering RQ3 and to reach RA3, which entails determining what specific trends exist in cases that involved government complaints. By focusing in detail on these findings as well as some key findings in the light of the media freedom debate and theoretical frameworks of the present system, the chapter also aids in ultimately answering the overall research question.

5.1. Findings: Specific trends involving complaints from government (August 2007 – August 2011)

In the light of the media freedom debate, which involves attacks on press freedom that include a threat of statutory regulation of the press, it was decided to conduct a more in-depth analysis of complaints lodged by government. This section outlines specific trends found in such complaints.

5.1.1. Government complaints overall

As discussed, within the complainant type “government”, complaints were received from the ANC itself as well as different spheres of government, where the individuals making the complaint felt the party or government department they were affiliated to was affected by the particular newspaper article. Such complaints were received from the president’s office, ministers, members of Parliament, provincial premiers, governmental departments, municipalities, members of executive committees and affiliates such as the ANC Youth League.

There were only eight complaints lodged by the ANC party itself in the research period, of which the most (3) were lodged in 2008. It could be that certain politicians affiliated with the party lodged more complaints; however such complaints would then have been counted under the complainant type politician/prominent person.

The following table indicates the 10 newspapers with the most complaints against them lodged by government complainants:

Newspapers with the most complaints from government:

NEWSPAPER	NUMBER OF COMPLAINTS	PERCENTAGE OF TOTAL GOVERNMENT COMPLAINTS (Aug '07 – Aug '11)
City Press	13	14%
Sunday Times	10	11%
Mail & Guardian	8	9%
The Star	7	8%
Sowetan	6	6%
Sunday Independent	5	5%
Cape Times	3	3%
Business Day	2	2%
Daily Sun	2	2%
The Mercury	2	2%

Table 5: Top 10 newspapers with the most complaints from government (August 2007-August 2011).

Complaints were lodged against all types of newspapers. As Table 5 indicates, the City Press received the most (13) complaints from government. However, around half (7) of these complaints were dismissed, while three were upheld, two partially upheld/dismissed and one settled. City Press, owned by Media24, is a Sunday

newspaper with a strong focus on political content and the fourth biggest weekly in the country. This newspaper had the second most complaints against it overall from all complainants in the research period. However, considering the findings of its overall complaints, it's interesting to note that about 40% of all complaints against City Press were dismissed, while 14% were upheld, 14% had lapsed and 12% had been settled.

During the research period August 2007 to August 2011, government lodged 91 complaints, accounting for 15% of the total 593 complaints captured.

Looking at the figures per year, the ombudsman received two complaints from government during the five-month period 1 August 2007 to 31 December 2007, accounting for 5% of the total 36 cases received in that period.

In 2008, the ombudsman dealt with 15 complaints from government, which accounted for 14% of the total 101 cases received in that year.

In 2009 the ombudsman dealt with a total of 132 cases, of which 16 complaints, or 12%, were from government.

Then, in 2010, government lodged 39 complaints, which accounted for 20% of the total 186 cases received in this year.

During the eight-months from 1 January 2011 to 31 August 2011, the ombudsman handled 138 complaints, of which 19 complaints, or 13%, were from government

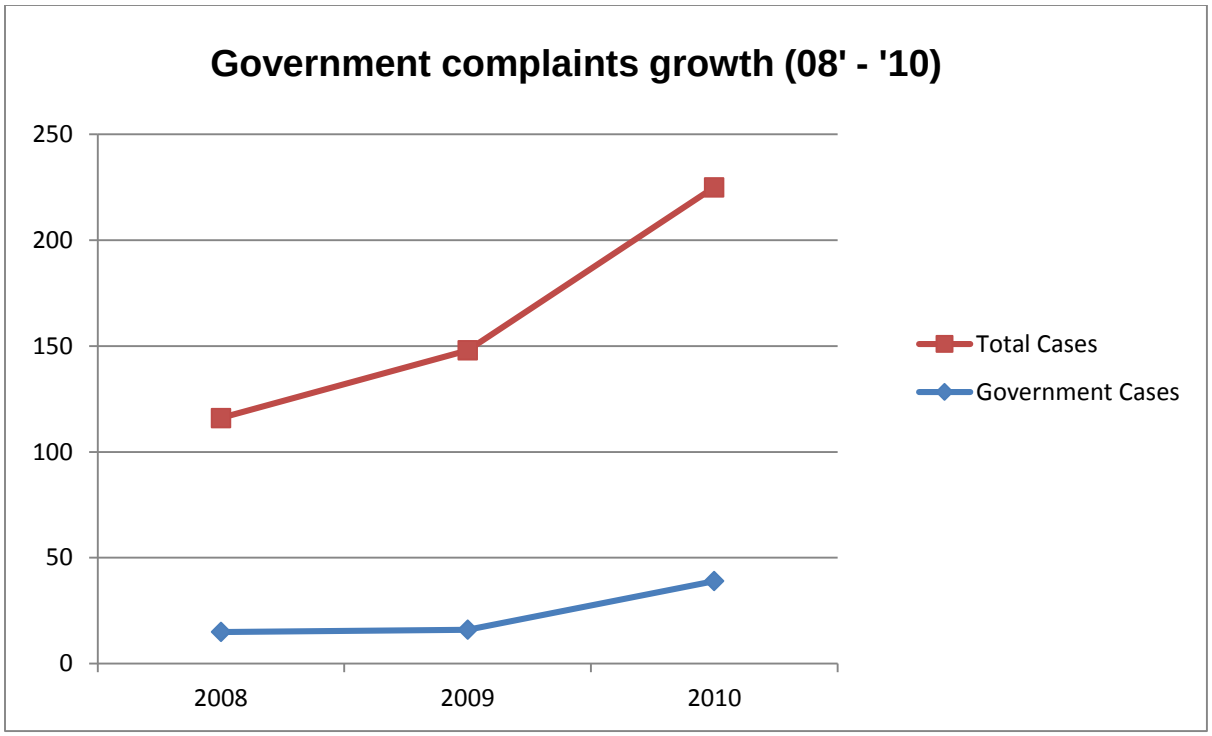


Figure 11: Government complaints growth (January-December 2008-2010).

As is illustrated in Figure 11, complaints from government increased slightly in the period 2008 to 2009. The increase follows the trend in cases overall having increased.

As was established in the overall analysis, while the number of such complaints showed only a slight increase (6%) between 2008 and 2009, a significant increase of 59% was found between 2009 and 2010. As mentioned, 2010 was also the year in which renewed calls from the ANC for a statutory Media Appeals Tribunal (MAT) sparked extensive debate surrounding press freedom and the contestation of the self-regulation system. Between 2008 and 2010, government complaints increased by 62%.

It can be argued that during this time and considering the ruling party's changed political thinking towards the press (as discussed in Chapter 1), government took a more critical look at the system from its philosophical viewpoint that is informed by a development model of the press (McQuail, 1987:121, as discussed in Chapter 2), rather than the social responsibility model under which the present system operates. In this light

government perhaps felt the present system was not performing and therefore saw the need to interfere in order to protect the country's developmental interests - albeit seen by some critics as a mere attempt at covering up possible corruption (discussed in Chapter 1).

In this sense, and considering the high number of dismissed cases, one can argue that the rise in complaints does not necessarily mean that the quality of journalism had suddenly deteriorated.

5.1.2. How did rulings affect complaints from government?

It was established in the overall findings that less than half (48%), or 44 of the total 91 complaints from government lodged in the entire research period, were dismissed by the ombudsman.

While 14% (13) of such cases were upheld, a further 14% were partially upheld/dismissed. A total of 8.7% (8) of all government complaints cases were settled, while 7.6% (7) were withdrawn and 5.4% (5) had lapsed.

An analysis of the ombudsman's findings on government complaints per year during the research period provided a more accurate reflection of how such cases were affected by the ombudsman's rulings, as is illustrated in the pie charts below.

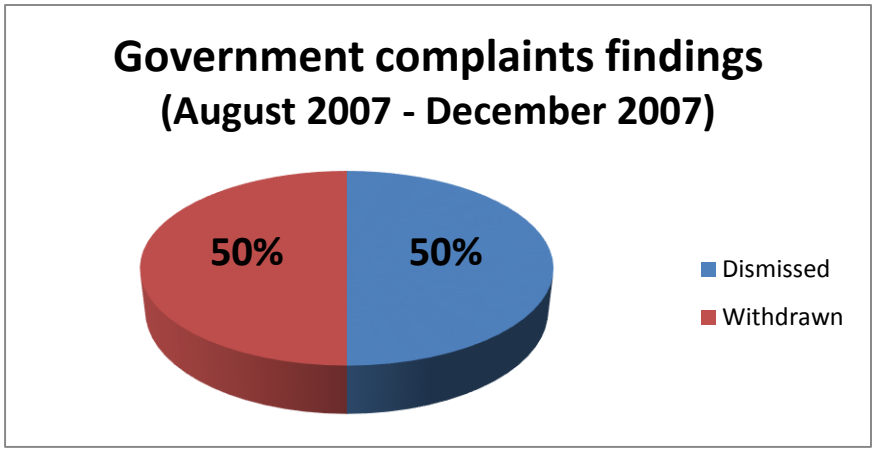


Figure 12: Government complaints findings (August - December 2007).

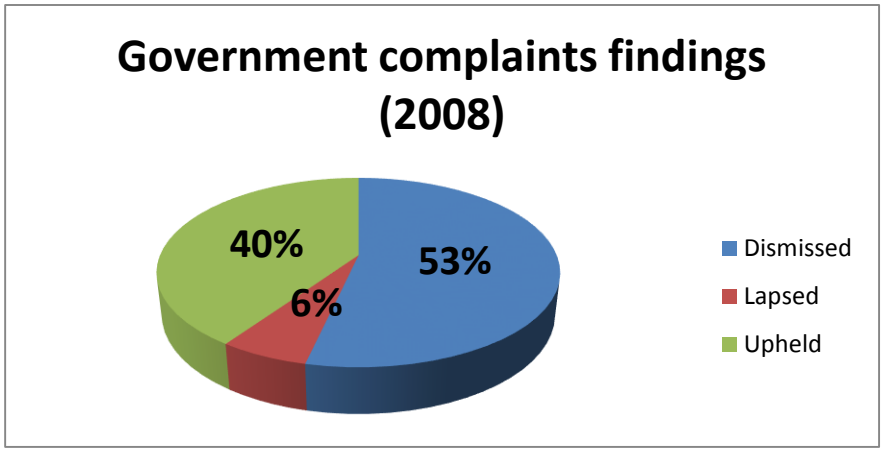


Figure 13: Government complaints findings (2008).

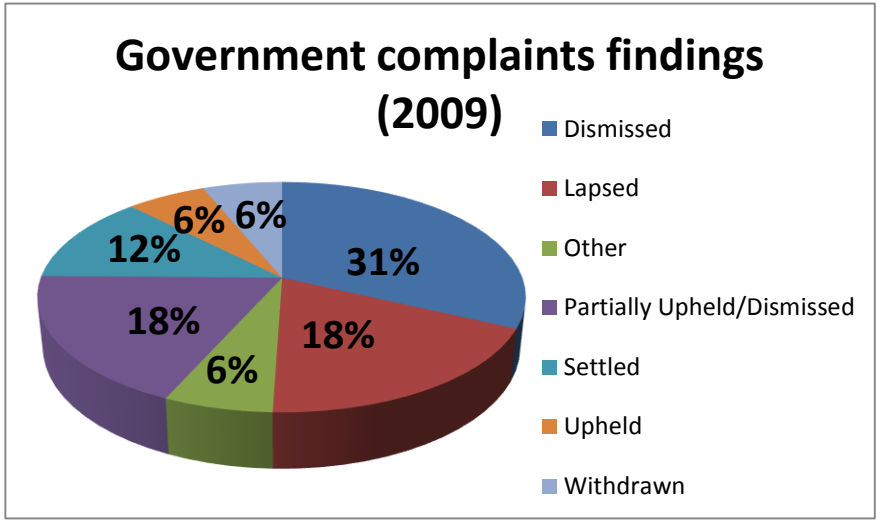


Figure 14: Government complaints findings (2009).

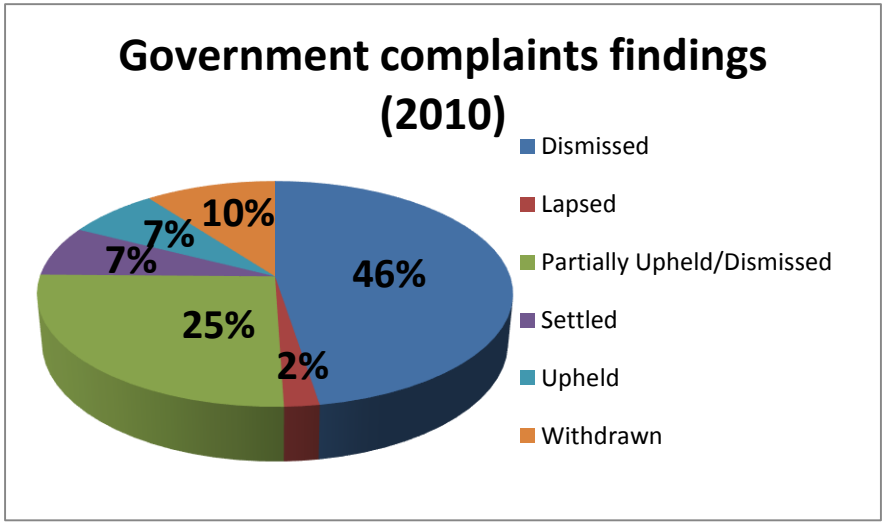


Figure 15: Government complaints findings (2010).

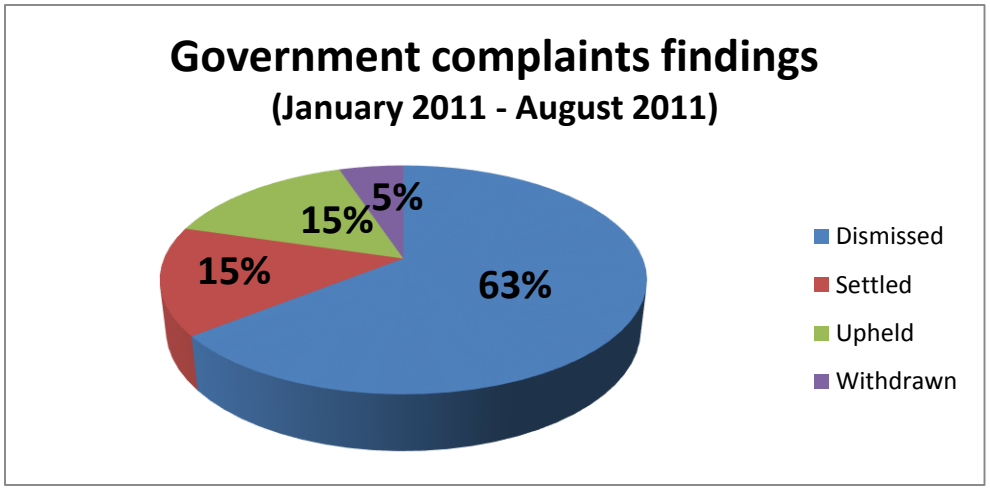


Figure 16: Government complaints findings (January - August 2011).

As Figure 12 shows, during the period 1 August 2007 to 31 December 2007, the ombudsman dealt with two complaints from government, of which one was dismissed and the other withdrawn. Of the 15 government complaints received in the following year, the ombudsman dismissed eight (53%) and upheld six (40%) complaints, while one complaint had lapsed, as Figure 13 illustrates.

Figure 14 indicates that in 2009, the ombudsman received 16 complaints from government, dismissing five (31%) of these and partially upholding/dismissing three (18%). One case was upheld (6%), and one case was withdrawn, while another accounted for a case falling outside the ombudsman's mandate (other). Two complaints (12%) were settled, while three (18%) had lapsed.

Figure 15 shows that, of the 39 government complaints cases received in 2010, 18 (46%) were dismissed and 10 (25%) were partially upheld/dismissed. Four (10%) such complaints were withdrawn, while three (7%) were upheld and another three settled. One case had lapsed.

During the period 1 January 2011 to 31 August 2011, as is illustrated in Figure 16, the ombudsman received 19 government complaints cases, of which 12 (63%) were dismissed, three (15%) were upheld and another three settled. One case had lapsed.

The year on year analysis indicates that it seems while government occasionally did have reason to complain, no overwhelming evidence exists against the press ombudsman and his handling of government matters.

5.1.3. Trends in the nature of government complaints

Comment

A trend found in reasons for complaints from government related to comment: either that a complainant had not been contacted for comment, or the complainant's comment was seeked but not published, or the complainant was not given enough time to comment.

This complaint involves the transgression of Article 1.5 of the Press Code, which states that: *"A publication should usually seek the views of the subject of serious critical reportage in advance of publication; provided that this need not be done where 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 witnesses intimidated"*.

Such complaints were made against all types of newspapers, from dailies to community newspapers. In several instances where the ombudsman intervened, the newspapers offered to print an apology and/or publish the complainant's response in a follow-up article even before being prompted to do so by the ombudsman, thus settling such cases before rulings were made.

As in the case of Lakela Kaunda, the deputy director-general in President Jacob Zuma's office, who, in July 2010, complained that The Times had published an article without contacting her for comment. The article, headlined "Kaunda wins battle in the presidency – Zuma's top aide tightens her hold as two more key officials prepare to leave", involved six sub-complaints, of which three were upheld and three dismissed. One of the three upheld complaints was that Kaunda was not asked for comment, while the others involved unqualified sources and unqualified facts. Upon the ombudsman's intervention the newspaper admitted to its mistake and agreed to publish Kaunda's response and apologise to her. The ombudsman nevertheless directed the newspaper to publish the complainant's right of reply as well as an apology and his findings.

Similarly, the Sowetan published an apology on its own accord for not asking the City of Cape Town's comment in an article published in September 2010. The case was therefore settled following the ombudsman's intervention.

In most instances, the ombudsman showed little tolerance for this transgression of the Press Code, mostly reprimanding newspapers and ordering newspapers to publish the complainants' responses and/or apologies. For example in the case of Floyd Shivambu, spokesman for the ANC Youth League (ANCYL) vs. the Mail & Guardian (M&G) in March 2010 regarding an article headlined "ANC Youth League targets Mantashe". The ANCYL complained that the story was concocted and the reporter did not speak to anyone from the ANCYL, and that the reporter did not contact the ANCYL for its official comment. The ANCYL claimed the purpose of the article was to "drive divisions in the ANC". After perusing the newspaper's defense the ombudsman found that the story was not concocted and therefore dismissed the first sub-complaint. However, the M&G was in breach of Article 1.5 by not contacting the ANCYL for comment. Subsequently the ombudsman reprimanded the M&G and directed it to publish his finding.

Similar instances whereby newspapers were reprimanded for not asking a complainant's comment and directed to print apologies/findings, included, but was not limited to, cases such as the Limpopo Health MEC vs. the Sowetan in December 2010, the ANCYL vs. Echo Ridge in November 2010, and the Northern Cape Education Ministry vs. the Diamond Field Advertiser in July 2010.

In several cases the ombudsman also ordered front page apologies and corrections, specifically if the article in question was originally printed on the front page of a newspaper.

For example in the case of the Department of Environmental Affairs (DEA), that complained about two articles published in the Cape Times in July 2010. The complaint

involved several sub-complaints, such as untrue statements, inaccurate reporting and misrepresentation of facts.
The ombudsman found the newspaper transgressed Article 1.5 of the Press Code by not asking the DEA for comment. Noteworthy is that the newspaper's defense stated that it unsuccessfully tried to get comment from the DEA. However, the ombudsman found the Cape Times also transgressed Article 1.2 and Article 1.4 of the Press Code, by irrespectively not publishing an earlier statement it had received from the DEA; and by not mentioning in the article that it unsuccessfully tried to get comment from the DEA. In addition a complaint regarding inaccurate statements was upheld. The ombudsman ordered the newspaper to apologise to the DEA and print a note on its front page announcing it was reprimanded and directed to apologise, with a reference to the summary of the findings of his ruling which had to be published on an inside page.

There were several instances in which newspapers did not give a complainant enough time to comment, such as the case of Matthews Phosa, then treasurer general of the ANC, who made such a complaint against City Press in August 2009. The City Press had to apologise to Phosa and the ANC, and print the ombudsman's findings.

Similarly, the primarily Western (and Eastern Cape) based Afrikaans-language daily Die Burger was reprimanded and had to publish the findings against it after the Kouga Local Municipality (KLM) complained it did not give its spokesman enough time to comment on an article published in June 2009. The complaint was part of 13 sub-complaints regarding an article headlined "Kouga-vrese loop", ranging from inaccurate to unfair reporting. Only two sub-complaints, including the comment one and another of inaccurate reporting, were upheld. In this instance the ombudsman noted "the little time the KLM was afforded to respond to the article was unfair, resulting in a breach of Art. 1.1, which states that the press shall be obliged to report news… fairly".

There were also instances where newspapers did ask for comment but neglected to use the comment they received. As in the case of the Gauteng Department of Education (GDE), which in February 2010 complained about The Star omitting the GDE's

comment in an article headlined “Schools in printer rip-off – unnecessary R150 000 expense forced on Gauteng institutions”. Three sub-complaints regarding the article containing false information and being misleading were dismissed. The ombudsman however upheld two sub-complaints, one being that The Star did receive comment from the GDE but did not use it, thereby transgressing Article 1.2 of the Press Code. The other was a transgression of Article 1.1 of the Press Code, whereby The Star omitted important information from the story. The Star was ordered to publish a correction and publish a summary of the ombudsman’s findings.

Similarly, the then Minister of Social Development Zola Skewiya complained in April 2008 that the City Press neglected to use his comment. The minister complained that City Press published “blatantly false facts” despite him having denied the claims when asked for comment. The ombudsman upheld the complaint and directed City Press to publish an apology.

In another case, in March 2010, the Lowvelder, a community newspaper, was reprimanded and directed to publish an apology for not printing a response of the Ehlanzeni Municipality in an article.

While a number of complaints were dismissed due to newspapers proving that they had indeed asked for comment, several such cases were dismissed or had lapsed due to the complainant either refusing to sign a waiver or having failed to respond to the newspaper’s defense in due time. For example, the Ministry of Communication’s failure to sign the waiver resulted in its complaint against the M&G on 6 April, for not asking for comment, being dismissed. (Outcomes are discussed in further detail later on in this chapter).

Voluntary corrections

A recurring trend found is that newspapers often published apologies or retracted stories upon being alerted of complaints by the ombudsman yet prior to rulings being made. For example the City Press in September 2010 conceded it was unable to verify

information and retracted a story regarding the Premier of Limpopo, Cassel Mathale. The premier had complained about five articles regarding alleged corruption and tender fraud in the province. Several of the sub-complaints were dismissed. However, the ombudsman found City Press in breach of Articles 1.1 and 1.2 by not corroborating facts, for misleading the public and inaccurate reporting. In addition the newspaper breached Article 5.3 by printing a picture that misrepresented the situation. The ombudsman remarked that while statistically the bulk of the sub-complaints were dismissed, “the severity of the breach of the Press Code should not be underestimated”.

Subsequently City Press was additionally directed to publish an apology to Mathale “for creating the impression that the Limpopo government was singled out in the national fight against corruption”; retract a false statement and publish a summary of his findings. City Press was also reprimanded for using a front page picture “to portray a misleading message” and inaccurate reporting.

Reporting and sources

Another trend found in the nature of complaints from government was the transgression of Articles 1.1 and 1.2., which irrespectively deals with truthfulness, accuracy and fair reporting; as well as factual, balanced, and distorted/misleading reporting.

Several government complaints also dealt with the transgression of Articles 1.3 and 1.4. of the Press Code, which irrespectively deals with the misuse of sources; and verifying the accuracy of factual statements in newspaper reports.

The ombudsman displayed strong intolerance towards newspapers misleading their readers and not corroborating facts before publication.

In June 2010, for example, the Sunday Tribune was found in breach of several articles of the press code after Dr. Zweli Mkhize, the then Premier of Kwazulu Natal, complained about a series of articles regarding alleged tender fraud and nepotism. The six sub-complaints were partially upheld/dismissed. The ombudsman found the

newspaper did not investigate the allegations before publication, a breach of Article 1.2; it also ignored information provided by the complainant's lawyer, thereby breaching Article 1.1, and it further breached Articles 1.2 and 1.4 by not attempting to corroborate accusations and omitting to publish Mkhize's denial of some accusations. A further breach of Article 1.4 was found in that the Tribune did not corroborate allegations in the stories. The ombudsman aptly noted: "It was not fair to raise the allegations, even if to deny them, without any attempt at corroboration". The newspaper had to publish a summary of the findings and apologise to Mkhize.

Inaccurate and misleading reporting, as well as issues with the misuse of sources, were thus among the main trends found in the reasons for complaints from government. It was found that there is little mercy on those who did not attempt to multi-source or establish the independence of anonymous sources.

For example in July 2010 the Limpopo Department of Housing and Local Government accused the Sunday Independent of using only one source in an article it labelled false and misleading. The ombudsman found the newspaper was in breach of Article 1.4 by using only one source and directed it to publish an apology and the findings.

In that same month, Lakela Kaunda, the deputy director-general in President Jacob Zuma's office, accused The Times, in addition to not asking for comment, of failing to establish the independence of two unnamed sources. The complaint was upheld and the newspaper directed to apologise.

A number of complaints dealt with the transgression of Article 5 (5.1 to 5.3) of the Press Code, which concerns fairness, reasonability and the potential to mislead in headlines, posters, pictures and captions.

The City Press, for example, was wrapped over the knuckles when the ANC complained that it presented a headline on a poster as fact in August 2009. The ombudsman noted how the newspaper admitted that the posters referring to the story, which read: "Now it's

Phosa vs. Mothlanthe", was an opinion. "In that case the posters elevated opinion as fact – which is misleading, for sure", the ombudsman remarked.

While the ombudsman rarely intervened when matters fell beyond his mandate, such as editorials and opinion pieces, there was an instance where he felt the "accusatory tone" in an article of the Daily Voice, a tabloid newspaper, was carried on into its editorial comment. This was in January 2008, when Ebrahim Rasool, the then Premier of the Western Cape, complained about an article, headline and editorial in the paper that he labeled defamatory and misleading. The ombudsman upheld the complaint, finding the Daily Voice in contravention of Article 1.1 and 1.2 by treating Rasool unfairly and distorting and misrepresenting facts. In addition he found the editorial comment in breach of Articles 3.2, 3.4 and 4.3, which all relate to the press having the right to advocate its views on controversial topics, provided that it does not misrepresent facts, and that its comment is honest and without malice.

Tabloids

In addition, relating to the abovementioned case, it can be said that the ombudsman was not found to be more lenient towards tabloids, which are traditionally known for pushing boundaries of ethical journalism. The ombudsman noted how "the responsibility to provide truthful, accurate and fair news still rests on editors, of both broadsheets and tabloids. The two types of newspapers might have different choices in news and different styles of presenting news – the one sober and the other sensationalist – but the Code requires minimum standards that the Daily Voice in this instance did not meet". The Daily Voice had to publish a front page apology and the findings. Its application to appeal this ruling was denied.

On the other hand, the ombudsman often defended the right of newspapers to use headlines and pictures creatively and to quote unidentified sources.

When Lakela Kaunda, deputy director-general in President Zuma's office, accused the M&G of an inaccurate article and misleading picture in July 2010, she was criticized by

the ombudsman. The ombudsman dismissed all her complaints regarding an article headlined “Presidency crisis – what crisis?”, noting that “it is normal journalistic practice to verify information a source gives a newspaper, especially if it is an unnamed one. If this cannot be done, the story should state that fact. In this instance the newspaper said it had seven sources.” He rejected Kaunda’s claim that seven sources are not sufficient.

Damaging reputations

Another trend found in the nature of government complaints was that complainants accused newspapers of defamation, malicious damage to reputations, putting them in a bad light or attacking their dignity.

For example the Sowetan was directed to do a follow up on their story headlined “Health MEC has failed – Nehawu” in December 2010. This after Miriam Saohatse, the Limpopo Health MEC, complained that the article’s intent was “to portray her as incompetent, corrupt and ruthless and that it maliciously damaged her reputation”. The ombudsman ordered the Sowetan to “do a follow-up story that portrays all views”.

However, such complaints were rarely successful. When Luzuko Jacobs, the then head of communications in Parliament, complained that an article in the Sunday Times in August 2008 placed Parliament in a bad light, the case was dismissed, but the paper was cautioned for exaggeration. In the same year, Nomatyala Hangana, then Deputy Minister of Provincial and Local Government, accused Business Day; and Fred Dennis, a senior official at the Kouga Municipality, accused Our Times of defamation. These two cases were also dismissed as the ombudsman found no contraventions of the Press Code.

In line with the common trend, several such complaints lapsed or were dismissed due to the complainants having failed to sign a waiver. Again it must just be noted that not all cases were treated the same in terms of outcomes where the waiver was concerned. Sometimes the outcome of cases in which waivers were not signed were handled as

lapsed and sometimes the ombudsman dismissed cases where waivers were not signed.
The presumption that cases that were dismissed due to complainants' failure to sign the waiver is due to the complainant not having a strong case can not be made. It could perhaps be that the complainants did not want to sign the waiver since they felt they had strong enough cases for defamation and opted to take the matters to court, since defamation suits are covered by civil law.

In February and October 2009, irrespectively, Kgalema Mothlanthe, then President of South Africa, accused the Sunday Independent and the Financial Mail of damaging his reputation and defamation in separate articles, the former headlined "All the president's women". The former case was settled and the latter not properly lodged, therefore the file was closed. No reasons for the outcomes were available in the case files.

In May the following year, a complaint of defamation made by the ANCYL against the City Press for a series of articles lapsed due to the failure of the ANCYL to provide the ombudsman with follow-up communication as required. In that same month, Lakela Kaunda, Deputy Director-General in President Zuma's office, withdrew a case against the Sunday Independent in which she complained about an article that was damaging to her reputation. In November 2010, another defamation case lapsed when Nomvula Mokonyane, Premier of Gauteng, failed to respond in due time to the M&G's offer to publish her right of reply on a published article – despite the newspaper having refuted her defamation claim.

In conclusion the nature of government complaints dealt mostly with Articles 1.1 through 1.7, as well as 5 and 6 of the Press Code, which irrespectively deals with transgressions that generally include accuracy, fairness, misleading reporting, sources, asking for comment, and the presentation of headlines and pictures.

While it can be argued that such serious potential transgressions of the Press Code builds a strong case for the ANC's critique of and lack of confidence in the

ombudsman's role in encouraging ethical journalism, it must be considered that the amount of dismissed complaints far outweighs the number of upheld ones.

The reasons behind dismissed cases are also vital to consider since it places the findings of government cases into context, as is discussed in the following section.

5.1.4. Trends in the outcomes of government complaints

It has been established that the ombudsman upheld the highest number (14%) of government complaints compared to other complainant types who lodged complaints during the research period. Only 7% of public complaints, 9% of politician/prominent person complaints and 11% of business/organisation complaints were upheld. This is interesting to note considering one of the ANC's major criticisms that the ombudsman is biased towards the press in his rulings (ANC, 2010:29).

Noteworthy is that government complaints also have the highest number (7.6%) of withdrawn cases compared to complaints from other complainant types. However, in most instances the reasons for withdrawal were not recorded on case files.

Government complaints have the third least (14%) partially upheld/dismissed cases and interestingly, only in the years 2009 and 2010 in the research period, were such outcomes evident.

The number of settled cases (8.7%) in government complaints followed the average trend of complaints from other complainant types. The examples of settled cases reflect positively on both the ombudsman and the press. Firstly on the ombudsman for his primary arbitrational duty: bringing parties to settle before a ruling needed to be made and encouraging the press to maintain high ethical standards in journalism in correcting mistakes and printing apologies or retracting stories. Secondly on the press, which have shown a willingness to voluntarily abide by Article 1.6 of the Press Code, which states

that: *"A publication should make amends for publishing information or comment that is found to be inaccurate by printing, promptly and with appropriate prominence, a retraction, correction or explanation"*.

One can also argue that settled cases also reflect positively on government complainants in that it shows willingness on their part to settle matters without prejudice.

Apart from the complainant group politician/prominent person, which hold the highest (20%) number of lapsed cases, lapsed complaints (5.4%) from government falls within the average trend of the other complainant groups.

Interesting to note is a key finding in lapsed government cases. All five (thus 100%) of the lapsed cases were due to complainants' failing to respond to a newspaper's defense. As explained in Chapter 1, part of the process when dealing with a complaint involves the ombudsman sending a complaint to a newspaper for its defense, and then the complainant needs to respond to the newspaper's defense in order for the ombudsman to peruse both parties' arguments and make a ruling.
Thus, it can be argued that lapsed cases reflect negatively on the complainants, as often there might have been a valid complaint but the complaints process could not proceed. It must also be noted that just because a case had lapsed, does not necessarily mean the Press Code was not transgressed.

The Waiver

The same can be argued about the amount (48%) of dismissed government cases. Complainant's failing to respond to communication or refusing to sign a waiver amounted to 34% of the reasons behind dismissed cases. Of this 34%, 11% was due to complainants failing to respond in due time to a newspaper's defense, while 23% was due to complainants not signing the waiver. The rest (66%) of dismissed government cases were due to the press not having transgressed the Press Code.

Twice the ANC failed to respond to a newspaper's defense and their complaints could therefore not proceed. In both September 2008 and August 2009, respectively, the ANC complained that the Cape Times and the Sunday Times wrote articles that contained factual inaccuracies, resulting in the former being dismissed and the latter having lapsed. The premier of Gauteng, the ANCYL, the Ministry of Housing and the Department of Social Development in the Western Cape were also among government complainants failing to respond during the process. In 2009, the ombudsman waited six months for Sbu Ndebele, then Premier of KwaZulu-Natal, to respond to The Mercury's defense on his complaint, lodged in March, regarding a story that he labeled misleading and inaccurate. The case had long lapsed and by September, when there was still no response, the case file was closed.

The trend in not signing waivers was found most often in cases in 2010 and onwards in the research period. This is interesting considering that 2010 was the year in which renewed calls for a statutory Media Appeals Tribunal was laden with criticism from the ANC party which in particular took issue with the waiver. The ANC is of the opinion that the waiver takes away the complainant's constitutional right to take a complaint to court if a complainant disagrees with the self-regulatory system's verdict (ANC, 2010:28). The PCSA however, obtained legal opinion that the self-regulatory system "was one of private arbitration and was regulated by law and by the Constitution of the country" (PCSA, 2011:49). In addition, the PCSA contended that the allegation that a waiver removes a complainant's legal rights is false, stating: "Complainants and publications still have the further option of taking the rulings of the Press Appeals Panel on review to the High Court" (PCSA, 2011:50). The PCSA concedes that this is, however, not properly explained in its current publicity material and indicated that this will be improved in the suggested Complaints Procedures published in the Review (PCSA, 2011:50). However as of January 2013 the waiver will be excluded for a trial period of one year, as is discussed in Chapter 6.

Heads and MEC's of governmental departments, municipal managers and departmental spokesmen were among those failing/refusing to sign waivers.

Some examples include the Mpumalanga Department of Cooperative Government and Traditional Affairs, The Kwa-Zulu Natal Human Settlements and Public Works Department, the Free-State Department of Social Development, the Eastern Cape Department of Roads and Transport, the ANC in the Eastern Cape and even the Ministry of Communication, which did not sign waivers for their complaints against, irrespectively, the Steelburger, the Mercury, Volksblad, Daily Dispatch, Eastern Province Herald and the Mail & Guardian.
This resulted in serious complaints of potential transgressions of the Press Code, among them false allegations; not being contacted for comment; defamation; misleading reporting; unbalanced reporting and incorrect facts; all being dismissed.

Although often no reasons were available in case files for the amount (7%) of withdrawn cases, in one such case a complaint was withdrawn because a complainant refused to sign the waiver.

This was the renowned case of the Ministry of Health against the Sunday Times in September 2007, over an exposé headlined “Manto: a drunk and a thief”. The minister of health at the time, Manto Tshabalala-Msimang, felt that she had a strong case against the newspaper for accessing her medical records and chose to withdraw her complaint against the Sunday Times, indicating that she opted to seek legal action instead. However, the minister did in fact not sue the newspaper.

It can be argued that the alarming amount of dismissed and lapsed outcomes was due to government complainants’ lack of cooperation with the process of self-regulation, whether it be failing to respond to communication during the process or refusing/failing to sign the waiver. Concerning the latter, one needs to also consider the possibility that there could be a number of reasons for refusing/failing to sign the waiver, including the unwillingness to part with one’s right to legal action, as was the case of the Ministry of Health vs. the Sunday Times.

As Berger (2010:297) aptly notes, during 2007 and 2008 when the ANC, embroiled in a leadership battle, first discussed the idea of a statutory MAT, ANC officials used the waiver requirement to justify their "failure to use the existing system". This trend continued throughout the research period and is discussed later on in this chapter under the "Key Rulings" section.

Nevertheless, one cannot assume that in all instances, dismissed cases should reflect a bias of the ombudsman towards the press. The opposite is also true, that the number of dismissed cases does not necessarily reflect that the press did not transgress the Press Code. This is a key trend considering the high number of dismissed cases throughout all complainant types in the research period; as well as the criticism on the ombudsman for dismissal of cases.

Lack of awareness/understanding

Another noteworthy trend found in the reasons for some cases being dismissed was that some complainants did not understand the press' rights; and several complaints fell beyond the ombudsman's mandate.

For example, in 2008 Sandile Mamela, spokesperson for the Ministry of Arts and Culture, complained he was not given a right to comment on a picture and article in the Sowetan published in March concerning the Human Rights Commission's (HRC) hearing on the Forum of Black Journalists and racism. The ombudsman dismissed the case and informed Mamela that he was not entitled to a right of reply since the paper was reporting on events at an HRC hearing.

Similarly, in April 2011, Fikila Mbalula, minister of Sports and Recreation, had his case against the M&G dismissed for complaining about court reporting. Mbalula complained that the article headlined "Kebble mentioned Mbalula" contained privileged statements made in court and he accused the newspaper of "repeating defamatory statements" and not verifying defamatory allegations made in court that "undermined his integrity". The

ombudsman explained the press' right to report on matters discussed in court proceedings.

Another case was that of Gauteng Premier Nomvula Mokonyane who, in April 2009, had her case against The Citizen dismissed for complaining that the newspaper wrote about her stay at a luxury hotel in the Vaal Triangle. The ombudsman informed the premier that she was a public figure whose activities are of public importance and therefore the newspaper had a right to report on the matter.

Following a dismissed complaint by the ANCYL against the Star in April 2011, the ombudsman explained to the league that it was beyond his mandate to order investigations into the editorial teams of newspapers.

Similarly in February 2010, the ombudsman explained to the Limpopo Department of Education that it fell beyond his mandate to force journalists to get involved in departmental hearings. This after the department complained about false statements made by a source to the City Press and the Sunday Sun and wanted the ombudsman to force the journalists to attend departmental hearings to testify after journalists previously refused to do so. The ombudsman explained that, even if he had the power to do so, it would be "detrimental to the media industry if he forced journalists to testify for whatever reason".

Although Article 4 of the Press Code deals with the press' right to comment on or criticize actions or events of public importance in a fair and honest manner, sometimes the ombudsman dismissed the odd complaint regarding opinion pieces or editorial comment as beyond his mandate. Such as the case of Dr. Mathole Motshekga, the then chief whip of the ANC in Parliament, who in March 2010 complained about a column published in the Cape Times. Motshekga labeled the column, written by Max du Preez and headlined "Black rulers whitewash coloureds" as derogatory, discriminatory, offensive and racist and said it racially stereotyped coloureds. The complaint dealt with Article 2 of the Press Code, which concerns discrimination and hate speech.

These examples are separate from the odd complaint dealing with online stories published on some newspapers' websites that were dismissed as it fell beyond the ombudsman's mandate. In its suggested new Constitution published in the Review, the PCSA plans to extend the ombudsman's mandate to include online stories of those publications subscribing to the Press Code (PCSA, 2011:43).

This trend is perhaps an indication of a lack of information about and understanding of the rights of the press and the mandate of the ombudsman. This trend was also observed among several cases involving complaints from the public.

As discussed in the Literature Review the ombudsman has been criticised for not adequately informing potential complainants about his roles – a disadvantage the PCSA has conceded to and vowed to improve through increased access and marketing (PCSA, 2011:9).

5.1.5. Trends in government cases appeals

The overall analysis of appeals showed that, during the period August 2007 to August 2011, only 44 cases, or 7%, of the total 593 captured cases, were appealed.

Of the 44 appeals, seven (16%) involved complaints cases from government. What is interesting to note is that, of these seven appeals, four were lodged by the newspapers against rulings that favoured government and found them transgressing the Press Code.

Significantly, only two government complainants lodged appeals in the research period. In the remaining case it was unclear from the case file who lodged the appeal and no details regarding the appeal could be found in the case.

In both instances of government complainants' appeals - in the case of Luzuko Jacobs vs. the Sunday Times in August 2008 and that of the Northern Cape Education Ministry vs. the Diamond Field Advertiser in July 2010 - the complainants' leave to appeal were denied by the Press Appeals Panel (PAP).

Concerning the newspapers' appeals: one was denied leave to appeal by the PAP (case of Ebrahim Rasool vs. the Daily Voice in January 2008); one remained unchanged after the PAP hearing (case of Limpopo Department of Housing and Local government vs. Sunday Independent in July 2010) and one case file indicates an appeal but there are no details as to the outcome (case of Ehlanzeni District Municipality vs. the Lowvelder in March 2010).

In only one instance, in a case involving the ANC party, did a newspaper successfully appeal a ruling against it. This was the case made by the ANC against the City Press for an article published in January 2008 headlined "Cracks in Zuma's NEC", a front page lead in the buildup to the ANC's Polokwane Conference. Initially, the ombudsman upheld the complaint in its entirety in March, ruling that the City Press breached Articles 1.1, 1.2, 1.3 and 1.5 of the Press Code. In his ruling the ombudsman noted, amongst others, that "all information (regarding the story) should have been treated more cautiously and fairly than City Press did. The panel unanimously decided that the newspaper breached the Code by going too far in reporting disputed allegations as fact. The structure and the wording of the story resulted in a story that was not fair and balanced." City Press had to publish and apology and the findings.

In May, however, the PAP heard the appeal of the City Press, which placed before the panel several essential facts that were not disputed by the ANC. The PAP found that the newspaper did not breach any articles of the Press Code. The ombudsman's initial ruling was overturned and the newspaper's appeal upheld, thereby dismissing the ANC's complaint.

5.1.6. Key rulings: The government's test

This specific case of the ANC and City Press in 2008 was, according to academic Guy Berger (2010:300), the first of a series of "tests", in a way, of the self-regulation system by the ANC.
First, the pressure on the media and calls for a MAT seemed to dwindle by 2009 in the changing post-Polokwane political context, which saw the ANC-leadership battle resolved. The ANC vs. City Press case came after the ANC took new position on a MAT and agreed to work together with the ombudsman in strengthening his office (Berger, 2010:300).

While this research has found that more cases were dismissed than upheld, Berger (2010:300) makes a valid point that there were some significant hard rulings against the press, and therefore in favour of government, that reflected the ombudsman's independence during the "test" period 2008 to 2009. A threshold, according to Berger (2010:300) had been crossed in which the ANC participated in the self-regulatory system.

Ombudsman Thloloe reported in August 2009 that the ANC had lodged 103 complaints in that year (Berger, 2010:303). Although such an amount of ANC-lodged complaints could not be found through this research, it is possible that Thloloe classified cases from politicians linked to the party under the group ANC when he did his own calculations. At the time, Thloloe felt comfortable enough to reaffirm the waiver system, with a slight addition in the form of an explanatory note that would accompany the waiver from then on. While Berger (2010:304) argues the system did not fully address all the ANC's criticisms at the time, it proved it was not biased towards the press.

Yet what has happened in the years that followed? What is evident from this research is that cases which followed may perhaps be a continuous 'test 'of the self-regulation system by government, specifically from the year 2010 onwards. This was the year in which, yet again the political context within the ANC changed and renewed calls for a

MAT sparked rigorous debate; and - what is perhaps not a coincidence evident from this research - also a year in which complaints from government to the ombudsman increased significantly, as the findings have shown.

While the ANC party itself did not make as many cases as it did in 2009, complaints were received from almost every sphere of government and senior members of the ANC: from the president's office to ministers, members of Parliament and provincial premiers, through to provincial and local governmental departments, MEC's and even municipal managers.

President Zuma's office, for example, lodged four complaints post-2009 in the research period. The case against the M&G in June 2010 was dismissed; the case against The Times in July of that year partially upheld/dismissed; the case against the Sunday Independent in May that year withdrawn; and the case against Business Day in April 2011 settled after the newspaper printed an apology when the ombudsman intervened.

Similarly, the ANCYL lodged four complaints post-2009 in the research period. The case against the Echo Ridge in November 2010 was partially upheld, and so was the case against the Mail & Guardian in January that year, while the case against City Press in May that year lapsed. The fourth case, against the Star in April 2011, was dismissed.

Complaints lodged by three ministers were dismissed in 2010 and 2011 in the research period. Minister of Defense and Military Veterans Lindiwe Sisulu complained against the Sunday Times in February 2010 for insulting her in a column after the newspaper printed an apology.

Minister of Co-operative Governance and Traditional Affairs Sicelo Sicheka lodged against the M&G in December 2010 for an article he labeled unsubstantiated and misleading, complaining that his letter that was published in response was not enough.

Sports and Recreation Minister Fikile Mbalula complained against the M&G in April 2011 for reporting on statements made in the Kebble-court case. Minister of Agriculture, Forestry and Fisheries Tina Joemat-Peterson complained about an article published in The New Age in April 2011 regarding allegations of corruption. The newspaper first offered a right of reply for not giving the minister's spokesman enough time to comment but when the minister declined, the newspaper published an apology and the case was settled.

Interestingly a number of complaints originated from the ANC-stronghold Limpopo Province. One such case was made against the Polokwane Observer by the ANC in the province in June 2011 for an article headlined "Rumours rife over Premier's removal". The provincial ANC took issue with not being asked for comment and the journalist's behavior, but the ombudsman found no transgression and dismissed the case.
While the Limpopo Department of Education's complaint against the Sunday Sun and City Press in February 2010 was dismissed, the province's Department of Housing and Local Government's case against Sunday Independent in July 2010 was upheld. The Sunday Independent appealed the initial finding of the ombudsman that it breached Article 1.4 of the Press Code after Clifford Motsepe, head of the department and NEC member of the ANCYL, complained about inaccuracies in the concerned article. However, the PAP concurred with the ombudsman's initial finding.

Controversial Limpopo Premier Cassel Mathale, who is also the Limpopo provincial chairman of the ANC, lodged six complaints during 2010 and 2011. The first was against City Press in April 2010 regarding five articles - some of which involved Mathale's ally, axed ANCYL leader Julius Malema - titled "Pravin guns for fat cats – Limpopo first target in fat-cat fight"; "Cadres – Finance minister orders investigation into corruption"; "Malema's R140m tender riches – Nationalisation's frontman is a big entrepreneur"; "Juju's dodgy R27m bridges"; and "Revelling and rallying mix at Juju's big bash". The stories focused on alleged corruption with multi-million rand tender deals involving the province and Malema, with Mathale at the centre of the probe.

In sum there were 17 sub-complaints on this case, with the premier believing, amongst other things, that the stories were riddled with inaccuracies and singled out the province as being the most corrupt in the country.

Four of the sub-complaints were upheld for breaches of Article 1.1, 1.2 and 5.1 of the Press Code. The City Press was reprimanded and directed to publish an apology to the premier for creating a false impression that singled out Limpopo in the fight against corruption, as well as using a misleading front page picture. In the meantime the newspaper had conceded to not being able to verify information in the fifth story and retracted it. The ombudsman noted “statistically the bulk of the complaints against City Press are dismissed – yet the severity of the breaches of the Press Code should not be underestimated”.

Mathale lodged two more complaints in 2011 for stories regarding his controversial trip to Italy, but later withdrew them. These were against the Star in April; and against the Sunday Times in July for its story headlined “Juju’s Italian Job” - that focused on the alleged coincidence of the premier and Malema’s visits to Milan.

In May, Mathale joined forces with the ANCYL on a complaint against the Sowetan for an article that incorrectly stated Mathale and Malema were rejected by the entire community. The newspaper published a retraction and apology after the ombudsman intervened, thereby settling the case.

Then, in June, the ombudsman settled another complaint lodged by Mathale, this time against the Capricorn Voice, for an article in which he was misquoted. The newspaper subsequently published an apology.

Only one of Mathale’s complaints, made in April 2011 against City Press, was dismissed in its entirety. Mathale complained about an article headlined “Why Cachalia was sacked – Sources say premier axed his treasury MEC because he resisted unnecessary expenditure”. The premier felt the story and its headline untruthfully

implied that he had lied when he gave reasons for the reconstitution of his cabinet. After carefully considering the merits of the case, the ombudsman found the he “cannot support Mathale’s conclusion that the story was calculated, if not designed, to harm and undermine his reputation and his dignity. Instead, the reportage was fair and reasonable” and the headline fairly reflected the content of the story as required by the Press Code.

In summary, considering some key rulings post-2009 as Berger (2010) did pre-2009, it can be argued that, despite the increase in complaints from government, this trend of independence remained continuous and findings of such cases reflect the ombudsman’s fair approach in his rulings, which were free of any obvious bias.

Significantly, the waiver issue re-sparked among reasons for outcomes in 2010 and seemed to remain a pressing matter among government complainants.

5.2. Conclusions from specific trends in government complaints

The following **main conclusions were drawn from empirical findings regarding specific trends that involved government complaints** in cases the ombudsman dealt with during the research period**:**

- **THE ANC AND ALL SPHERES OF GOVERNMENT UTILISED THE OMBUDSMAN’S OFFICE**: Complaints were received from several different spheres of government – from the president’s office to Parliament, from ministers to premiers, and from government departments to municipalities. The ANC party itself lodged only eight complaints during the entire research period. Considering the fierce contestation of the system by the ruling ANC it can be argued that one might’ve expected this number to be higher.
- **MOST GOVERNMENT COMPLAINTS VS. CITY PRESS**: During the research period, government lodged 91 (15%) complaints cases out of the total 593 cases. The City Press received the most (13) complaints from government. However,

around half of these complaints were dismissed. City Press, owned by Media24, is a political Sunday newspaper and fourth biggest weekly in the country. This newspaper has the second most complaints against it overall from all complainants in the research period. However it's interesting to note that, overall, about 40% of all complaints against City Press were dismissed, while 14% were upheld, 14% had lapsed and 12% had been settled.

- **GOVERNMENT'S MAJOR GRIPES NOT ABOUT PRIVACY**: The reasons for the majority of government complaints were (in order of most to least): Not asked for comment (Art. 1.5); Accuracy, truthfulness and misleading reporting (Art.1.1 and 1.2); Misuse of sources and verifying statements (Art. 1.3 and 1.4); Unfair and misleading headlines, captions or photographs (Art. 5 and 6); defamation, damaged reputations, attacking their dignity/privacy (Art.1.10). It can therefore be argued that, while one of the major complaints of the ANC against the press was violations of privacy and dignity (ANC, 2010:29), these reasons were least often featured in such complaints.
- **NEWSPAPERS QUICK TO CORRECT THEIR MISTAKES:** Newspapers were often quick to voluntary print corrections and apologies upon being informed of possible transgressions by the ombudsman and prior to being prompted to do so by him. This reflects the press' co-operation with and acceptance of the self-regulation system as well as their commitment to voluntarily raising journalistic standards.
- **OMBUDSMAN INTOLERANT OF TRANSGRESSIONS:** In addition to handing out sanctions which often included front page apologies, the ombudsman often criticised newspapers for serious transgressions. This reflects that the ombudsman showed commitment to raising journalism standards.
- **GOVERNMENT CASES AND THE MAT IN 2010:** Government complaints showed a significant increase of almost 60% in 2010. This was also the year in which renewed calls for a statutory Media Appeals Tribunal (MAT) sparked fierce contestation of the self-regulation system and rigorous debate surrounding press freedom. One can argue that government further tested the present system from 2010 onwards, as it had previously done between 2008 and 2009, following its

suspension of the first calls for a MAT in 2007 (Berger, 2010:300). This does not necessarily mean government took issue with the quality of journalism or that journalism standards had suddenly deteriorated. It can be argued that during changing party politics (discussed in Chapter 1), government took a more critical look at the system from its philosophical viewpoint of the press that was rather informed by a development model (McQuail, 1987:121, discussed in Chapter 2) as opposed to the press' social responsibility model. In this sense, government felt the present system was not performing and therefore saw the need to interfere in order to protect the country's developmental interests – albeit seen by some as a potential effort to cover up corruption.

- **RULINGS FREE OF OBVIOUS BIAS**: One of the ANC's major criticisms was that the ombudsman was biased towards the press in his rulings (ANC, 2010:29). However, the findings dispel this critique based on three points. Firstly, less than half of all government complaints were dismissed, not the majority as the ANC claims. Secondly, one needs to only consider the reasons behind dismissed (and lapsed) cases to understand that such outcomes may reflect negatively on government complainants themselves. In 34% of dismissed cases, and in 100% of lapsed cases, the reasons were due to complainants either not signing the waiver or failing to respond to communication during the complaints process. In addition, the findings of this research relating to the small number of government appeals makes another strong case for the ombudsman's fair approach (see last point of empirical conclusions regarding appeals).
- **THE WAIVER ISSUE:** A major reason for the dismissal (or lapsing) of several cases, was that complainants failed to sign the waiver. This trend was found most evident in the year 2010 and onwards in the research period (and was superficially observed to be evident in other groups also, in particular the politician/prominent people complainant type). The waiving of one's constitutional right to legal recourse in the self-regulation process was one of the ANC's major critiques (ANC, 2010:28). However, the ombudsman has dispelled this criticism by arguing that outcomes of the PAP may be taken on review to the High Court and its office is legitimised in its private arbitration function (PCSA, 2011:50). It

was not just the ruling party that took issue with the waiver, however, since the PCSA Review Task Team received several submissions from the public and business to amend or do away with the waiver (PCSA, 2011:8). The PCSA (2011:8) initially addressed the issue in its Review by proposing to rename it to a Complainant's Declaration (see Appendix C and H). However as from January 2013 the waiver will be excluded for a trial period of one year (see Chapter 6).

- **LACK OF PUBLIC AWARENESS/INFORMATION:** Another trend found was that a number of complaints were made about issues that fell outside the ombudsman's mandate, or over concerns with journalistic behaviour. This, (together with the high number of dismissed complaints from members of the public), points to a seeming lack of public awareness of the ombudsman's roles and functions, as well as a lack of information regarding what journalists are permitted to do when conducting their work. The ombudsman, however, conceded to this and the PCSA has indicated in its Review that it intends on addressing the issue by proposed marketing of and increasing access to the system (PCSA, 2011:9).
- **ONLY TWO APPEALS BY GOVERNMENT:** Of the seven appeals lodged in cases involving government complaints, four were lodged by newspapers after findings favoured government complainants. Of these four appeals, only one newspaper succeeded, whereby the ombudsman's original ruling in favour of the ANC and against the City Press, was overturned by the PAP, who dismissed the ANC's complaint. The fact that only two government complainants lodged appeals following findings that favoured the press, perhaps reflects a satisfaction, despite government's criticism, with the ombudsman's rulings. Both these government complainants were denied leave to appeal by the PAP, which can be seen as a confirmation from the independent PAP that the ombudsman's fair approach had been free of any obvious bias.

In Chapter 2 the theoretical framework of the present system was summarised in the following two statements:

Theoretical statement 1: *The theory of freedom of speech (which includes press freedom) informs the notion that the press has a responsibility to act socially accountable. This responsibility requires the free press to have a system of self-regulation, which often functions in the form of a press council.*

Theoretical statement 2: *The theory of social responsibility, squarely rooted in the theory of freedom of the press, in practice requires the press to regulate itself to ensure it is accountable towards the public it serves. Thus, by a press council (through its ombudsman) enforcing a socially responsible code of ethics, the professionalism and ethical standards of the press are encouraged. This system in turn could advance the cause of press freedom.*

In view of the empirical findings and theoretical statements, the **following theoretical conclusions regarding specific trends in complaints from government** can be made:

- During the research period government showed support for the system as an accepted, fair channel for complaints that is free of any obvious bias, as was evident in both the increasing number of complaints and the very few (two) appeals against the ombudsman's rulings. This despite the ruling party's criticism of the present self-regulatory system, seemingly due to its philosophical thinking regarding the press being informed by a developmental model, rather than the present system's socially accountable model as is set out in theoretical statement 1.
- More than half of the time the ombudsman ruled in favour of government complainants and often displayed intolerance for transgressions of the Press Code, which is reflected in his sanctions. However, as is evident in several complaints falling outside his mandate, there remains a gap in the creation of awareness of the present system and the roles of the ombudsman. It also remains to be seen whether complainants, specifically from government, will find the waiving of legal rights in favour of private arbitration, albeit in line with the system of accountability, satisfactory or discouraging in future.

- The press voluntarily obeyed the socially responsible Press Code: by often voluntarily correcting mistakes before being prompted by the ombudsman and in the fact that violations of privacy, which may infringe on the freedom of speech, featured least in the reasons for complaints. Support for self-regulation as set out in theoretical statement 1, was therefore not only evident in the fact that complainants utlised the system, but also in the fact that the press voluntarily obeyed the socially responsible Press Code.
- In addition, it can be argued that by enforcing the socially responsible code of ethics, the ombudsman has encouraged professionalism and ethical standards of the press as described in theoretical statement 2.
- Therefore it can tentatively be argued that the ombudsman's work has in turn advanced the cause of press freedom in South Africa during the research period. (This argument will be fleshed out in more detail in the following chapter.)

In summary, this section of the findings concentrated on cases that involved complaints from government in order to establish the trends that exist in such cases in the research period. In establishing and interpreting such trends this chapter has aided in answering RQ3 and reaching RA3.

5.3. Chapter summary

Chapter 5 has determined what specific trends exist in cases involving complaints from government during the research period, against the backdrop of the media freedom debate and theoretical frameworks of the present system. By highlighting several key rulings from the findings, this chapter has further contextualised the findings and ultimately aided in answering the overall research question and more specifically answering RQ3 and reaching RA3.

6. Conclusions

Four Research Aims (RAs) were set out at the commencement of this dissertation. Chapter 2 determined what theories underpin press freedom and the press' responsibility to self-regulate, thus providing the theoretical frameworks of the present system, as set out in RA1. Chapter 4 reached RA2 by determining what overall trends existed in the cases of the press ombudsman during the research period August 2007 – August 2011. In order to reach RA3, Chapter 5 determined what specific trends existed in cases involving government complaints during the research period.

Finally, in order to reach RA4, this chapter further contextualises the findings of this research in light of the theoretical frameworks and in relation to the ombudsman's advancement of the cause of press freedom.

Firstly, arguments for and criticisms of the self-regulation system (thus the present system) are highlighted in order to provide context and to aid in answering RQ4 and reach RA4.

The aim of this chapter is to discuss how the present self-regulatory system, through its ombudsman, advanced the cause of press freedom in South Africa during the research period, in order to specifically reach RA4 and adequately answer the overall research question. Finally the limitations and contributions of this study are highlighted.

6.1. Towards press freedom through self-regulation

It is important to understand how the present system of self-regulation may have contributed towards the advancement of press freedom during the research period, since the present system is being contested and South Africa is at the brink of entering a new system.

Considering the theoretical frameworks that explain how self-regulation and freedom of the press are mutually complementing principles (Hong-won, 2008:129), it is essential to note that, notwithstanding some criticism, it is widely accepted that within a democratic dispensation self-regulation is the best way of advancing press freedom.

In debating alternatives for the regulation of the press, which included the proposed statutory control of the press or a system of independent co-regulation (to be introduced in 2013), several arguments have been made for and against self-regulation.

Since the media is often referred to as the “fourth estate” among the executive, judicial and legislative arms of government, then the media is a centre of power in their own right (Krüger, 2009:10). Any centre of power can be abused. Krüger (2009:10) argues that self-regulation is the answer, in that it essentially becomes the “watcher of the watchdogs” of other centres of power.

Another argument in favour of self-regulation is grounded in the public’s right to information (Berger, 2010:291). Self-regulation in essence is meant to prevent external forces from gaining control and undermining this right. Yet integral to responsible self-regulation is public awareness of the system, which increases the chances of the public defending the system from political interference (Berger, 2010:291).

Self-regulation additionally benefits the public, and in particular politicians, since it comes at no cost and complaints are generally resolved faster, unlike court proceedings (Haraszti, 2008:11). In fact, Lord Wakeham, former chair of the British Press Complaints Commission (PCC), articulated 10 advantages that self-regulation has over courts, such as flexibility and accessibility (Wakeham, 1998, cited in Krüger, 2009:12).

A Governance Review of the British PCC published in 2010 (MST, 2010) suggested that South Africa's situation is not so unique. Pressure from the government claiming the PCC lacks public confidence caught the eye of the British Media Standards Trust

(MST), which published a critique of the press self-regulatory system and PCC in that country in 2009. This was followed in 2010 with recommendations for reform of the British PCC. The report came after research revealed that only 7% of the public said they trusted national newspapers to behave responsibly. In fact, 75% of the public thought newspapers published stories they know were inaccurate and invaded people's privacy. What was alarming, was that six in 10 people thought the government should do more to prevent journalists from invading people's privacy and 73% wanted government to do more to ensure that newspapers correct inaccurate reporting. The issue forced the British PCC to publish its own Governance Review in July 2010, having supported 19 of the MST's 28 recommendations.

Learning from that experience, William Gore, the Public Affairs Director of the PCC, told the PCSA that any system of press self-regulation will be criticised as it is an imperfect system, but that in his opinion, "it's better than any alternative" (PCSA, p. 15). Haraszti (2008:18) concurs, stating that self-regulation is "the right way to foster professionalism and global responsibility".

In Ireland and the UK (Gore and Horgan, 2010:523) and on the African continent (Botswana and Nigeria) the regulation of the press has also come under fire in recent years.

Haraszti (2008:14) explains that governments from time to time overstep the law to try 'help' impose quality journalism, but that his often ends up imposing the view of the majority party in power.

This may be true of the recent attacks on press freedom in a South African context. One can argue that the government, taking a critical look at the press from the perspective of a developmental model rather than one of social responsibility on which the present South African system is based (see Chapter 2), felt the present system did not perform and deemed it necessary to intervene. One needs to consider, however, that the criticisms were informed by the ruling party that fundamentally differed in its

philosophical thinking from the present system, and that such criticisms were not necessarily informed by declining journalism standards or quality.

However, Haraszti (2008:15) contends that governmental legislation cannot make the press more ethical or responsible and that only the press can create standards and voluntarily obey them. While certain governmental laws are necessary, such as a Constitution to protect press freedom, the state should interfere as little as possible in order to ensure press freedom. Ethical journalism can only develop in an atmosphere that guarantees press freedom (Haraszti, 2008:15; IFJ, 1999). Journalist's self-restraint must be preceded by government's restraint on handling the media. Haraszti (2008:18) concludes that politicians and the public must accept that freedom of speech, as defined by the European Court of Human Rights, is "the right to shock, disturb and offend". The media has a duty to make that freedom "tolerable and enjoyable" and "responsible self-regulation" is the way to achieve this (Haraszti, 208:18). As Retief (2002:222) notes: "the less government interferes in self-regulation, the better. But then the media must act responsibly".

On the one hand, those lobbying for self-regulation have cited various reasons why self-regulation is the golden standard that benefits the press, democracy and the public. These advocates of self-regulation also cite various reasons why the state should not interfere in press regulation. Looking at the press councils in the United Kingdom and Ireland, for example, Gore and Horgan (2010:523) contend that the self-regulatory system can "raise standards and provide effective redress to those who are wronged by the press. But it does so by working with journalists, not against them".

On the contrary, those in favour of statutory or co-regulation of the press are also citing examples from other countries in support of their views. For example, democratic countries such as India and Denmark that have statutory press councils, were cited by ANC representatives in support of their view that to have such a press council in South Africa would not be anti-democratic (Berger, 2011:38). However, Berger (2011:39) warns against simply adopting and adapting to the structures of other countries, as each

country is unique, specifically within its cultural, institutional and political norms. As Gore and Horgan (2010:524) note, the characteristic that makes self-regulation successful is flexibility, in that “no two press councils are the same”.

Another argument in favour of statutory control concerns the seeming lack of authoritarian muscle in self-regulation systems. Since the onus in social responsibility rests on the press to regulate itself, the argument can be made that self-regulation systems lack real enforcement authority that has statutory basis.

On the contrary, Wakeham (1998, cited in Krüger, 2009:12) argues that “self-imposed rules have greater moral authority than any that could be imposed from outside”.
In addition, a non-statutory self-regulation system entails that the free press acknowledges their responsibility for the quality of public discourse, as well as protecting their editorial autonomy whilst shaping it (Haraszti, 2008:9). In short, self-regulation balances rights and responsibilities, simultaneously maintaining sound ethical standards that in turn protects and advances the cause of press freedom.

6.2. Final conclusions

Be the arguments as they may, voluntary self-regulation is widely accepted as the golden standard for the press (Duncan, 2011:91) and practiced around the world in Western democracies.

It is however, the effectiveness of the system, and how to measure it, that remains an issue of wide debate in media circles (Krüger, 2009:13). There is a global political trend towards greater accountability and this affects media regulators and social institutions. As Gore and Horgan (2010:531) note, calls for independent assessment of the effectiveness and maintaining of standards of self-regulation systems are increasing and will therefore see such systems having to combat, particularly political, criticisms. The authors warn that if such criticisms are not successfully countered by raising and measuring journalism standards, either the marketplace will serve as the only form of

accountability or statutory interference will see growing threats on media freedom. This is indeed also the case in South Africa; notwithstanding the fact that press freedom is enshrined in the Constitution.

Thus, while a strong case can be made that self-regulation is the best platform to advance press freedom, it is essential to ensure the effectiveness of such a system, by, amongst other things, measuring journalism standards and nurturing public buy-in. An effective self-regulation system benefits the public in proving to them that the free media are not irresponsible, while simultaneously benefiting democracy by imposing a political culture free of political interference (Haraszti, 2008:11). Berger (2010:292) supports this view, contending that effective press councils can avoid governmental control by upholding journalistic standards and printing corrections.

In this sense, the independence of a press council is not only essential for its credibility but is also at the core of its effectiveness. Krüger (2009:13) argues that press councils have to be able to prove their effectiveness in order to compellingly contest government regulation.

Despite much of the ANC's criticisms being politically motivated, the PCSA argues that the issue does raise a fundamental question: can the effectiveness of the self-regulatory system be judged by the general standards and behaviour of the media? (PCSA, 2011:16).

Having established trends that exist in ombudsman's cases in this research, the question remains, rightly so asked by the PCSA, whether or not such trends can be linked to either an effective or flawed self-regulatory system. Academics like Franz Krüger (2009), Guy Berger (2010) and Miklos Haraszti (2008) argue that it could, but not in a simplistic manner.

Krüger (2009:23) explains that, while one can measure the satisfactions of parties concerned; as well as the Press Council's ability to resolve complaints quickly; its

protection of press freedom and the extent to which it withstands government interference; the most difficult question is whether a council's success should be measured against actual behaviour of the press.

For if regulation of the press is seen as the measure of success, any failure on the part of the press could reflect as the ombudsman's failure. Yet Krüger (2009:24) makes the point that there would be no need for press councils if they had no impact on journalistic behaviour. The solution, Krüger (2009:24) contends, lies in a situation which requires a press council to both take complete responsibility for journalistic behaviour and taking none. This means that press councils should become more proactive and muscular, by for example training journalists and nurturing public trust in the system, the latter in turn reflecting public trust in media behaviour.

Krüger (2009:24) argues the effectiveness of press councils "can and should be judged by their ability to influence media behaviour over time, taking into account the many other factors at play". Measuring the effectiveness of the self-regulation system by the actual behaviour of the press in a simplistic way is therefore debatable and should be done over time (Krüger, 2009:23), and thus falls beyond the scope of this research. The findings of this research can therefore not be directly linked to the effectiveness of the present system nor the behaviour of the press.

Rather than measuring the effectiveness of the self-regulation system in direct relation to the findings of this research, then, the approach of Haraszti (2008:22) is taken that the self-regulation system achieves effectiveness when journalists are encouraged to behave in line with ethical standards by such a system - through the ombudsman enforcing a socially responsible Press Code. In this sense such trends could be linked to whether or not the ombudsman has positively enhanced the cause of press freedom.

The findings of this research have shown that the ombudsman has, through his fair and unbiased approach, fulfilled the duties of a press council, as defined by Zlatev (2008:46).

In this sense, referring back to theoretical statements 1 and 2, it can be concluded that, because the ombudsman encouraged the responsibility dimension by enforcing a socially responsible Press Code, self-regulation encouraged high standards for professionalism and ethics of the press. Since the social responsibility model of the press that is firmly grounded in press freedom functioned properly, then it can finally be concluded that the ombudsman's findings during the research period has indeed in turn advanced the cause of press freedom in South Africa.

Why then, despite the above conclusion and considering that self-regulation is seen by many as the best method of enhancing press freedom, is the present system being replaced by a system of "independent co-regulation" in January 2013?

Firstly, in support of Krüger's (2009:23) methodological problem that the system's effectiveness cannot simply be measured by trends, one cannot simply link the conclusion that the self-regulation system which will be in place until the end of 2012, has indeed advanced the cause of press freedom to the effectiveness of self-regulation in the research period.

Secondly, in particular in the South African context, one needs to consider that a purely liberal concept of media freedom and classic normative theory prescribing ethical performance are no longer necessarily meaningfully applicable to the new media environment (Duncan, 2011:95; Hadland, 2007:2; Fourie, 2010:33). In this sense there can be no universal assumption as to how media performance should be assessed and the notion of self-regulation in the public interest as a means to measure ethical behaviour or performance, needs to be revisited.

While some of the findings have dispelled some criticisms of the ANC on the ombudsman that has led to the proposal for a statutory MAT, one must consider South Africa's changing political environment, and the relationship between the state and the media in this country (Hadland, 2007:2).

As discussed in Chapter 2, it would seem the ruling ANC party differed fundamentally in its philosophical thinking regarding the press from that of the classic normative theoretical approach to self-regulation of the press. As Fourie (2005:29) argues, opposing views around the role of the South African media in society resulted in tension between the press and government, as well as between the press and the public and within the media itself.

It can be argued that the ANC situated its theoretical viewpoint within McQuail's developmental theory, in which it deemed itself the right to restrict or censor the press in the interest of serving the country's developmental interests (McQuail, 1987:121). In this sense the ANC would also see public criticism of the government as anti-developmental and counterproductive to the national development process (Fourie, 2010:30). Fourie (2010:30) points out that these reasons were offered by the government with regard to both the MAT and Gag Bill in 2010.

Understanding that a part of the ANC's philosophical viewpoint is perhaps still informed by developmental theory while the press is still focused in the liberal and normative concepts of media freedom and social responsibility theories is essential in understanding the attacks on press freedom in South Africa.

One might also argue that, considering the ANC has seemingly welcomed the new independent co-regulation system it would seem the ANC also considered the so-called democratic-participant theory, which focuses on the public's right to access the media (Fourie, 2010:30).

Another consideration is an African approach to normative theory, which in a sense links the developmental and democratic-participant theories. This approach is based on the African moral philosophy of ubuntu, where a code of ethics is situated in African culture (Fourie, 2010:36). In this sense, the press should "play a developmental role in stimulating public participation" (Fourie, 2010:37). This approach changes the purpose

of journalism serving the public interest by providing information the public needs, to journalism serving the public with valuable information. Such an approach, therefore, perhaps sees the ANC believing that journalists should act according to communal ethics rather than a professional code of ethics. (That leaves us with the question what these “communal ethics” are and by whom it is determined.)

Having said that, one cannot ignore the arguments of academics like Jane Duncan (2010:4) and Peter McDonald (2011:130), who contend that the ANC’s motivation for these attacks is tainted by a need to protect its own interests, rather than that of the country.

Be that as it may, since the South African press will in January 2013 enter a new regulatory era under a system of independent co-regulation, and since the ANC has not yet indicated it will suspend its calls for statutory regulation indefinitely, it can be argued that the understanding of trends of the present voluntary self-regulation system and how the ombudsman enhanced the cause of press freedom in recent years, has provided a platform that may inform future discussions of regulation of the press.

Having argued that the present system has fared well does not necessarily mean that its faults should be ignored, nor does it justify an argument for the present system to remain uncontested or even unchanged.

From the findings it can be concluded that there are areas in which the ombudsman and present self-regulatory system can improve. Several such shortcomings were identified during the Review process, specifically by the PFC, and acknowledged by the ombudsman and Press Council. The end result, as discussed in Chapter 1, was that the PCSA announced in October 2012, as this study was being concluded, that the current self-regulatory system will be replaced by a system of independent co-regulation in 2013.

Whereas the Press Council currently consists of six press and six public representatives, the new system will see a retired judge chair six press and six public representatives (Thloloe, 2012). In addition a director, who will focus on public engagement regarding issues of ethical journalism and media freedom, and a public advocate, who will assist the public to formulate complaints and attempt to resolve complaints, will be appointed (Thloloe, 2012). Whereas the current Press Appeals Panel (PAP) saw its chairperson appointing one public and one press member to handle appeals hearings, the new system will see the chair, as well as one press and up to three public members handle appeals (Thloloe, 2012).

The documents published in the PCSA Review, being the Press Code, Complaints Procedures and Constitution, were further amended (see Appendix I for addenda).

Unlike the suggested documents published in the Review, the adopted new documents include, amongst other amendments, several of the PFC's suggestions with which the ANC had earlier indicated some satisfaction. Some important changes include that the new system will allow for the admission of third-party complaints and the issuing of "space" and monetary fines (Thloloe, 2012). The space fines refer to the amount of space imposed corresponding with the seriousness of the transgression. Monetary fines and/or suspension for a period or expulsion from the ombudsman's jurisdiction may be imposed if a publication fails to appear for hearings or repeated non-compliance with rulings (Thloloe, 2012). This is an attempt to address the criticism that the ombudsman's rulings were lacking any real form of punishment.

In addition, timeframes for handing down findings have also been shortened to 21 days within hearings. Whereas legal representation is currently permitted at hearings, it shall not be permitted under the new system unless the ombudsman or PAP chair gives consent.

Perhaps most significantly, considering also the findings of this research, is the change regarding the waiver. Under the new system, the waiver will be excluded; however, the

Press Council will need to review this decision after a year of working without the waiver (Thloloe, 2012).

Thloloe (2012) contends that the new system, while moving away from complete self-regulation, maintains the essence of media freedom as enshrined in the Constitution and therefore aims to support the guarantees of freedom of expression and of the press, while also reaching the Press Council's primary aim of promoting and developing ethical practice in journalism.

These changes indicate an important turning point and set the stage for a new era of press regulation in South Africa. However, only time will tell whether government will be satisfied.

6.3. Contribution and limitations of study

Limitations of this study included that the study focused on newspapers only. However, in the entire research period there were only 23 complaints cases out of a total of 705 (according to the official case register) against magazines. There were also a handful of complaints against online publications that were rejected as the ombudsman's scope of powers went beyond online publications during the research period.

From the outset the record keeping system within the press ombudsman's office was very limited, in that especially during the first two years of the research period, it was found that case files lacked great detail. Several cases against newspapers were missing as the findings showed. There was no up to date IT database that could be consulted for data capturing – the ombudsman's office captured all cases on paper files and stored them in filing cabinets and thus the majority were not electronically available, except for a few which had been recorded on the Press Council's website. The case register in which cases were recorded was also not accurate or up to date.
In addition, all case files were kept at the press ombudsman's office in Parktown, Johannesburg and could not be removed, therefore data capturing had to take place at

the ombudsman's office, which was time-consuming. The ombudsman also did not have an accurate, up to date list of the exact newspapers (about 700) which subscribe to the Press Code.

By creating an accurate database of cases in the research period via the computer programme specifically designed for this research, it is hoped that this research has contributed in the establishment of an IT-database for the press ombudsman's office – a record keeping system that this office was lacking prior to this research and an issue which has left the ombudsman's office open to criticism.

This research, against the theoretical backdrop of freedom of expression and the press' obligation to self-regulate, provided insight into trends that existed in the present self-regulation system during the research period and the system's role in advancing the cause of press freedom, thus hopefully contributing towards the unfolding media freedom debate.

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7.1. Appendixes

Appendix A: The PCSA Constitution Prior Review

PCSA CONSTITUTION (Current)

1. Aims and Objectives of the PCSA

1.1 To promote and preserve the right of freedom of expression including freedom of the press as guaranteed in section 16 of the Constitution of the Republic of South Africa;

1.2 To promote and to develop excellence in journalistic practice and ethics and to promote the adoption of and adherence to those standards of practice and ethics by publications that are associated with it;

1.3 To promote the concept of press self-regulation and to set up the office of the Press Ombudsman and South African Press Appeals Panel;

1.4 To accept a Press Code of Conduct enforced by an independent non-statutory, mediating and adjudicating structure aimed at introducing procedures for the expeditious and cost-effective adjudication, in the absence of a settlement, of complaints against publications published by members of the Print Media Association of South Africa (“PMSA") and other publications that subscribe to the press code.

1.5 To promote public awareness of the existence of the Press Ombudsman and Press Appeals Panel and to create an understanding of their function and purpose;

1.6 To collaborate with other press councils and related organisations here or abroad and to facilitate or organise meetings and conferences with other press councils or related institutions here or abroad;

1.7 To undertake such other tasks as are necessary to further the objectives of the Council;

1.8 Generally, to promote the principles forming the basis of the South African Press Code.

2. Establishment of the Press Council of South Africa

2.1 To achieve the objectives set out in paragraph 1 of this Constitution, there is hereby established a juristic person to be known as the Press Council of South Africa (PCSA) which shall exercise the powers, functions and duties conferred and imposed by this Constitution.

2.2 Without derogating from the generality of paragraph 2.1, the PCSA, for the purposes of the proper exercise and performance of its powers, functions and duties under this Constitution, shall be capable in law of instituting or defending or opposing legal proceedings of whatever nature, or purchasing or otherwise acquiring and holding and alienating or otherwise disposing of movable or immovable property or any other real right or interest, of entering into contracts and concluding agreements, and generally, of performing such other acts and doing such other things as juristic persons may by law perform and do, subject to the provisions of this Constitution.

3. Jurisdiction

3.1 The member publications of the associations listed in paragraph 4.2 below are subject to the jurisdiction of the Press Code and Complaints Procedures as amended from time to time by the PCSA.

3.2 All the associations listed in paragraph 4.2 below shall take such reasonable measures as they may determine to promote the aims and objectives of the PCSA.

3.3 Where a complaint is made against a newspaper or magazine which is not a member of the associations listed in paragraph 4.2 below, the Ombudsman shall approach such newspaper or magazine and inquire whether it accepts the jurisdiction of the Press Ombudsman for the settlement of the complaint.

3.4 In the event that the newspaper or magazine refuses to submit to the jurisdiction of the Ombudsman, he or she shall advise the complainant accordingly.

4. Membership of the PCSA

4.1 The Council shall consist of six members representative of the press and six members, one of them nominated alternate, representative of the public.
4.2 The press members shall be appointed as follows:
One member each shall be appointed by:
4.2.1 The Newspaper Association of South Africa (NASA);
4.2.2 The Magazine Publishers Association of South Africa (MPASA);
4.2.3 The Association of Independent Publishers (AIP); and
4.2.4 The Forum of Community Journalists (FCJ).
4.2.5 The South African National Editors' Forum (SANEF) shall appoint two members, and in the event of a journalists' association being formed, SANEF shall relinquish one seat to the journalists' association.
4.3 The press members are required to be active in editorial work or reporting for a PMSA publication, or to have wide experience in this field.
4.4 In the event of a vacancy occurring, the organisation whose representative has left shall appoint a replacement for the balance of the term.

5. Powers and functions of the Council shall include:

5.1 To consider and decide upon any matter arising from this Constitution or the functioning of any office appointed in terms of this Constitution.
5.2 The Council shall perform all such acts and do all such things as are reasonably necessary for or ancillary, incidental or supplementary to the achievement, pursuit, furtherance or promotion of the objects and principles contained in this Constitution, the Code or Procedure or any function considered necessary by the Council.

6. Structures of the Press Council of South Africa

6.1 The structures of the PCSA shall include:
6.1.1 The Appointments Panel
6.1.2 Management Committee
6.1.3 The adjudicating structures shall be:
6.1.3.1 The South African Press Ombudsman (“SAPOM”), the Deputy Ombudsman and,
6.1.3.2 The South African Press Appeals Panel (“SAPAP").

7. The Appointments Panel

7.1 The aim of the Appointments Panel is to appoint the Press Ombudsman, the Deputy Ombudsman, members of the public to the PCSA, the members of the Appeals Panel and the Chairperson of the Appeals Panel.
7.2 During the last year of the term of office of council members, the council shall request the Chief Justice of South Africa to appoint a judge to Chair the Appointments Panel.
7.3 The sitting council shall appoint at least three council members to assist the Chairman of the Appointments Panel to select members of the next council.
7.4 The Appointments Panel may determine the procedure for the selection of members of the council.
7.5 The Appointments Panel shall dissolve immediately upon completion of the appointment(s) for which it was constituted.
7.6 The public members of the PCSA shall be appointed for a term of five years from persons who have applied for or have been nominated for the posts in response to advertisements placed in the press.
7.7 In the event of a vacancy occurring for any reason, an appointments panel shall be requested by the PCSA to select a replacement for the balance of the term, if possible from the previous applicants or nominees.

8. Management Committee

8.1 The Council may appoint a management committee to run the daily affairs of the PCSA;
8.2 The Management Committee shall consist of one press member, one public member and the Chairperson of the PCSA.
8.3 The Management Committee shall be entitled to represent the PCSA in all matters assigned to it by the PCSA.
8.4 The Council may amend or set aside any decision of the Management Committee provided that no third party is prejudiced by the alteration of a decision of the Management Committee.

9. The Ombudsman

9.1 Qualifications: The Ombudsman shall –
9.1.1 Be a citizen of and permanently resident in the Republic of South Africa;
9.1.2 Have extensive press editorial experience at a senior level;
9.1.3 Have the capability to adjudicate matters independently and fairly;
9.1.4 Be a person who is committed to fairness, freedom of speech, the free flow of information and is committed to the Press Code of the PCSA;
9.2 Powers and functions: The Ombudsman shall manage the office of the Press Ombudsman and he or she shall independently deal with and attempt to settle or otherwise adjudicate, in the latter case with two members as defined hereunder, complaints against publications that fall under the Ombudsman's jurisdiction, as determined from time to time by the PCSA.
9.3 The Ombudsman may initiate a discussion in the Press Council into any matter based on or arising from the Press Code.
9.4 Where no public or press member is available to sit on a matter, the Ombudsman may co-opt a person who, in his or her opinion, has appropriate experience to fill that of the public or press member, as the case may be.
9.5 The PCSA shall determine any advertisement relating to the appointment of the Ombudsman or Deputy Ombudsman.
9.5.1 Appointment: The PCSA shall determine the terms and conditions of the appointment of the Ombudsman or the Deputy Ombudsman.
9.5.2 The qualifications and functions (9.1.1 - 9.4) related to the Ombudsman shall apply to the appointment of the Deputy Ombudsman.
9.5.3 The Ombudsman shall allocate such duties and tasks to the Deputy Ombudsman as he/she considers necessary and appropriate in the circumstances.
9.6 The office of the Ombudsman is in Johannesburg and the hearings will take place in Johannesburg, unless the Ombudsman decides to hold a hearing in another city of a province when he considers it appropriate to do so.

10. Appointment of Public and Press Members to the SAPAP

10.1 The PCSA shall advertise for eight positions from among members of the public and eight positions for press members to SAPAP on such terms and manner as it considers necessary.
10.2 The public members are required to have a keen interest in communications, social and political issues and have a serious interest in the furtherance of the communicative value of the printed media as founded in the freedom of expression guarantee of the Constitution of the Republic.
10.3 The press members are required to be active in editorial work or reporting for a PMSA publication, or to have wide experience in this field.
10.4 The appointments are made by the Appointments Panel for a term of five years and reasonable fees plus costs are paid to public members per hearing day.
10.5 The press and public members who have been appointed to the Appeals Panel may not sit on an appeal in the matter they dealt with at the level of the Ombudsman.
10.6 A press member who is in the employ of a publication which is owned by a respondent in a matter may not sit on such a matter.
10.7 Where a public or press member is not available to sit on an appeal, the Chairperson or Acting Chairperson may co-opt a member who, in his or her opinion, has appropriate experience to fill that of the public or press member, as the case may be.
10.8 The office of SAPAP shall be in Johannesburg and hearings shall be held in Johannesburg, unless the Chairperson decides that it is appropriate to hold a hearing elsewhere.

11. Appointment of the Chairperson of the South African Press Appeals Panel

11.1 The Appointments Panel shall appoint the Chairperson of the South African Press Appeals Panel.
11.2 The PCSA advertises the post of Chairperson of SAPAP in a manner which it deems fit.
11.3 Qualifications of the Chairperson:
11.3.1 The Chairperson must have senior experience within the field of law.
11.4 The term of appointment shall be for five years and is part-time.
11.5 The remuneration is by way of a retainer, a daily hearing fee plus costs.
11.6 One of the eight public members, who have has senior legal experience, shall be appointed to act as Chair when the Chair is not available.

12. Persons Disqualified from Holding the Position of Ombudsman, Deputy Ombudsman or Chairperson of the South African Press Appeals Panel.

12.1 A person shall not be appointed as Ombudsman, Deputy Ombudsman or Chairperson of the of the Press Appeals Panel:

12.1.1 Does not, in the opinion of the Appointments Panel, have the requisite experience or capability;

12.1.2 Has any financial interest in the media or is in the employ of the media;

12.1.3 Occupies a seat in a provincial or national legislative body;

12.1.4 Is an office bearer of a political party or movement or is in the employ of the Public Service:

12.1.5 Is an unrehabilitated insolvent;

12.1.6 Was convicted of an offence after 1992, whether in the Republic or elsewhere, for which such person has been sentenced to imprisonment without the option of a fine.

13. Cessation of Membership

13.1 A person shall cease to be the Chairperson, Ombudsman, Deputy Ombudsman or a member if:

13.1.1 He or she resigns;

13.1.2 He or she becomes incapable for whatever reason of fulfilling his or her duties; provided that if a dispute arises between the incumbent and the PCSA in this connection, the matter will be resolved by an arbitrator appointed by the Chair of the Johannesburg Bar Council in a manner which he or she deems fair;

13.1.3 He or she is declared insolvent by a court or is found guilty of an offence listed in Schedule I or II of the Criminal Procedure Act 1977.

13.1.4 Any member who becomes ineligible to hold the post in terms of the criteria for appointment to the post shall automatically cease to be a member as from the date of such ineligibility.

13.2 The Council may, by a two-thirds majority at a general meeting, suspend or terminate the membership of any member if such a member has brought the good name of the PCSA into disrepute or if such member has omitted to attend two consecutive meetings in a year without good cause acceptable to the Council.

13.2.1 At least 21 days prior written notice of such a meeting of the Council must be given to all members of the Council.

13.3 Such a resolution must be taken by a two-thirds majority of all the members of the Council and may be taken only at a meeting where at least two-thirds of the members are in attendance.

14. Finance

14.1 The annual reasonable expenditure of the SAPOM and SAPAP shall be met by the PCSA in terms of an annual budget prepared by the Ombudsman's office.

14.2 Public members of the PCSA will be remunerated per meeting and their costs for attending meetings will be paid by the PCSA.

14.3 The remuneration for the public members and the Chairperson shall be determined by the PCSA at the beginning of its term and an annual increase of at least the official inflation rate (CPIX) shall also be determined at this stage.

14.4 All costs of the Chairperson and the public members of the PAP in connection with the adjudication or appeal shall be paid by the PCSA.

14.5 The Chairperson of the Appeals Panel and the Ombudsman shall be entitled to business class flights.

15. Meetings

15.1 The Council shall hold as many meetings per year as the Chairperson deems necessary or where three members require the Chairperson to hold a meeting on a specific matter, he or she shall do so within 21 days.

15.2 The quorum for a meeting shall be six members and resolutions shall be taken by majority vote except in so far as this Constitution requires otherwise. The Chairperson shall have a casting vote where the votes are equal.

15.3 Meetings of the Council may be held in person or by telephone or video conference or other appropriate electronic communications system or a combination thereof: provided that proper notice of such a meeting was given to all members and a quorum is in attendance.

15.4 Minutes shall be kept of the proceedings of meetings by one of the members elected at a Council meeting as secretary.

15.5 Unless all the members agree, a Council meeting shall be held within seven days' written notice by the secretary or the Chairperson.

16. Arbitration

16.1 In the event of any dispute (including a dispute relating to membership costs, or the budget prepared by the Ombudsman, or the costs of SAPOM and SAPAP) within the PCSA relating to any matter arising from functions of any member or office-bearer, the PCSA shall appoint an arbitrator to resolve the problem and where the parties cannot agree on the arbitrator the Chair of the Johannesburg Bar Council shall be approached to appoint an arbitrator.

16.2 Each association which has appointed a representative in terms of 4.2 of this Constitution shall bear the costs of its representative carrying out the bona fide functions.

16.3 The cost of the arbitrator shall be shared equally by the disputing parties except in any dispute with the Ombudsman, in which case the cost of arbitration shall be borne by the Council.

16.4 The decision of the arbitrator shall be final and binding.

17. Amendments

17.1 Any amendment to this Constitution, the Code or the Procedure shall require the approval of two-thirds of the members of the PCSA voting either personally or in absentia.

17.2 No amendment shall be effective unless at least 21 calendar days' written notice of a proposed amendment shall have been given to all members.

17.3 Votes submitted in absentia shall be in writing, signed by the relevant member and be recorded for or against the proposed amendment and no further amendments of the proposal may be made at such meeting unless a two-thirds majority of the Council is present at the meeting and votes for such further amendment.

18. Dissolution

18.1 The PCSA may, after each term of the Press Ombudsman, terminate the existence of SAPOM and SAPAP.

18.2 A resolution to dissolve the said system must be passed at a special meeting called for this purpose, by a two-thirds majority of the members present, which two-thirds majority shall be not less than a simple majority of the total membership.

18.3 Not less than 21 days' notice shall be given of any such meeting and such notice shall give particulars of the purpose for which the meeting is called.

19. Seat of the PCSA

19.1 The seat of the PCSA shall be in Johannesburg and meetings shall be held in Johannesburg unless the management decides otherwise.

Appendix B: The PCSA Press Code Prior Review

THE SOUTH AFRICAN PRESS CODE (current)
Preamble
WHEREAS:
Section 16 of the Constitution of the Republic of South Africa enshrines the right to freedom of expression as follows:
(1) Everyone has the right to freedom of expression, which includes:
(a) Freedom of the press and other media;
(b) Freedom to receive or 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 basic principle to be upheld is that the freedom of the press is indivisible from and subject to the same rights and duties as that of the individual and rests on the public's fundamental right to be informed and freely to receive and to disseminate opinions; and
The primary purpose of gathering and distributing news and opinion is to serve society by informing citizens and enabling them to make informed judgments on the issues of the time; and
The freedom of the press allows for an independent scrutiny to bear on the forces that shape society.
NOW THEREFORE:
The Press Council of South Africa accepts the following Code which will guide the South African Press Ombudsman and the South African Press Appeals Panel to reach decisions on complaints from the public after publication of the relevant material.
Furthermore, the Press Council of South Africa is hereby constituted as a self-regulatory mechanism to provide impartial, expeditious and cost-effective arbitration to settle complaints based on and arising from this Code.
Definition
For purposes of this Code, "child pornography" shall mean: "Any image or any description of a person, real or simulated, who is or who is depicted or described as being, under the age of 18 years, engaged in sexual conduct; participating in or assisting another person to participate in sexual conduct; or showing or describing the body or parts of the body of the person in a manner or circumstances which, in context, amounts to sexual exploitation, or in a manner capable of being used for purposes of sexual exploitation."
1. Reporting of News
1.1 The press shall be obliged to report news truthfully, accurately and fairly.
1.2 News shall be presented in context and in a balanced manner, without any intentional or negligent departure from the facts whether by:
1.2.1 Distortion, exaggeration or misrepresentation;
1.2.2 Material omissions; or
1.2.3 Summarisation.
1.3 Only what may reasonably be true, having regard to the sources of the news, may be presented as fact, and such facts shall be published fairly with due regard to context and importance. Where a report is not based on facts or is founded on opinions, allegation, rumour or supposition, it shall be presented in such manner as to indicate this clearly.
1.4 Where there is reason to doubt the accuracy of a report and it is practicable to verify the accuracy thereof, it shall be verified. Where it has not been practicable to verify the accuracy of a report, this shall be mentioned in such report.

1.5 A publication should usually seek the views of the subject of serious critical reportage in advance of publication; provided that this need not be done where 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 witnesses intimidated.
1.6 A publication should make amends for publishing information or comment that is found to be inaccurate by printing, promptly and with appropriate prominence, a retraction, correction or explanation.
1.7 Reports, photographs or sketches relative to matters involving indecency or obscenity shall be presented with due sensitivity towards the prevailing moral climate.
1.7.1 A visual presentation of sexual conduct may not be published, unless a legitimate public interest dictates otherwise.
1.7.2 Child pornography shall not be published.
1.8 The identity of rape victims and victims of sexual violence shall not be published without the consent of the victim.
1.9 News obtained by dishonest or unfair means, or the publication of which would involve a breach of confidence, should not be published unless a legitimate public interest dictates otherwise.
1.10 In both news and comment the press shall exercise exceptional care and consideration in matters involving the private lives and concerns of individuals, bearing in mind that any right to privacy may be overridden only by a legitimate public interest.

2. Discrimination and Hate Speech

2.1 The press should avoid discriminatory or denigratory references to people's race, colour, ethnicity, religion, gender, sexual orientation or preference, physical or mental disability or illness, or age.
2.2 The press should not refer to a person's race, colour, ethnicity, religion, gender, sexual orientation or preference, physical or mental illness in a prejudicial or pejorative context except where it is strictly relevant to the matter reported or adds significantly to readers' understanding of that matter.
2.3 The press has the right and indeed the duty to report and comment on all matters of legitimate public interest. This right and duty must, however, be balanced against the obligation not to publish material which amounts to hate speech.

3. Advocacy

A publication is justified in strongly advocating its own views on controversial topics provided that it treats its readers fairly by:
3.1 Making fact and opinion clearly distinguishable;
3.2 Not misrepresenting or suppressing relevant facts;
3.4 Not distorting the facts in text or headlines.

4. Comment

4.1 The press shall be entitled to comment upon or criticise any actions or events of public importance provided such comments or criticisms are fairly and honestly made.
4.2 Comment by the press shall be presented in such manner that it appears clearly that it is comment, and shall be made on facts truly stated or fairly indicated and referred to.
4.3 Comment by the press shall be an honest expression of opinion, without malice or dishonest motives, and shall take fair account of all available facts which are material to the matter commented upon.

5. Headlines, Posters, Pictures and Captions

5.1 Headlines and captions to pictures shall give a reasonable reflection of the contents of the report or picture in question.
5.2 Posters shall not mislead the public and shall give a reasonable reflection of the contents of the reports in question.
5.3 Pictures shall not misrepresent or mislead nor be manipulated to do so.

6. Confidential Sources

The press has an obligation to protect confidential sources of information.

7. Payment for Articles

No payment shall be made for feature articles to persons engaged in crime or other notorious misbehaviour, or to convicted persons or their associates, including family, friends, neighbours and colleagues, except where the material concerned ought to be published in the public interest and the payment is necessary for this to be done.

8. Violence

Due care and responsibility shall be exercised by the press with regard to the presentation of brutality, violence and atrocities.

Appendix C: The PCSA Complaints Procedures Prior Review

PCSA COMPLAINTS PROCEDURES (current)
It shall be of the essence of the adjudication proceedings:
That complaints be considered and adjudicated upon within the shortest possible time after the publication of the matter giving rise to the complaint;
That complaints be considered and adjudicated upon in an informal manner; and,
That whenever possible the Ombudsman and SAPAP and the parties will strive for a speedy and amicable settlement.

1. Complaints

1.1 "Complainant" shall mean and include any person who or body of persons which lodges a complaint, provided that such person or body of persons has a direct, personal interest in the matter complained of.
1.2 The "respondent" in respect of a complaint shall be the proprietor of the publication, which may delegate its editor or, in his or her absence, an assistant editor or other suitable editorial representative of the member concerned, to act and appear in its stead in respect of any complaints dealt with either by the Ombudsman or the SAPAP.
1.3 A complaint shall be made as soon as possible, but not later than fourteen days after the date of the publication giving rise to the complaint. The Ombudsman may on reasonable grounds accept late complaints if in his or her opinion there is good and satisfactory explanation for the delay.
1.4 The complaint shall be made to the Ombudsman either in person, by telephone or in writing. "Writing" shall include cable, telegram, telex, e-mail and fax messages. Where a complaint is made other than in writing it shall be confirmed forthwith in writing or the Ombudsman's office shall assist the complainant to do so. Upon the receipt of a complaint by the Ombudsman, the Ombudsman shall be entitled to request from the complainant a copy of the material published giving rise to the complaint, and the complainant shall be obliged to forward such a copy to the Ombudsman forthwith.
1.5 The Ombudsman shall not accept a complaint:
1.5.1 Which is anonymous or which, in his or her opinion, is fraudulent, frivolous, malicious or vexatious and which prima facie falls outside the ambit of the Code;
1.5.2 Where at any stage of the proceedings legal action is threatened or is considered by the Ombudsman to be a possibility, unless the complainant in writing waives any right to claim civil relief of whatsoever nature directly or indirectly related to or arising out of the complaint;
1.5.3 Which is directed at a newspaper outside his or her jurisdiction.
1.6 Where the Ombudsman has accepted a complaint and the respondent offers to settle the matter complained of by way of publication or otherwise, which in the opinion of the Ombudsman constitutes a reasonable and sufficient offer of settlement of such complaint, the Ombudsman may withdraw his or her acceptance of the complaint.
1.7 Where the Ombudsman declines to accept a complaint on any of the grounds specified in rules 1.3 or 1.5 or withdraws his or her acceptance of a complaint under rule 1.6 the complainant may, within seven days, with full reasons, request the Chairperson of SAPAP to review the Ombudsman's decision. In the event of the Chairperson overruling the Ombudsman's decision, the matter shall proceed in terms of rule 2.

2. Conciliation and Adjudication Procedure by the Ombudsman

2.1 Upon acceptance of a complaint by the Ombudsman, he or she shall immediately notify the respondent in writing of the complaint, giving sufficient details to enable the respondent to investigate the matter and respond.
2.2 The Ombudsman shall forthwith endeavour to achieve a settlement.

2.3 The Ombudsman shall hold discussions with the parties on an informal basis with the object of achieving a speedy settlement. Legal representation is permitted.

2.4 If the complaint is not settled within 14 days of its notification to the respondent, the Ombudsman may, if it is reasonable not to hear the parties, decide the matter on the papers.
2.4.1 Where the Ombudsman decides to hold a hearing, the Ombudsman shall appoint a public and a press member of the Appeals Panel to adjudicate the matter with him or her at the hearing.
2.4.2 Decisions shall be by a majority vote.
2.4.3 Legal representation shall be permitted at hearings.
2.5 Within 7 days of receipt of the decision, any one of the parties may apply for leave to appeal to the Chairperson of the SAPAP and the grounds of appeal shall be fully set.
2.6 The application and grounds must be filed at the Ombudsman's office.
2.7 The Ombudsman shall inform the other party of the application for leave to appeal and shall advise the party that he or she may file a response to the application for leave to appeal within 7 days of receipt thereof.
2.8 If the Chairperson is of the view that there are reasonable prospects that the SAPAP may come to a decision different from that of the Ombudsman or the Ombudsman with members, as the case may be, the Chairperson shall grant leave to appeal.

3. Adjudication Procedure of SAPAP

3.1 Where leave to appeal is granted in terms of rule 2.8, the Ombudsman shall place before SAPAP all the documentation that he or she had before him or her and the Ombudsman shall also inform both parties of the date and venue of the hearing before the SAPAP.
3.2 The Chairperson of SAPAP shall appoint one press member and one public member from the persons appointed in terms of clause 10 of the Constitution to hear the appeal with him.
3.3 The Chairperson shall determine a date, time and venue for adjudication of the appeal, which shall be heard as soon as possible after receipt by him or her of the documents referred to in rule 3.1.
3.4 It shall not be obligatory for either party to appear personally before the SAPAP, but they are entitled to attend and to address the SAPAP which is, in any case, entitled to question them on the matter: provided that a respondent is not under a duty to disclose the identity of an informant.
3.5 The Chairperson may request the parties to appear personally. The Chairperson may advise parties that, in the circumstances, an adverse inference may be drawn from failure to comply with such request without good cause.
3.6 The parties shall be entitled to legal representation when appearing before the SAPAP.
3.7 If the SAPAP finds against a respondent who is present, the respondent shall be given an opportunity to address the Tribunal in mitigation of any order that may be made.
3.8 The hearings of the SAPAP shall be open to the public unless the identity of a rape or sexual victim or a child or a victim of extortion is at issue.

4. Variation of Procedure

4.1 The Ombudsman or Chairperson of the SAPAP may, if satisfied that no injustice will result, and upon such conditions as he or she may impose:
4.1.1 Extend any time period contemplated in these rules;
4.1.2 At any stage require any allegation of fact to be verified on oath;
4.1.3 Call upon the parties to a dispute to furnish such further information as he or she may consider necessary.

5. Findings of SAPOM or SAPAP

5.1 The SAPOM or SAPAP may uphold or dismiss a complaint or appeal, as the case may be.

5.2 If a finding is made against a member of PMSA or a publication that has voluntarily become subject to the jurisdiction of the SAPOM and SAPAP, the SAPOM or the SAPAP, as the case may be, may make any one or more of the following orders against the proprietor of the publication:
5.2.1Caution or reprimand a respondent;
5.2.2 Direct that a correction, retraction or explanation and, where appropriate, an apology and/or the findings of the SAPOM or SAPAP be published by the respondent in such manner as may be determined by the SAPOM or the SAPAP, as the case may be.
5.2.3 Order that a complainant's reply to a published article, comment or letter be published by the respondent;
5.2.4 Make any supplementary or ancillary orders or issue directives that are considered necessary for carrying into effect the orders or directives made in terms of this clause and, more particularly, issue directives as to the publication of the findings of SAPOM and/or SAPAP.

5.3 In the reasons for the decision and/or sanction the SAPOM or SAPAP is entitled to criticise the conduct of the complainant in relation to the complaint, where such criticism is warranted in the view of SAPOM or SAPAP
5.4 The Ombudsman shall cause any findings, reasons for a finding and/or requirements of a tribunal to be sent to the complainant and to the respondent who shall comply with the SAPOM or the SAPAP's orders or directives, if any.
5.5 The Ombudsman shall keep on record all findings and reasons for findings by the Ombudsman or SAPAP.
5.6 The records referred to in rule 5.5 shall be public documents except insofar as those documents are privileged in terms of the Promotion of Access to Information Act 2000 or identify a rape victim, a person who has been sexually assaulted or a child, or a victim of extortion.

The Waiver
Our Complaints Procedures states: “The Ombudsman shall not accept a complaint...where at any stage of the proceedings legal action is threatened or considered by the Ombudsman to be a possibility, unless the complainant in writing waives any right to claim civil relief of whatsoever nature directly or indirectly related to or arising out of the complaint.”
This waiver is designed to avoid tribunal-hopping and to prevent a publication having to answer twice on the same complaint - to us and then later to the courts or other tribunals. We thus give you a choice of tribunal upfront. If your goal is to clear your name quickly and cost-effectively, you would choose our system. If it is other relief you seek, you might choose another route to suit your goal.
Waiver
I, (name of complainant), the undersigned, hereby agree to submit my complaint and any dispute arising from my complaint for adjudication to the SA Press Ombudsman (“the Ombudsman”) subject to the SA Press Code and Complaints and Procedures of the SA Press Council.
I accept the decision of the Ombudsman, or in the event of an appeal, the decision of the Press Appeals Panel as final and binding.
Furthermore, by submitting my complaint for adjudication to the Ombudsman I waive my right to approach a court of law or any other tribunal to adjudicate upon my complaint or any dispute arising from my complaint submitted to the Ombudsman.
Signed:
Date:

Appendix D: Newspapers subscribing to the PCSA

Mainstream, Tabloids & Community newspapers which subscribe to the South African Press Code

Source: Newspaper Association of South Africa (NASA)

URBAN DAILY NEWSPAPERS	URBAN WEEKLY NEWSPAPERS	INDEPENDENT NATIONAL WEEKLY NEWSPAPERS
Beeld	**Weekly Editions**	Afican Times
Burger, Die	Post	China Express, The
Business Day	UmAfrika	China News
Cape Argus, The	**Saturday Editions**	Mail & Guardian
Cape Times	Burger, Die	
Citizen, The	Citizen, The	
Daily Dispatch	Independent on Saturday, The	
Daily News, The	Naweek Beeld	
Daily Sun	Pretoria News	
Diamond Fields Advertiser	Saturday Dispatch	
Herald, The	Saturday Star, The	
Isolezwe	Volksblad, Die	
Mercury, The	Weekend Argus on Saturday	
New Age	Weekend Post on Saturday	
Pretoria News	Weekend Witness, The	
Sake Beeld	**Sunday Editions**	
Son, Die	City Press	
Sowetan	Rapport	
Star, The	Sunday Independent, The	
Times, The	Sunday Sun	
Volksblad, Die	Sunday Times	
Witness, The	Sunday Tribune	
	Sunday World	
	Weekend Argus on Sunday	

COMMUNITY NEWSPAPERS	COMMUNITY NEWSPAPERS	COMMUNITY NEWSPAPERS
African Reporter	Eikestadnuus	Meyerton Ster
Agri Review	Estcourt & Midland News	Mid South Coast Mail
Alex News	Express	Middelburg Observer
Alberton Record	False Bay Echo	Midrand Reporter
Algoa Sun	Fourways Review	Midweek Record
Athlone News	Gemsbok Advertiser	Mirror, The
Atlantic Sun	George Herald	Mopani News
Barateiro	Germiston City News	Mosselbay Advertiser
Barberton Times	Go! & Express East London	Mpumalanga News
Bedfordview & Edenvale News	Goudveld Forum	Newcastle & District Advertiser
Benoni City Times	Grahamstown Shoppa This Week	Noord Vrystaatse Gazette
Berea Mail	Heidelberg / Nigel Heraut	Noordkaap
Bloemnuus	Helderberg Sun	Noordwes Gazette
Bolander	Helderpos/Heldermail	Noordwester, Die
Bonus	Hermanus Times	North Eastern Tribune
Boksburg Advertiser	Highvelder /Hoevelder	Northcliff & Melville Times
Bosvelder	Highway Mail	Northern Natal Courier
Brakpan Herald	Hilltop, The	Northern Review
Breedrivier Gazette	Ilizwi	Northglen News
Brits Pos	Indabazethu	Northside Chronicle
Caledon Kontreinuus	Jabavu Urban News	Ons Stad
Cape Towner, The	Joburg East Express	Orlando Urban News
Capricorn Voice	Kempton Express	Oudtshoorn Courant
Carletonville Herald	Klerksdorp Record	Outlook
Chatsworth Rising Sun	Kouga Express	Our Times
Chiawelo Urban News	Knysna Plett Herald	Overport Rising Sun
City Vision (Cape Town)	Kroonnuus	Paarl Post
City Vision (Jhb)	Krugersdorp News	Palabora & Hoedspruit Herald
City Vision (Langa/Gugulethu/Nyanga)	Ladysmith Gazette	PE Express
Comaro Chronicle	Lentswe	People's Post Athlone
Constantiaberg Bulletin	Letaba Herald	People's Post Claremont/Rondebosch
Corridor Gazette	Lowvelder, The/Die Laevelder	People's Post Constantia/Wynberg
Daller, The	Mail, The	People's Post City Edition
Diepkloof Urban News	Maluti	People's Post False Bay
District Mail/Distrikspos	Maritzburg Sun	People's Post Grassy Park
Dobsonville Urban News	Meadowlands Urban News	People's Post Lansdowne

East Griqualand Herald	Metro-Burger Mitchell's Plain	People's Post Retreat
Echo, The	Merebank Rising Sun	Phoenix Sun
COMMUNITY NEWSPAPERS	**COMMUNITY NEWSPAPERS**	**COMMUNITY NEWSPAPERS**
Potchefstroom Herald	Southern Mail	Tygerburger Kuilsrivier
Protea Urban News	Sentinel News	Tygerburger Kus/ Coast
Pimville Urban News	South Coast Fever	Tygerburger Milnerton
Plainsman	South Coast Herald	Tygerburger Parow
QwaQwa News	South Coast Sun	Tygerburger Ravensmead / Belhar
Queensburgh News	Southern Courier	Tygerburger Tableview
Randburg Sun	Southern Mail	Tygertalk Bellville/ Durbanville
Randfontein Herald	Southern Suburbs Tatler	Tygertalk Goodwood/ Parow
Rekord Centurion	Southlands Sun	UD News/Nuus
Rekord Mamelodi	Springs & Brakpan Advertiser	Umthatha Herald
Rekord Moot	Standerton Advertiser	Umzinto Rising Sun
Rekord Noord / North	Steelburger	Vaal Vision
Rekord Noweto	Stellalander	Vaal Weekly
Rekord Oos / East	Stellenbosch Gazette	Vanderbijlpark Ster
Rekord Sentraal / Central	Streeknuus	Vereeniging Ster
Rekord Wesnuus / West News	Suid-Kaap Forum	Vaalweekblad
Representative, The	Swartlander Monitor	Village Talk
Ridge Times	Tabletalk	Vista
Roodepoort Record	Talk of the Town	Vryheid Herald
Rosebank Killarney Gazette	Tembisan	Vrystaat
Rustenburg Herout/Herald	Times of Ladysmith inc	Vukani
Sandton Chronicle	Times of Newcastle inc Inkanyezi	Weskus Nuus/West Coast News
Sasolburg Ster	Tygerburger Bellvile	Weslander, Die
Secunda & Bethal Echo, The	Tygerburger Brackenfell	Wild Coast Herald
Sentinel News	Tygerburger Durbanville	Witbank News/Nuus
South Coast Fever	Tygerburger Eersterivier / Blue Downs	Worcester Standard & Advertiser
South Coast Herald	Tygerburger Elsiesrivier	Zola Urban News
South Coast Sun	Tygerburger Goodwood/Pineland	Zululand Observer
Southern Courier	Tygerburger Kraaifontein	

Independent newspapers which subscribe to the South African Press Code
Source: Association of Independent Publishers (AIP)

Advertiser, The	Durban North News	Harrismith Chronicle	Makana Moon
African Eye News	Eastern Cape Mirror	Heartbeat 24/7	Maloti News
Agenda	Eastern Cape Today	Highlands Herald	Mangaung Issue
Al-qalam	Eastern Cape Voice	Highlands News	Maputaland Mirror
Alex Pioneer	Eastern Times	Highlands Panorama	Maritzburg Views
Aliwal Weekly	Eastern Free State Issue	Highveld Tribune	Mash News
Barkly East Reporter	Eastern Cape Mirror	HIGHWAY IZINDABA	MASILONYANA NEWS
Botswana Advertiser	Eastern Cape Today	Highway News	MdasB Connexion
Bulletin	Eastern Cape Voice News	Homeless Talk	Meander Chronicle
Bush Voice	Ekasi News	Horizon	Midland News
Bushbuckridge News	eThekwini Times	Izwi le Africa	Mmega District News
Cape Flats News	Excelsior News	Joburg Style	Mogol Post
Centurion Sun	Ezakwazulu News	Kathorus Mail	Motsosakgang News
Chalkline	EZASEXOBHONEWS	Kathu Gazette	Mountain Echo
CHATSWORTH TABLOID	Feel SA	Khanya Lamontville	Mpumalanga Tourism Information
Coal City News	Fordsburg Independent	Kokstad Advertiser	Muslim Views
Coastal Weekly	Frankfort Herald	Kormorant	NEWCASTLE EXPRESS
Consumer Fair	Free State Business Bulletin	Kowie Bugle	Next 48 hours
Cosmo City Chronicle	Free State News	Kruger 2 Canyon	Nhlalala
Cosmos News	Free State Sun	Kwela xpress	Nokeng News
Courant Free gig	Full Circle	KZN Newspaper	Northern News
Courier	Galaxy Newspaper	LADYSMITH HERALD	North West On Sunday
Die Herrie	Gansbaai Courant	Laudium Tshwane Sun	Northern Bulletin
Die Hoorn	Gansbaai Herald	Lenasia Times	NORTHERN STAR
Die Kwêvoël	Gauteng Times	Lentswe News	NorthWest Independent
Die Platteland	Gonubie Bugle	Leseding News	Nqoho News
Dizindaba News	Greytown Gazette	Letsholo News	Nthavela
Durban North News	Grocotts Mail	Life & Style	Ons Kontrei
Dizindaba News	Guardian yase Mpumalanga	Limpopo Mirror	Overvaal
Die Pos	Harambe	Madiba Action	

Appendix E: SAARF AMPS January – December 2011

AMPS (January – December 2011) AVERAGE ISSUE READERSHIP OF NEWSPAPERS

The following table gives the latest readership figures for newspapers and magazines from SAARF AMPS Jan-Dec '11. Over and above the thousands of readers and percentages of the total adult population for each publication, the table also indicates the range (both in percentages and thousands) in which the true readership figure lies, with a statistical certainty of 95%.

Let us look at two examples:

Example 1 - Beeld (daily) - 463,000 readers, 1.3% of total adults – AMPS Jan-Dec '11.

The table indicates that there is a range of plus or minus 0.14%; and plus or minus 49,000 readers. This means that we can be 95% certain that the true value of Beeld lies somewhere in the range (1.3 – 0.14% to 1.3 + 0.14%, that is, 1.16% to 1.44%) or (463,000 – 49,000 to 463,000 + 49,000, that is, 414,000 to 512,000 readers).

Example 2 – Daily Sun – 5,561,000 readers, 15.9% of total adults – AMPS Jan-Dec '11.

The table indicates that there is a range of plus or minus 0.45%; and plus or minus 158,000 readers. We can, therefore, be 95% certain that the true range of Daily Sun lies in the range (15.9 – 0.45% to 15.9 + 0.45%, that is, 15.45% to 16.35%) or (5,561,000 – 158,000 to 5,561,000 + 158,000, that is, 5,403,000 to 5,719,000 readers).

It is important to bear these ranges in mind when comparing readership from one survey to another. The readership figures for AMPS Jul '10-Jun '11 also have a range of possible values, and only when there is no overlap between the AMPS Jul '10-Jun '11 and AMPS Jan-Dec '11 ranges, is the readership figure in the one survey significantly different from the other survey with a 95% degree of statistical certainty.

In the table, the publications with readership that differs significantly between AMPS Jul '10-Jun '11 and AMPS Jan-Dec '11 are indicated as follows:

"+" indicates a significant increase

"#" indicates a significant decrease

In the case of the two examples, Beeld readership is essentially the same between the two years because the range for Beeld in AMPS Jul '10-Jun '11 (1.35% to 1.65%) overlaps with the range for Beeld in AMPS Jan-Dec '11 (1.16% to 1.44%). In the case of Daily Sun readership, there is an overlap between the two years (14.86% to 15.74% in AMPS Jul '10-Jun '11) and (15.45% to 16.35% in AMPS Jan-Dec '11); therefore there is no statistical difference between them.

AVERAGE ISSUE READERSHIP OF NEWSPAPERS

	AMPS Jul '09 - Jun '10				AMPS Jan - Dec '10				AMPS Jul '10 - Jun '11				AMPS Jan - Dec '11				
	TOTAL TOTAL				TOTAL TOTAL				TOTAL TOTAL				TOTAL TOTAL				
INFORMANTS	25170	25170			25160	25160			25160	25160			25160	25160			
POPULATION ('000)	34020	34020			34020	34020			34020	34020			34934	34934			
	'000s	%	± %	± '000	'000s	%	± %	± '000	'000s	%	± %	± '000	'000s	%		± %	± '000
DAILY NEWSPAPERS																	
BEELD	562	1.7	0.16	54	506	1.5	0.15	51	511	1.5	0.15	51	463	1.3		0.14	49
BURGER	490	1.4	0.15	49	487	1.4	0.15	49	470	1.4	0.15	49	456	1.3		0.14	49
BUSINESS DAY	76	0.2	0.06	19	85	0.2	0.06	19	79	0.2	0.06	19	62	0.2		0.06	19
CAPE ARGUS	312	0.9	0.12	40	349	1.0	0.12	42	321	0.9	0.12	40	287	0.8		0.11	38
CAPE TIMES	253	0.7	0.10	35	268	0.8	0.11	37	231	0.7	0.10	35	225	0.6		0.10	33
CITIZEN	438	1.3	0.14	48	370	1.1	0.13	44	379	1.1	0.13	44	508	1.5	& +	0.15	52
DAILY DISPATCH	280	0.8	0.11	37	269	0.8	0.11	37	261	0.8	0.11	37	232	0.7		0.10	36
DAILY NEWS	509	1.5	0.15	51	430	1.3	0.14	48	377	1.1	0.13	44	353	1.0	@	0.12	43
DAILY SUN	4956	14.6	0.44	148	5023	14.8	0.44	149	5220	15.3	0.44	151	5561	15.9	&	0.45	158
DAILY VOICE	627	1.8	0.16	56	585	1.7	0.16	54	591	1.7	0.16	54	556	1.6		0.16	54
DFA	74	0.2	0.06	19	75	0.2	0.06	19	82	0.2	0.06	19	78	0.2		0.06	19
HERALD	270	0.8	0.11	37	256	0.8	0.11	37	236	0.7	0.10	35	238	0.7		0.10	36
ISOLEZWE	760	2.2	0.18	62	696	2	0.17	59	756	2.2	0.18	62	912	2.6	& +	0.20	69
MERCURY	269	0.8	0.11	37	275	0.8	0.11	37	247	0.7	0.10	35	225	0.6		0.10	33
NEW AGE													39	0.1		0.04	14
PRETORIA NEWS	136	0.4	0.08	27	105	0.3	0.07	23	108	0.3	0.07	23	128	0.4		0.08	27
SON	984	2.9	0.21	71	1039	3.1	0.21	73	1132	3.3	0.22	75	1097	3.1		0.21	75
SOWETAN	1457	4.3	0.25	85	1522	4.5	0.26	87	1618	4.8	0.26	90	1722	4.9		0.27	93
THE STAR	561	1.7	0.16	54	574	1.7	0.16	54	576	1.7	0.16	54	640	1.8		0.16	57
THE TIMES	377	1.1	0.13	44	331	1.0	0.12	42	313	0.9	0.12	40	322	0.9		0.12	41
VOLKSBLAD	159	0.5	0.09	30	162	0.5	0.09	30	178	0.5	0.09	30	162	0.5		0.09	30
THE WITNESS	157	0.5	0.09	30	152	0.4	0.08	27	147	0.4	0.08	27	119	0.3		0.07	24
ANY "AMPS" DAILY NEWSPAPER	9941	29.2	0.56	191	9990	29.4	0.56	192	10316	30.3	0.57	193	10761	30.8	&	0.57	199
WEEKLY NEWSPAPERS																	
BURGER (SAT)	313	0.9	0.12	40	194	0.6	0.10	32	226	0.7	0.10	35	386	1.1	& +	0.13	45
CITY PRESS (SUN)	2122	6.2	0.30	101	1867	5.5	0.28	96	1604	4.7	0.26	89	1746	5.0		0.27	94
ILANGA LANGESONTO (SUN)	877	2.6	0.20	67	868	2.6	0.20	67	910	2.7	0.20	68	950	2.7		0.20	70
INDEPENDENT ON SATURDAY	305	0.9	0.12	40	280	0.8	0.11	37	275	0.8	0.11	37	239	0.7		0.10	36
ISOLEZWE NGESONTO (SUN)	715	2.1	0.18	60	755	2.2	0.18	62	764	2.2	0.18	62	889	2.5		0.19	67
MAIL & GUARDIAN (FRI)	437	1.3	0.14	48	428	1.3	0.14	48	383	1.1	0.13	44	424	1.2		0.13	47
NAWEEK BEELD (SAT)	198	0.6	0.10	32	114	0.3	0.07	23	73	0.2	0.06	19	73	0.2		0.06	19
POST (WED)	439	1.3	0.14	48	429	1.3	0.14	48	394	1.2	0.13	46	341	1.0	@	0.12	43
PTA NEWS WEEKEND (SAT) $$	64	0.2	0.06	19	37	0.1	0.04	13	21	0.1	0.04	13	35	0.1		0.04	14
RAPPORT (SUN)	1543	4.5	0.26	87	1396	4.1	0.25	83	1437	4.2	0.25	84	1476	4.2		0.25	87
SATURDAY DISPATCH	138	0.4	0.08	27	148	0.4	0.08	27	105	0.3	0.07	23	91	0.3		0.07	24
SATURDAY STAR	361	1.1	0.13	44	291	0.9	0.12	40	234	0.7	0.10	35	237	0.7		0.10	36
SOCCERWEEK (THURS)					274	0.8	0.11	37	233	0.7	0.10	35	##	##		##	##
SOCCER LADUMA	2894	8.5	0.34	117	2925	8.6	0.35	118	3009	8.8	0.35	119	3182	9.1		0.36	124
SON OP SONDAG @@	426	1.3	0.14	48	389	1.1	0.13	44	502	1.5	0.15	51	609	1.7	&	0.16	56
SONDAG	141	0.4	0.08	27	179	0.5	0.09	30	190	0.6	0.10	32	185	0.5		0.09	30
SUNDAY INDEPENDENT	125	0.4	0.08	27	107	0.3	0.07	23	67	0.2	0.06	19	74	0.2		0.06	19
SUNDAY SUN	2508	7.4	0.32	110	2371	7.0	0.32	107	2416	7.1	0.32	108	2567	7.3		0.32	112
SUNDAY TIMES	4085	12.0	0.40	137	3800	11.2	0.39	133	3659	10.8	0.38	130	3733	10.7		0.38	133
SUNDAY TRIBUNE	657	1.9	0.17	57	624	1.8	0.16	56	575	1.7	0.16	54	487	1.4	@	0.15	51
SUNDAYWORLD	1738	5.1	0.27	92	1680	4.9	0.27	91	1594	4.7	0.26	89	1547	4.4		0.25	89
SUPER SATURDAY CITIZEN	331	1	0.12	42	181	0.5	0.09	30	51	0.1	0.04	13	67	0.2	@ +	0.06	19
UMAFRIKA (FRI)	206	0.6	0.10	32	233	0.7	0.10	35	214	0.6	0.10	32	224	0.6		0.10	33
VOLKSBLAD (SAT)	68	0.2	0.06	19	62	0.2	0.06	19	67	0.2	0.06	19	49	0.1	@ #	0.04	14
WEEKEND ARGUS SATURDAY	248	0.7	0.10	35	213	0.6	0.10	32	190	0.6	0.10	32	181	0.5		0.09	30
WEEKEND ARGUS SUNDAY	165	0.5	0.09	30	145	0.4	0.08	27	136	0.4	0.08	27	123	0.4		0.08	27
WEEKEND WITNESS (SAT)	178	0.5	0.09	30	171	0.5	0.09	30	153	0.5	0.09	30	124	0.4		0.08	27
WEEKENDPOST (SAT)	275	0.8	0.11	37	218	0.6	0.10	32	201	0.6	0.10	32	209	0.6		0.10	33
THE ZIMBABWEAN (THURS) $$	70	0.2	0.06	19	47	0.1	0.04	13	39	0.1	0.04	13	48	0.1		0.04	14
ANY "AMPS" WEEKLY NEWSPAPER	11637	34.2	0.59	199	11351	33.4	0.58	198	11387	33.5	0.58	198	11915	34.1		0.59	205
BI-WEEKLY NEWSPAPERS																	
ILANGA (MON/THU)	819	2.4	0.19	64	770	2.3	0.19	63	848	2.5	0.19	66	971	2.8	&	0.20	71
MONTHLY NEWSPAPERS																	
BIGNEWS	48	0.1	0.04	13	##	##	##	##	##	##	##	##	##	##		##	##
THE TEACHER	197	0.6	0.10	32	169	0.5	0.09	30	159	0.5	0.09	30	195	0.6		0.10	33
ANY "AMPS" NEWSPAPER	16206	47.6	0.62	210	16150	47.5	0.62	210	16321	48.0	0.62	210	17072	48.9	&	0.62	216

Significant increase = +, Significant decrease = #

Annual significant increase = &, Annual significant decrease = @

Appendix F: The PCSA Constitution Reviewed 2011

PCSA CONSTITUTION 2011

Preamble

Reaffirming that freedom of expression, including freedom of the press, is a cornerstone of democracy;

Acknowledging that the South African Constitution guarantees freedom of expression and that South Africa is also party to the 2002 Declaration of Principles on Freedom of Expression in Africa, drawn up by the African Commission on Human and Peoples' Rights, which states: "Effective self-regulation is the best system for promoting high standards in the media"; and

Noting that the laws of the country allow for private arbitration of disputes – a speedy and cost-effective process;

We, the print media in South Africa, accept that self-regulation is a system that will uphold freedom of expression and the editorial independence of the press, and contribute to high journalistic standards. We therefore establish a voluntary independent press self-regulatory system with the aims and objectives set out in this Constitution.

1. Establishment of the Press Council of South Africa

1.1.The South African press, through the founding industry and professional bodies named in paragraph 1.2, establishes the Press Council of South Africa (''PCSA'' or ''Council''), in order to achieve the aims and objectives set out in paragraph 2 of this Constitution.

1.2. The founding bodies are:

1.2.1. Print Media South Africa (PMSA), which includes

1.2.1.1. The Newspaper Association of South Africa (NASA);

1.2.1.2. The Magazine Publishers Association of South Africa (MPASA);

1.2.1.3. The Association of Independent Publishers (AIP);

1.2.2. The Forum of Community Journalists (FCJ).

1.2.3. The South African National Editors' Forum (SANEF), which also acts in trust for a journalists' association until such an association is formed.

1.3. The founding bodies named in 1.2 explicitly guarantee the independence of the PCSA, so that it can act without fear or favour in the interests of a free and ethical press, and in pursuit of the aims and objectives set out below.

1.4 Without derogating from the generality of paragraph 2.1, the PCSA, for the purposes of the proper exercise and performance of its powers, functions and duties under this Constitution, shall be capable in law of instituting or defending or opposing legal proceedings of whatever nature, and appointing staff, and purchasing or otherwise acquiring and holding and alienating or otherwise disposing of movable or immovable property or any other real right or interest, of entering into contracts and concluding agreements, and generally, of performing such other acts and doing such other things as juristic persons may by law perform and do, subject to the provisions of this Constitution.

2. Aims and objectives

2.1. To promote and to develop ethical practice in journalism and to promote the adoption of and adherence to those standards by the South African press;

2.2. To adopt the SA Press Code as a guide to excellent practice, and to act as its custodian;

2.3. To establish and maintain a voluntary independent mechanism to deal with complaints on journalistic ethics from the public against member publications of PMSA and others who subscribe to the SA Press Code;

2.4. To promote and preserve the right of freedom of expression, including freedom of the press as guaranteed in Section 16 of the Constitution of the Republic of South Africa.

2.5. To promote the concept of press self-regulation, as well as public aware- ness of the existence of the PCSA's mediation and arbitration service to deal with complaints on journalistic practice;

2.6. To cooperate with other press councils and similar organisations in South Africa and abroad that have the same aims and objectives as the PCSA; and

2.7. To undertake such other tasks as are necessary to further the objectives of the Council.

3. Powers and functions

3.1. To consider and decide upon any matter arising from this Constitution or the functioning of any office appointed in terms of this Constitution.

3.2. The Council shall perform all such acts and do all such things as are reasonably necessary for or ancillary, incidental or supplementary to the achievement, pursuit, furtherance or promotion of the objects and principles contained in this Constitution, the Code or Complaints Procedure or any function considered necessary by the Council.

3.3. The PCSA may set up a management or other sub-committees to deal with particular issues, as it sees fit.

4. Membership

The Council shall consist of:

4.1. Six members representing the public, appointed as set out in paragraph 5.1 below,

4.2. Six members representing the press, appointed as follows:

4.2.1. One member appointed by the Newspaper Association of South Africa (NASA);

4.2.2. One member appointed by the Magazine Publishers Association of South Africa (MPASA);

4.2.3. One member appointed by the Association of Independent Publishers (AIP); and

4.2.4. One member appointed by the Forum of Community Journalists (FCJ).

4.2.5. The South African National Editors' Forum (SANEF) shall appoint two members, and in the event of a journalists' association being formed, SANEF shall relinquish one seat to the journalists' association.

4.3. All members of the PCSA shall act in furtherance of the aims and objectives of the Council, and set aside all sectional interests, regardless of the organisation that appointed them.

4.4. The Council shall elect one of the press members as their chair.

4.5. In the event of a press vacancy occurring, the organisation whose representative has left shall appoint a replacement for the balance of the term.

4.6. In the event of a public vacancy occurring, the Appointments Panel shall appoint a replacement, preferably from the shortlist of candidates previously considered.

4.7. The Director, Press Ombudsman, Chair of Appeals and Public Advocate shall serve ex officio on the PCSA, without voting rights.

4.8. The chairperson, public and press members of the PCSA shall serve a term of five years.

4.9. To create a pattern whereby Council members do not all come to the end of their term at once, the chair, three press and three public members of the first PCSA to be established under this Constitution shall serve for six years, and the other members for four. All Council members may continue in office after the date of expiry of their term until a new incumbent is nominated but for not more than six months. Thereafter, all terms will revert to five years. At its first regular meeting, the first PCSA shall decide who shall serve for four, and who shall serve for six years.

5. Structures and offices of the Press Council of South Africa

The PCSA shall establish and maintain the following structures. The staff of the PCSA, no matter how appointed, shall be in the employ of the PCSA.

5.1.1. APPOINTMENTS PANEL

The PCSA Appointments Panel exists for the purpose of appointing the chairperson and public members of the PCSA, as well as the Ombudsman, the Deputy Ombudsman, the Director, the Public Advocate and Chair of Appeals.

5.1.2. During the last year of the term of office of the PCSA chair, the Council shall request the Chief Justice of South Africa to appoint a judge to chair the Appointments Panel.

5.1.3. The sitting Council shall appoint two Council members to assist the Chairperson of the Appointments Panel.

5.1.4. The Appointments Panel shall have the right to co-opt no more than two additional members.

5.1.5. Appointments shall be made after public invitations for nomination have been advertised, a shortlist compiled and interviews conducted with shortlisted candidates.

5.1.6. The Appointments Panel will dissolve when it has completed its task.

5.1.7. In the event of a vacancy occurring for any reason, the Appointments Panel shall be requested to reconvene to select a replacement for the balance of the term, considering by preference, the previously shortlisted candidates.

5.2. THE DIRECTOR

5.2.1. The PCSA shall appoint a Director, who will lead it on a full-time, professional basis, and who will concentrate on public engagement around issues of standards and media freedom.
5.2.2. On request from a newsroom, the Director will also look at standards in newsrooms.
5.2.3. The Director's post must be filled by an individual of the highest reputation and integrity.
5.2.4. The Director shall serve a renewable term of five years.

5.3. COMPLAINTS MECHANISM

The PCSA shall establish a mechanism to deal with complaints against the press. The mechanism offers a non-statutory avenue for the mediation and arbitration of complaints against the press. The offices and structures dealing with complaints shall act independently of the PCSA and the founding media organisations.

5.3.1. JURISDICTION

The member publications of the associations listed in paragraph 1.2.1 above are subject to the Press Code, as amended from time to time by the PCSA, and to the jurisdiction of the PCSA's complaints mechanism.
5.3.1.1. The jurisdiction of the PCSA extends to the electronic media of member publications.
5.3.1.2. Where a complaint is made against a newspaper or magazine which is not a member of the associations listed in paragraph 1.2.1 above, the Public Advocate or Ombudsman shall approach such newspaper or magazine and inquire whether it accepts the jurisdiction of the PCSA for the settlement of the complaint.
5.3.1.3. In the event that the newspaper or magazine refuses to submit to the jurisdiction of the Ombudsman, he or she shall advise the complainant accordingly.

5.4. PUBLIC ADVOCATE

5.4.1. The Public Advocate will assist members of the public to formulate their complaints.
5.4.2. The Public Advocate will be responsible for attempts to resolve com plaints through mediation between the complainant and the publication in question.
5.4.3. If this does not succeed, the Public Advocate will refer the matter to the Ombudsman for arbitration.
5.4.4. If a hearing is held, s/he may represent the complainant at the hearing and argue the matter on their behalf before the Ombudsman.
5.4.5. This individual:
5.4.5.1. Should ideally have both media and legal skills, with a finely tuned sense of public service and commitment.
5.4.5.2. Be a citizen of and permanently resident in the Republic of South Africa;
5.4.5.3. Be a person who is committed to fairness, freedom of speech, the free flow of information and is committed to the Press Code of the PCSA.
5.4.5.4. Will serve a renewable term of five years.

5.5. THE OMBUDSMAN

5.5.1. The Ombudsman shall arbitrate matters that cannot be resolved at the earlier level of mediation.
5.5.2. The Ombudsman may do so on the papers, without hearing evidence.
5.5.3. The Ombudsman may also conduct a hearing, for which s/he shall convene an "arbitration committee", in which s/he shall be joined by one press and one public member of the Adjudication Panel.
5.5.4. A person employed by a publication which is the subject of the complaint, or with any other vested interest in the matter, may not serve on an "arbitration committee" to consider the matter.
5.5.5. The Ombudsman may also co-opt an additional assessor to assist with technically complex issues.
5.5.6. The Ombudsman shall:
5.5.6.1. Be a citizen of and permanently resident in South Africa;
5.5.6.2. Have extensive press editorial experience at a senior level;
5.5.6.3. Have the capability to adjudicate matters independently and fairly;
5.5.6.4. Be a person who is committed to fairness, freedom of speech, the free flow of information and is committed to the Press Code of the PCSA.
5.5.6.5. The Ombudsman's term of office is five years and is renewable.

5.6. THE PANEL OF ADJUDICATORS

5.6.1. The PCSA shall appoint a Panel of Adjudicators composed of six public representatives and six press representatives.
5.6.2. Members of “arbitration committees” to hear a case with the Ombudsman shall be drawn from the Panel of Adjudicators, as set out in paragraph 5.5.3 above.
5.6.3. Members of “appeals committees” to hear an appeal with the Chair of Appeals shall also be drawn from the Panel of Adjudicators, as set out in paragraph 5.7.4 below.
5.6.4. Members of the Panel of Adjudicators who heard a case at the level of arbitration may not sit on the appeal in the same case.
5.6.5. The term of office of the Panel of Adjudicators shall be five years.

5.7. THE CHAIR OF APPEALS

5.7.1. Appeals against an arbitration ruling by the Ombudsman, acting with or without an “arbitration committee”, shall be dealt with by the Chair of Appeals.
5.7.2. Application for leave to appeal must be made to the Chair of Appeals, who may accept the application or refuse it.
5.7.3. The Chair of Appeals may decide an appeal on the papers, without hearing oral evidence or argument.
5.7.4. S/he may also convene an “appeals committee”, in which s/he shall be joined by one press and one public member of the Adjudication Panel.
5.7.5. A person employed by a publication which is the subject of the complaint, or with any other vested interest in the matter, may not serve on an “appeals committee” to consider the matter.
5.7.6. The “appeals committee” may consider the matter with or without hearing oral argument or evidence.
5.7.7. The Chair of Appeals should be a senior legal practitioner, preferably a retired judge.
5.7.8. The term of appointment shall be for five years and is part-time.
5.7.9. A member of the Panel of Adjudicators shall be appointed to act as Chair of Appeals when the Chair is not available.

6. Eligibility

6.1. Persons appointed to any post in the PCSA must be of high standing and integrity, with a strong interest in the press, and subscribe fully to principles of a free press and the Press Code.
6.2. Press members of the PCSA and the Panel of Adjudicators are required to be active in editorial work or reporting for a PMSA publication, or to have wide experience in this field.
6.3. The public members of the PCSA and the Panel of Adjudicators are required to have a keen interest in communications and the media and social and political issues and to be advocates of freedom of expression and the freedom of the press.
6.4. Other offices of the PCSA may not be held by anybody who:
6.4.1. Has any financial interest in the media or is in the employ of the media;
6.4.2. Occupies a seat in a local, provincial, national legislative body;
6.4.3. Is an office-bearer of a political party or movement or is in the employ of the Public Service;
6.4.4. Is an unrehabilitated insolvent;
6.4.5. Was convicted of an offence after 1992, whether in South Africa or elsewhere, for which such person has been sentenced to imprisonment without the option of a fine.

7. Cessation of membership

A person shall cease to occupy an office of the PCSA if:
7.1. He or she resigns;
7.2. He or she becomes incapable for whatever reason of fulfilling his or her duties, provided that if a dispute arises between the incumbent and the PCSA in this connection, the matter will be resolved by an arbitrator appointed by the Chair of the Johannesburg Bar Council in a manner which he or she deems fair;
7.3. He or she is declared insolvent by a court or is found guilty of an offence listed in Schedule I or II of the Criminal Procedure Act 1977.
7.4. Any member who becomes ineligible to hold the post in terms of the criteria for appointment to the post shall automatically cease to be a member as from the date of such ineligibility.
7.5. The Council may, by a two-thirds majority at a general meeting, suspend or terminate the membership of any member if such a member has brought the good name of the PCSA into disrepute or if such member has omitted to attend two consecutive meetings in a year without good cause acceptable to the Council.

7.5.1. At least 21 days' prior written notice of such a meeting of the Council must be given to all members of the Council.
7.5.2. Such a resolution must be taken by a two-thirds majority of all the members of the Council and may be taken only at a meeting where at least two-thirds of the members are in attendance.

8. Finance

8.1. The PCSA shall establish a Finance and Remuneration Committee to consider all financial issues and the fair and proper remuneration of its staff and the remuneration of public members. The Director of the PCSA shall be a member of this Committee.
8.2. The Finance and Remuneration Committee shall prepare an Annual Budget for submission to the PMSA.
8.3. The PMSA shall cover the reasonable costs of the PCSA.
8.4. If the PCSA and the PMSA cannot reach agreement on the annual budget, it shall be treated as a dispute and dealt with in terms of paragraph 11.
8.5. The Chair of Appeals will be remunerated by way of a retainer, a daily hearing fee plus costs.
8.6. Public members of the PCSA will be remunerated per meeting and their costs for attending meetings will be paid by the PCSA.
8.7. The remuneration for the public members and the Chairperson shall be determined by the PCSA at the beginning of its term and an annual increase of at least the official inflation rate (CPIX) shall also be determined at this stage.
8.8. Where members of the Adjudication Panel serve on an "arbitration committee" or an "appeals committee", their costs and a reasonable daily rate for attendance shall be paid by the PCSA.

9. Meetings

9.1. The Council shall hold as many meetings per year as the Chairperson deems necessary, with a minimum of four meetings per year, or where three members require the Chairperson to hold a meeting on a specific matter, he or she shall do so within 21 days.
9.2. The quorum for a meeting shall be six members and resolutions shall be taken by majority vote except in so far as this Constitution requires otherwise. The Chairperson shall have a casting vote where the votes are equal.
9.3. Meetings of the Council may be held in person or by telephone or video conference or other appropriate electronic communications system or a combination thereof: provided that proper notice of such a meeting was given to all members and a quorum is in attendance.
9.4. Minutes shall be kept of the proceedings of meetings.
9.5. Unless all the members agree, a Council meeting shall be held within seven days' written notice by the Chairperson.

10. Amendments

10.1. Any amendment to this Constitution, the Code or the Complaints Procedure shall require the approval of two-thirds of the members of the PCSA voting either personally or in absentia, with the concurrence of the founding bodies.
10.2. No amendment shall be effective unless at least 21 calendar days' written notice of a proposed amendment shall have been given to all members.
10.3. Votes submitted in absentia shall be in writing, signed by the relevant member and be recorded for or against the proposed amendment and no further amendments of the proposal may be made at such meeting unless a two-thirds majority of the Council is present at the meeting and votes for such further amendment.

11. Arbitration

11.1. In the event of any dispute within the PCSA or between the PCSA and its founding bodies which are not capable of resolution between the parties within a period of two months, the PCSA shall appoint an arbitrator to resolve the problem and where the parties cannot agree on the arbitrator the Chair of the Johannesburg Bar Council shall be approached to appoint an arbitrator.
11.2. Each association which has appointed a representative in terms of 4.2 of this Constitution shall bear the costs of its representative carrying out the bona fide functions.
11.3. The cost of the arbitrator shall be shared equally by the disputing parties except in the case where the arbitrator decides otherwise.
11.4. The decision of the arbitrator shall be final and binding.

12. Seat of the PCSA

12.1. The seat of the PCSA shall be in Johannesburg and meetings shall be held in Johannesburg unless the management decides otherwise.

13. Dissolution

13.1. A resolution to dissolve the PCSA can only be passed at a special meeting called for this purpose, by a two-thirds majority of the members present, which two-thirds majority shall be not less than a simple majority of the total membership.

13.2. Not less than 21 days' notice shall be given of any such meeting and such notice shall give particulars of the purpose for which the meeting is called.

13.3. In the case of dissolution the assets will be handed back to the founding bodies.

Appendix G: The PCSA Press Code Reviewed 2011

SOUTH AFRICAN PRESS CODE 2011

Preamble

The press exists to serve society. Its freedom provides for independent scrutiny on 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 time, a role whose centrality is recognised in the South African constitution. Section 16 of the bill of rights sets out that: "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.
"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 press holds these rights in trust for the country's citizens; and it is 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. As South African journalists, we commit ourselves to to the highest standards of excellence, to maintain credibility and keep the trust of our readers. This means maximising[4] truth, avoiding unnecessary harm and acting independently.

We adopt the following Code. We note that since the public interest is the guiding principle of our work, it may on occasion outweigh a principle usually enforced. But any variance is acceptable only in proportion to the weight of that public interest, which is understood to describe information of legitimate interest or importance to citizens.

1. Reporting of News

1.1 The press shall be obliged to report news truthfully, accurately and fairly.

1.2 News shall be presented in context and in a balanced manner, without any intentional or negligent departure from the facts whether by distortion, exaggeration or misrepresentation, material omissions, or summarisation.

1.3 Only what may reasonably be true, having regard to the sources of the news, may be presented as fact, and such facts shall be published fairly with due regard to context and importance. Where a report is not based on facts or is founded on opinions, allegation, rumour or supposition, it shall be presented in such manner as to indicate this clearly.

1.4 Where there is reason to doubt the accuracy of a report and it is practicable to verify the accuracy thereof, it shall be verified. Where it has not been practicable to verify the accuracy of a report, this shall be mentioned in such report.

1.5 The more serious and controversial a claim is, the more corroboration will be required before it can be published. A single source will not usually be sufficient. Secondary sources should be treated with caution, and clearly identified.

1.6 A publication should seek the views of the subject of serious critical reportage in advance of publication; provided that this need not be done where 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. If the publication was unable to obtain such comment, this shall be stated in the report.

1.7 A publication should make amends for publishing information or comment that is found to be inaccurate by printing, promptly and with appropriate prominence, a retraction, correction or explanation.
1.8 Reports, photographs or sketches relating to matters involving indecency or obscenity shall be presented with due sensitivity.
1.8.1 A visual presentation of sexual conduct should be published, unless public interest dictates otherwise.
1.9 The press shall not plagiarise.

2. Gathering of news

2.1 News should be obtained legally, honestly and fairly unless public interest dictates otherwise.
2.2 Press representatives shall identify themselves as such, unless public interest dictates otherwise.

3. Independence & conflicts of interest

3.1 The press shall not allow commercial, political, personal or other non-professional considerations to influence or slant reporting. Conflicts of interest must be avoided, as well as arrangements or practices that could lead audiences to doubt the press's independence and professionalism.
3.2 The press shall not accept a bribe, gift or any other benefit where this is intended or likely to influence coverage.
3.3 The press shall indicate clearly when an outside organisation has contributed to the cost of newsgathering.
3.4 Editorial material shall be kept clearly distinct from advertising.

4. Privacy

4.1 The press shall exercise exceptional care and consideration in matters involving the private lives and concerns of individuals, including their dignity and reputation, bearing in mind that any right to privacy may be overridden only by a legitimate public interest.
4.2 The identity of rape victims and victims of sexual violence shall not be published without the consent of the victim.
4.3 The HIV/AIDS status of people should not be disclosed without their consent, or in the case of children, without the consent of their legal guardians.

5. Discrimination and Hate Speech

5.1 The press should avoid discriminatory or denigratory references to people's race, colour, ethnicity, religion, gender, sexual orientation or preference, physical or mental disability or illness, age, or other status except where it is strictly relevant to the matter reported.
5.2 The press should not refer to a person's race, colour, ethnicity, religion, gender, sexual orientation or preference, physical or mental disability or other status in a prejudicial or pejorative context except where it is strictly relevant to the matter reported.
5.3 The press has the right and indeed the duty to report and comment on all matters of legitimate public interest. This right and duty must, however, be balanced against the obligation not to publish material which amounts to hate speech.

6. Advocacy

A publication is justified in strongly advocating its own views on controversial topics provided that it treats its readers fairly by:
6.1 Making fact and opinion clearly distinguishable;
6.2Not misrepresenting or suppressing relevant facts;
6.3 Not distorting the facts.

7. Comment

7.1The press shall be entitled to comment upon or criticise any actions or events of public interest provided such comments or criticisms are fairly and honestly made.
7.2 Comment by the press shall be presented in such manner that it appears clearly that it is comment, and shall be made on facts truly stated or fairly indicated and referred to.
7.3Comment by the press shall be an honest expression of opinion, without malice or dishonest motives, and shall take fair account of all available facts which are material to the matter commented upon.

8. Children

Definition of Child Pornography

For purposes of this Code, "child pornography" shall mean: "Any image or any description of a person, real or simulated, who is or who is depicted or described as being, under the age of 18 years, engaged in sexual conduct; participating in or assisting another person to participate in sexual conduct; or showing or

describing the body or parts of the body of the person in a manner or circumstances which, in context, amounts to sexual exploitation, or in a manner capable of being used for purposes of sexual exploitation."
8.1 Child pornography shall not be published.
8.2 Exceptional care and consideration must be exercised when reporting on matters where children under the age of 18 are involved. If there is any chance that coverage might cause harm of any kind to a child, he or she should tnot be interviewed, photographed or identified unless a custodial parent or similarly responsible adult consents or a public interest is evident.
8.3 The press shall not identify children who have been victims of abuse or exploitation, been charged or convicted of a crime, or have been a witness to a crime.

9. Violence

Due care and responsibility shall be exercised by the press with regard to the presentation of brutality, violence and atrocities.

10. Headlines, Posters, Pictures and Captions

10.1 Headlines and captions to pictures shall give a reasonable reflection of the contents of the report or picture in question.
10.2 Posters shall not mislead the public and shall give a reasonable reflection of the contents of the reports in question.
10.3 Pictures shall not misrepresent or mislead nor be manipulated to do so

11. Confidential and anonymous sources

11.1 The press has an obligation to protect confidential sources of information.
11.2 Anonymous sources will be avoided unless there is no other way to handle a story and there is additional evidence available.

12. Payment for Articles

Chequebook journalism, where informants are padi, should be avoided, particularly when criminals are involved, except where the material concerned ought to be published in the public interest and the payment is necessary for this to be done.

Appendix H: The PCSA Complaints Procedures Reviewed 2011

PCSA Complaints Procedures 2011

It shall be of the essence of the adjudication proceedings that:

• Complaints be considered and adjudicated upon within the shortest possible time after the publication of the matter giving rise to the complaint;

• Complaints be considered and adjudicated upon in an informal manner; and

• Whenever possible the Public Advocate, Ombudsman, the Appeals Committee and the parties will strive for a speedy and amicable settlement.

1. Complaints

1.1. "Complainant" shall mean and include any person who or body of persons which lodges a complaint, provided that such person or body of persons has a direct, personal interest in the matter complained of. In exceptional circumstances, we will take complaints from third-party complainants when there is no risk that a person directly affected could take the complaint to the courts after it has been dealt with in the Ombudsman's system.

1.2. The ''respondent'' in respect of a complaint shall be the proprietor of the publication, which may delegate its editor or, in his or her absence, an assistant editor or other suitable editorial representative of the member concerned, to act and appear in its stead in respect of any complaints dealt with by the Public Advocate, Ombudsman or the Appeals Committee.

1.3. A complaint shall be made as soon as possible, but not later than 14 days after the date of the publication giving rise to the complaint. The Public Advocate, who throughout the process will advise and help the complainant, may on reasonable grounds accept late complaints if in his or her opinion there is good and satisfactory explanation for the delay.

1.4. The complaint shall be made to the Public Advocate either in person, by telephone or in writing. ''Writing'' shall include cable, telegram, telex, e-mail and fax messages. Where a complaint is made other than in writing it shall be confirmed forthwith in writing or the Public Advocate shall assist the complainant to do so. Upon the receipt of a complaint by the Public Advocate, the Public Advocate shall be entitled to request from the complainant a copy of the material published giving rise to the complaint, and the complainant shall be obliged to forward such a copy to the Public Advocate forthwith.

1.5. The Public Advocate shall not accept a complaint:

1.5.1. Which is anonymous or which, in his or her opinion, is fraudulent, frivolous, malicious or vexatious and which prima facie falls outside the ambit of the Code;

1.5.2. Where the complainant declines to sign the Complainant's Declaration indicating his or her choice to use the private arbitration mechanism provided by the Press Council of South Africa (PCSA);

1.5.3. Which is directed at a newspaper or magazine outside the jurisdiction of the Ombudsman's office. Where the publication does not fall under the jurisdiction of the Ombudsman's office, the Public Advocate will approach the editor of the publication and request that they become part of the process.

1.6. Where the Public Advocate declines to accept a complaint on any of the grounds specified in rules 1.3 or 1.5 the complainant may, within seven days, with full reasons, request the Chair of Appeals to review the decision. In the event of the Chair of Appeals overruling the Public Advocate's decision, the matter shall proceed in terms of rule 2. The Deputy Ombudsman or another competent member of the Press Council will act as the Public Advocate in this event.

2. Negotiation Procedure by the Public Advocate

2.1. Upon acceptance of a complaint by the Public Advocate, he or she shall immediately notify the respondent in writing of the complaint, giving sufficient details to enable the respondent to investigate

the matter and respond within seven working days unless there is a satisfactory reason for the extension of the time.
2.2. The Public Advocate shall forthwith endeavour together with the complainant to achieve a settlement with the publication.
2.3. The Public Advocate shall hold discussions with the parties on an informal basis with the object of achieving a speedy settlement.
2.4. If the complaint is not settled within seven working days of receipt of the response, the Public Advocate shall refer the complaint to the Ombudsman for Arbitration.

3. Arbitration Proceedings by the Ombudsman

3.1. The Ombudsman may, if it is reasonable not to hear the parties, decide the matter on the papers.
3.2. Where the Ombudsman decides to hold a hearing, the Ombudsman shall convene an Arbitration Committee in which he or she is joined by a public and a press member drawn from a Panel of Adjudicators, to adjudicate the matter with him or her at the hearing.
3.3. If the complainant accepts the offer, the Public Advocate will represent the complainant at the hearing.
3.4. Decisions by the Arbitration Committee shall be by a majority vote.
3.5.1. Within 7 days of receipt of the decision, any one of the parties may apply for leave to appeal to the Chair of Appeals and the grounds of appeal shall be fully set out.
3.5.2. The application and grounds must be filed at the Ombudsman's office.
3.5.3The Ombudsman shall inform the other party of the application for leave to appeal and shall advise the party that he or she may file a response to the application for leave to appeal within 7 days of receipt thereof.
3.6. If the Chair of Appeals is of the view that there are reasonable prospects that the Appeals Committee may come to a decision different from that of the Ombudsman or the Arbitration Committee, as the case may be, the Chair of Appeals shall grant leave to appeal.

4. Adjudication by the Appeals Committee

Where leave to appeal is granted in terms of rule 3.5, the Ombudsman shall place before the Appeals Committee all the documentation that he or she had before him or her and the Ombudsman shall also inform both parties of the date and venue of the hearing before the Appeals Committee.
4.2. The Chair of Appeals shall appoint one press member and one public member from Panel of Adjudicators, the persons appointed in terms of clause 5.6 of the Constitution, to hear the appeal with him.
4.3. The Chair of Appeals shall determine a date, time and venue for adjudication of the appeal, which shall be heard as soon as possible after receipt by him or her of the documents referred to in rule 4.1.
4.4. It shall not be obligatory for either party to appear personally before the Appeals Committee, but they are entitled to attend and to address the Appeals Committee which is, in any case, entitled to question them on the matter: provided that a respondent is not under a duty to disclose the identity of an informant.
4.5. The Chair of Appeals may request the parties to appear personally, with the Public Advocate looking after the interests of the complainant. The Chair of Appeals may advise parties that, in the circumstances, an adverse inference may be drawn from failure to comply with such request without good cause.
4.6. If the Appeals Committee finds against a respondent who is present, the respondent shall be given an opportunity to address the Committee in mitigation of any order that may be made.
4.7. The hearings of the Arbitration and the Appeals Committees shall be open to the public unless the identity of a rape or sexual victim or a child or a victim of extortion is at issue.

5. Variation of Procedure

5.1. The Ombudsman or Chair of Appeals may, if satisfied that no injustice will result, and upon such conditions as he or she may impose:
5.1.1. Extend any time period contemplated in these rules;
5.1.2. At any stage require any allegation of fact to be verified on oath;
5.1.3. Call upon the parties to a dispute to furnish such further information as he or she may consider necessary.

6. Findings of Ombudsman, Arbitration Committee or Appeals Committee

6.1. The Ombudsman, Arbitration Committee or Appeals Committee may uphold or dismiss a complaint or appeal, as the case may be.
6.2. If a finding is made against a member of PMSA or a publication that has voluntarily become subject to the jurisdiction of the Ombudsman, Arbitration Committee or Appeals Committee, the Ombudsman, Arbitration Committee or Appeals Committee, as the case may be, may make any one or more of the following orders against the proprietor of the publication:
6.2.1. Caution or reprimand the publication;
6.2.2. Direct that a correction, retraction or explanation and, where appropriate, an apology and/or the findings of the Ombudsman, Arbitration Committee or Appeals Committee be published by the respondent in such manner as may be determined by the Ombudsman, Arbitration Committee or Appeals Committee, as the case may be.
6.2.3. Order that a complainant's reply to a published article, comment or letter be published by the publication;
6.2.4. Make any supplementary or ancillary orders or issue directives that are considered necessary for carrying into effect the orders or directives made in terms of this clause and, more particularly, issue directives as to the publication of the findings of the Ombudsman, Arbitration Committee or Appeals Committee.
6.3. In the reasons for the decision and/or sanction the Ombudsman, Arbitration Committee or Appeals Committee is entitled to criticise the conduct of the complainant in relation to the complaint, where such criticism is warranted in the view of Ombudsman, Arbitration Committee or Appeals Committee.
6.4. The Ombudsman shall cause any findings, reasons for a finding and/or requirements of a Committee to be sent to the complainant and to the publication who shall comply with the Ombudsman, Arbitration Committee or Appeals Committee orders or directives, if any.
6.5. The Ombudsman shall keep on record all findings and reasons for findings by the Ombudsman, Arbitration Committee or Appeals Committee.
6.6. The records referred to in rule 6.5 shall be public documents except insofar as those documents are privileged in terms of the Promotion of Access to Information Act 2000 or identify a rape victim, a person who has been sexually assaulted or a child, or a victim of extortion.

Complainant's Declaration (Previously the Waiver)
Complainant's Declaration
I, (name of complainant), the undersigned, have been informed by the Press Council's Public Advocate of my rights under Section 34 of the Constitution of South Africa to have my dispute with …X.publication… resolved before a court or another independent and impartial tribunal or forum provided by the State. However, I hereby choose to submit my complaint and any dispute arising from it for adjudication to the SA Press Ombudsman ("the Ombudsman") subject to the SA Press Code and Complaints and Procedures of the Press
Council of South Africa – a private arbitration mechanism for a speedy and cost-effective outcome. I accept the decision of the Ombudsman, or in the event of an appeal, the decision of the Appeals Committee as final and binding. I am also aware that if I am unhappy with the way the proceedings were conducted, I do have the right to apply to the courts for a review in terms of Section 33 of the Arbitration Act of 1965.
Signed:
Date:

Appendix I: Adopted PCSA documents 2013

The PCSA further amended the suggested new Complaints Procedures, Constitution and Press Code that were published in the Review. These final amended documents include several addenda (see addenda below, taken from the PCSA booklet 2013). The new documents were adopted and come into effect on 1 January 2013.

Addendum 1: South African Press Code

Preamble

The press exists to serve society. Its 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 press strives to hold these rights in trust for the country's citizens; and it is 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. Our 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 of excellence, to maintain credibility and keep the trust of our readers. 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 acting independently.

We adopt the following Press Code:

1. Gathering of news

1.1. News should be obtained legally, honestly and fairly, unless public interest dictates otherwise.
1.2. Press representatives shall identify themselves as such, unless public interest or their safety dictates otherwise.

2. Reporting of News

2.1. The press shall take care to report news truthfully, accurately and fairly.
2.2. News shall be presented in context and in a balanced manner, without any intentional or negligent departure from the facts whether by distortion, exaggeration or misrepresentation, material omissions, or summarisation.
2.3. Only what may reasonably be true, having regard to the sources of the news, may be presented as fact, and such facts shall be published fairly with due regard to context and importance. Where a report is not based on facts or is founded on opinion, allegation, rumour or supposition, it shall be presented in such manner as to indicate this clearly.
2.4. Where there is reason to doubt the accuracy of a report and it is practicable to verify the accuracy thereof, it shall be verified. Where it has not been practicable to verify the accuracy of a report, this shall be stated in such report.
2.5. A publication shall seek the views of the subject of critical reportage in advance of publication; provided that this need not be done where 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. Reasonable time should be afforded the subject for a response. If the publication is unable to obtain such comment, this shall be stated in the report.
2.6. A publication shall make amends for publishing information or comment that is found to be inaccurate by printing, promptly and with appropriate prominence, a retraction, correction or explanation.
2.7. Reports, photographs or sketches relating to indecency or obscenity shall be presented with due sensitivity to the prevailing moral climate. A visual presentation of explicit sex shall not be published, unless public interest dictates otherwise.
2.8. Journalists shall not plagiarise.

3. Independence and conflicts of interest

3.1 The press shall not allow commercial, political, personal or other non- professional considerations to influence or slant reporting. Conflicts of interest must be avoided, as well as arrangements or practices that could lead audiences to doubt the press's independence and professionalism.
3.2 Journalists shall not accept a bribe, gift or any other benefit where this is intended or likely to influence coverage.
3.3 The press shall indicate clearly when an outside organisation has contributed to the cost of newsgathering.
3.4 Editorial material shall be kept clearly distinct from advertising.

4. Dignity, Reputation and Privacy

4.1. The press shall exercise care and consideration in matters involving the private lives and concerns of individuals. The right to privacy may be overridden by a legitimate public interest.
4.2. The press shall exercise care and consideration in matters involving dignity and reputation. The dignity or reputation of an individual should only be overridden in the following circumstances:
4.2.1. The facts reported are true or substantially true;
4.2.2. The article amounts to fair comment based on facts that are adequately referred to and that are true or substantially true;

4.2.3. The report amounts to a fair and accurate report of court proceedings, Parliamentary proceedings or the proceedings of any quasi-judicial tribunal or forum; or
4.2.4. It was reasonable for the article to be published because it was prepared in accordance with acceptable principles of journalistic conduct and in the public interest.
4.3. The identity of rape victims and victims of sexual violence shall not be published without the consent of the victim or in the case of children, without the consent of their legal guardians and it is in the best interest of the child.
4.4. The HIV/AIDS status of people should not be disclosed without their consent, or in the case of children, without the consent of their legal guardians, and only if it is in the public interest and it is in the best interest of the child.

5. Discrimination and Hate Speech

5.1. Except where it is strictly relevant to the matter reported and it is in the public interest to do so, the press 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, nor shall it refer to people's status in a prejudicial or pejorative context.
5.2. The press has the right and indeed the duty to report and comment on all matters of legitimate public interest. This right and duty must, however, be balanced against the obligation not to publish material that amounts to:
5.2.1. Propaganda for war;
5.2.2. Incitement of imminent violence; or
5.2.3. Advocacy of hatred that is based on race, ethnicity, gender or religion, and that constitutes incitement to cause harm.

6. Advocacy

A publication is justified in strongly advocating its own views on controversial topics provided that it treats its readers fairly by:
6.1. Making fact and opinion clearly distinguishable;
6.2. Not misrepresenting or suppressing relevant facts; and
6.3. Not distorting the facts.

7. Comment

7.1. The press shall be entitled to comment upon or criticise any actions or events of public interest provided such comments or criticisms are fairly and honestly made.
7.2. Comment by the press shall be presented in such manner that it appears clearly that it is comment, and shall be made on facts truly stated or fairly indicated and referred to.
7.3. Comment by the press shall be an honest expression of opinion, without malice or dishonest motives, and shall take fair account of all available facts which are material to the matter commented upon.

8. Children

The Bill of Rights (Section 28.2) in the South African Constitution states: "A child's best interests are of paramount importance in every matter concerning the child."
8.1. The press shall therefore exercise exceptional care and consideration when reporting about children under the age of 18. 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 unless a custodial parent or similarly responsible adult consents, or a public interest is evident.
8.2. Child pornography shall not be published.
Child Pornography is defined in the Film and Publications Act as: Any image or any description of a person, real or simulated, who is or who is depicted or described as being, under the age of 18 years, engaged in sexual conduct; participating in or assisting another person to participate in sexual conduct; or showing or describing the body or parts of the body of the person in a manner or parts of the body of the person in a manner or circumstance which, in context, amounts to sexual exploitation.
8.3. The press shall not identify children who have been victims of abuse, exploitation, or who have been charged with or convicted of a crime, unless a public interest is evident and it is in the best interests of the child.

9. Violence

Due care and responsibility shall be exercised by the press with regard to the presentation of brutality, violence and suffering.

10. Headlines, Posters, Pictures and Captions

10.1. Headlines and captions to pictures shall give a reasonable reflection of the contents of the report or picture in question.
10.2. Posters shall not mislead the public and shall give a reasonable reflection of the contents of the reports in question.
10.3. Pictures shall not misrepresent or mislead nor be manipulated to do so.

11. Confidential and anonymous sources

11.1. The press has an obligation to protect confidential sources of information.
11.2. The press shall avoid the use of anonymous sources unless there is no other way to deal with a story. Care should be taken to corroborate the information.
11.3. The press shall not publish information that constitutes a breach of confidence, unless a legitimate public interest dictates otherwise.

12. Payment for Articles

The press 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.

Addendum 2: Complaints Procedures

1.2. The "respondent" in respect of a complaint shall be the proprietor of the publication, which shall delegate its editor or, in his or her absence, an assistant editor or other suitable editorial representative of the member concerned, to act and appear in its stead in respect of any complaints dealt with by the Public Advocate, the Ombudsman or the Chair of Appeals.
1.3. A complaint shall be made as soon as possible, but not later than 20 working days after the date of publication giving rise to the complaint. The Public Advocate, who throughout the entire process (also at the Ombudsman and the Appeals Panel) will advise and assist the complainant if the complainant agrees, may on reasonable grounds accept late complaints if, in his or her opinion, there is a good and satisfactory explanation for the delay.

1.4. The complaint shall be made to the Public Advocate either in person, by telephone or in writing. “Writing” shall include cable, telegram, telex, SMS, e-mail and fax messages. Where a complaint is made other than in writing it shall be confirmed forthwith in writing or the Public Advocate’s office shall assist the complainant to do so before the complaint can be formally accepted. On receipt of a complaint, the Public Advocate shall be entitled to request from the complainant a copy of the material published giving rise to the complaint, and the complainant shall be obliged to forward such a copy to the Public Advocate forthwith.
1.5. The Public Advocate shall not accept a complaint:
1.5.1. Which is anonymous; or
1.5.2. Which, in his or her opinion, is fraudulent, frivolous, malicious or vexatious or prima facie falls outside the ambit of the Press Code; or
1.5.3. Which is directed at a newspaper outside the jurisdiction of the Ombudsman. Where a publication does not fall within the jurisdiction of the Ombudsman, the Public Advocate will approach the proprietor or editor of the publication and request that the publication submits to the process for purposes of adjudicating the complaint.
1.6. Where at any stage of the proceedings it emerges that proceedings before a court are pending on a matter related to the material complained about, the Public Advocate, the Ombudsman or the Chair of Appeals, depending on status of the complaint at that stage, shall forthwith stop the proceedings and set aside the acceptance of the complaint by the Public Advocate.
1.7. Where the Public Advocate declines to accept a complaint on any of the grounds specified in rule 1.5 the complainant may, within seven working days, with full reasons, request the Ombudsman to adjudicate the complaint in terms of Section 3. The Deputy Ombudsman or another competent member of the Panel of Adjudicators may act on behalf of the complainant as the Public Advocate in this event. Either party may take the Ombudsman’s or the Adjudicating Panel’s ruling to the Chair of Appeals in terms of normal procedures.
1.8. Where, within 30 working days after the date of publication there has been no complaint, but the Public Advocate is of the view that a prima facie contravention of the Press Code has been committed and it is in the public interest, he may file a complaint with the Ombudsman for adjudication in terms of Section 3 below.

2. Settlement procedure by the Public Advocate

2.1. Upon formal acceptance of a complaint by the Public Advocate he or she shall immediately notify the publication of the complaint in writing, giving sufficient details to enable the respondent to investigate the matter and respond within seven working days unless a satisfactory reason is given to the Public Advocate for an extension of time.
2.2. The Public Advocate shall forthwith endeavour with the complainant to achieve a speedy settlement with the publication.
2.3. If the complaint is not settled within 15 working days of the publication receiving notice of the complaint, the Public Advocate shall refer the complaint to the Ombudsman for adjudication, unless she or he feels the time-frame needs to be lengthened because of the circumstances.

3. Adjudication by the Ombudsman.

3.1. The Ombudsman may, if it is reasonable not to hear the parties, decide the matter on the papers.
3.2. If the Ombudsman finds that the matter cannot be decided on the papers, but some aspects of a complaint need to be clarified and sees no need for a formal hearing, the Ombudsman may convene an informal hearing with the two parties.
3.3. Where the Ombudsman decides to hold a hearing, he or she shall convene an Adjudication Panel in which the Ombudsman is joined by a public and a press member drawn from the Panel of Adjudicators, to adjudicate the matter with him or her at a hearing.
3.3.1. A person employed by a publication which is the subject of the complaint, or with any other vested interest in the matter, may not serve on an Adjudication Panel to consider the matter.
3.4. Both parties are expected to attend and address the Adjudication Panel, which is, in any case, entitled to question them personally or in writing on the matter. Failure by the publication to send a representative may lead to the matter being adjudicated in their absence.
3.5. Decisions by the Adjudication Panel shall be by a majority vote.
3.6. Within 7 working days of receipt of the decision, any one of the parties may apply for leave to appeal to the Chair of Appeals and the grounds of appeal shall be fully set out.
3.7. The application and grounds must be filed at the Ombudsman’s office.
3.8. The Ombudsman shall inform the other party of the application for leave to appeal and shall advise the party that he or she may file a response to the application for leave to appeal within 7 working days of receipt thereof.
3.9. If the Chair of Appeals is of the view that there are reasonable prospects that the Appeals Panel may come to a decision different from that of the Ombudsman or the Adjudications Panel, as the case may be, the Chair of Appeals shall grant leave to appeal.

4. Adjudication by the Appeals Committee

4.1. Where leave to appeal is granted in terms of rule 3.7, the Ombudsman shall place before the Chair of Appeals all the documentation that he or she had before him or her.
4.2. The Chair of Appeals shall appoint one press member and up to three public members from the Panel of Adjudicators appointed in terms of clause 5.6 of the Constitution, to hear the appeal with him or her. The Chair of Appeals will have discretion on the number of public members he or she invites to hear an appeal with him.
4.2.1. A person employed by a publication which is the subject of the complaint, or with any other vested interest in the matter, may not serve on an Appeals Panel to consider the matter.
4.2.2. Members of the Panel of Adjudicators who heard a case with the Ombudsman may not be part of a panel hearing the appeal against the earlier decision.
4.3. The Chair of Appeals shall determine a date, time and venue for adjudication of the appeal, which shall be heard as soon as possible after receipt by him or her of the documents referred to in rule 4.1.
4.4. The Ombudsman shall inform the parties of the date and venue of the hearing before the Appeals Panel.
4.5. Both parties are expected to attend and address the Appeals Panel, which is, in any case, entitled to question them personally or in writing on the matter. Failure by the publication to send a representative may lead to the matter being adjudicated in their absence.

5. Hearings

5.1. Discussions between the Public Advocate and the complainant, on the one hand, and the publication, on the other, are private and confidential and are conducted on a without prejudice basis. No person may refer to anything said at these discussions.
6.1.3. Call on the parties to a dispute to furnish such further information as he or she may consider necessary.

7. Findings of the Ombudsman, Adjudication Panel, the Chair of Appeals and the Appeals Panel

7.1. The Ombudsman, the Adjudication Panel, the Chair of Appeals and the Appeals Panel may uphold or dismiss a complaint or appeal, as the case may be.
7.2. If a finding is made against a member of PMSA or a publication that has voluntarily become subject to the jurisdiction of the Ombudsman, the Ombudsman, the Adjudication Panel, or the Appeals Panel, as the case may be, may make any one or more of the following orders against the proprietor of the publication:
7.2.1. Caution or reprimand the publication;
7.2.2. Direct that a correction, retraction or explanation and, where appropriate, an apology and/or the findings of the Ombudsman, the Adjudication Panel, or the Appeals Panel be published by the respondent in such manner as they may determine.
7.2.3. Order that a complainant's reply to a published article, comment or letter be published by the publication;
7.2.4. Make any supplementary or ancillary orders or issue directives that are considered necessary for carrying into effect the orders or directives made in terms of this clause and, more particularly, issue directives as to the publication of the findings of the Ombudsman, the Adjudication Panel, or the Appeals Panel.

8. Hierarchy of sanctions

8.1. A hierarchy of sanctions must be developed by the Press Council according to a scale of seriousness of infractions and, when that is done, this hierarchy must be included in this sub-clause and taken into consideration in determining a fitting sanction in terms of this clause.
8.2. "Space fines" shall be applied by way of the amount of space imposed to be correspondent with the seriousness of the infraction.
8.3. Monetary fines will not be imposed as a penalty for the content of the press. However, monetary fines according to a formula determined by the Press Council and included in this sub-clause and/or suspension for a period or expulsion from the jurisdiction of the Ombudsman may be imposed as sanctions for a respondent's failure to appear for adjudication hearings and repeated non-compliance with the rulings of the adjudicatory system. during any subsequent proceedings, unless the parties agree in writing. No person may be called as a witness during any subsequent proceedings in the Press Council or in any court to give evidence about what transpired during the discussions.
5.2. The hearings of the Adjudicating Panel and of the Appeals Panel shall be open to the public unless the identity of a rape victim or victim of a sexual offence, a child under eighteen, or a victim of extortion is at issue.
5.3. The Public Advocate may assist the complainant at a hearing of the Adjudicating Panel or the Appeals Panel.
5.4. Legal representation shall not be permitted at hearings unless:
5.4.1. The Ombudsman or the Chair of Appeals and all the other parties consent;
5.4.2. The Ombudsman or the Chair of Appeals concludes that it is unreasonable to expect a party to deal with the dispute without legal representation, after considering:
5.4.2.1. The nature of the questions of law raised by the dispute;
5.4.2.2. The complexity of the dispute;
5.4.2.3. The public interest; and
5.4.2.4. The comparative ability of the opposing parties to deal with the dispute.
5.5. At the conclusion of a hearing, and before a Panel has reached a decision, both parties shall be entitled to address the Panel, personally or in writing, on sanctions and where appropriate mitigation.

6. Variation of Procedure

6.1. The Ombudsman or Chair of Appeals may, depending at which level the matter is being adjudicated, if satisfied that no injustice will result, and upon such conditions as he or she may impose:
6.1.1. Extend any time period contemplated in these rules;
6.1.2. At any stage require any allegation of fact to be verified on oath; and
6.1.3. Call on the parties to a dispute to furnish such further information as he or she may consider necessary.

7. Findings of the Ombudsman, Adjudication Panel, the Chair of Appeals and the Appeals Panel

7.1. The Ombudsman, the Adjudication Panel, the Chair of Appeals and the Appeals Panel may uphold or dismiss a complaint or appeal, as the case may be. Such finding must be handed down within 21 days of the hearing of the complaint.
7.2. If a finding is made against a member of PMSA or a publication that has voluntarily become subject to the jurisdiction of the Ombudsman, the Ombudsman, the Adjudication Panel, or the Appeals Panel, as the case may be, may make any one or more of the following orders against the proprietor of the publication:
7.2.1. Caution or reprimand the publication;
7.2.2. Direct that a correction, retraction or explanation and, where appropriate, an apology and/or the findings of the Ombudsman, the Adjudication Panel, or the Appeals Panel be published by the respondent in such manner as they may determine.
7.2.3. Order that a complainant's reply to a published article, comment or letter be published by the publication;
7.2.4. Make any supplementary or ancillary orders or issue directives that are considered necessary for carrying into effect the orders or directives made in terms of this clause and, more particularly, issue directives as to the publication of the findings of the Ombudsman, the Adjudication Panel, or the Appeals Panel.

8. Hierarchy of sanctions

8.1. A hierarchy of sanctions must be developed by the Press Council according to a scale of seriousness of infractions and, when that is done, this hierarchy must be included in this sub-clause and taken into consideration in determining a fitting sanction in terms of this clause.
8.2. "Space fines" shall be applied by way of the amount of space imposed to be correspondent with the seriousness of the infraction.

8.3. Monetary fines will not be imposed as a penalty for the content of the press. However, monetary fines according to a formula determined by the Press Council and included in this sub-clause and/or suspension for a period or expulsion from the jurisdiction of the Ombudsman may be imposed as sanctions for a respondent's failure to appear for adjudication hearings and repeated non-compliance with the rulings of the adjudicatory system.
6.1.3. Call on the parties to a dispute to furnish such further information as he or she may consider necessary.
7. Findings of the Ombudsman, Adjudication Panel, the Chair of Appeals and the Appeals Panel
7.1. Ombudsman, the Adjudication Panel, the Chair of Appeals and the Appeals Panel may uphold or dismiss a complaint or appeal, as the case may be.
7.2. If a finding is made against a member of PMSA or a publication that has voluntarily become subject to the jurisdiction of the Ombudsman, the Ombudsman, the Adjudication Panel, or the Appeals Panel, as the case may be, may make any one or more of the following orders against the proprietor of the publication:
7.2.1. Caution or reprimand the publication;
7.2.2. Direct that a correction, retraction or explanation and, where appropriate, an apology and/or the findings of the Ombudsman, the Adjudication Panel, or the Appeals Panel be published by the respondent in such manner as they may determine.
7.2.3. Order that a complainant's reply to a published article, comment or letter be published by the publication;
7.2.4. Make any supplementary or ancillary orders or issue directives that are considered necessary for carrying into effect the orders or directives made in terms of this clause and, more particularly, issue directives as to the publication of the findings of the Ombudsman, the Adjudication Panel, or the Appeals Panel.
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8.2. "Space fines" shall be applied by way of the amount of space imposed to be correspondent with the seriousness of the infraction.
8.3. Monetary fines will not be imposed as a penalty for the content of the press. However, monetary fines according to a formula determined by the Press Council and included in this sub-clause and/or suspension for a period or expulsion from the jurisdiction of the Ombudsman may be imposed as sanctions for a respondent's failure to appear for adjudication hearings and repeated non-compliance with the rulings of the adjudicatory system.
9. Records
9.1. The Ombudsman shall cause any findings, and reasons for a finding to be sent to the complainant and to the respondent who shall comply with the Press Ombudsman Panel or the Press Appeals Panel's orders or directives, if any.
9.2. The Ombudsman shall keep on record all findings and reasons for findings by the Press Ombudsman Panel or the Press Appeals Panel.
9.3. The records referred to in rule 9.1 shall be public documents except insofar as those documents identify a rape victim, a person who has been a victim of a sexual offence or a child under eighteen, or a victim of extortion or identify any other person whose identity is protected in the Press Code or by law.

Addendum 3: Constitution of the Press Council of South Africa

Preamble
Reaffirming that the Bill of Rights, which includes freedom of expression, which in turn includes freedom of the press, is a cornerstone of democracy;
Acknowledging that the South African Constitution guarantees freedom of expression and that South Africa is also party to the 2002 Declaration of Principles on Freedom of Expression in Africa, drawn up by the African Commission on Human and Peoples' Rights, which states: "Effective self-regulation is the best system for promoting high standards in the media";
Believing that the effectiveness of self-regulation by the print media is enhanced by public participation in a co-regulatory process;
Noting that the laws of the country allow for alternative dispute resolution through a speedy and cost-effective process; and
Accepting that co-regulation involving exclusively the press and the public will uphold freedom of expression and the editorial independence of the press, and contribute to high standards of journalism and ethical conduct;
We, the print media in South Africa, therefore establish a voluntary independent co-regulatory system involving exclusively representatives of the press and representatives of the public with the aims and objectives set out in this Constitution.
1. Establishment of the Press Council of South Africa
1.1. The South African Press, through the founding industry and professional bodies named in paragraph 1.2, establishes the Press Council of South Africa ("PCSA" or "Council"), in order to achieve the aims and objectives set out in paragraph 2 of this Constitution.
1.2. The founding associations are:
1.2.1. Print Media South Africa (PMSA), which includes:
1.2.1.1. The Newspaper Association of South Africa (NASA);
1.2.1.2. The Magazine Publishers Association of South Africa (MPASA);
1.2.1.3. The Association of Independent Publishers (AIP);
1.2.2. The Forum of Community Journalists (FCJ); and
1.2.3. The South African National Editors' Forum (SANEF), which also acts in trust for a journalists' association until such an association is formed.
1.3. The constituent associations named in 1.2. explicitly guarantee the independence of the PCSA, so that it can act without fear or favour in the interests of a free and ethical press, and in pursuit of the aims and objectives set out below.

2. Aims and Objectives
2.1. To promote and to develop ethical practice in journalism and to promote the adoption of and adherence to those standards by the South African press;
2.2. To adopt the SA Press Code as a guide to excellent practice, and to act as its custodian;
2.3. To establish and maintain a voluntary independent mechanism to deal with complaints about journalistic ethics from the public against member publications of PMSA and others who subscribe to the SA Press Code;
2.4. To promote and preserve the right of freedom of expression, including freedom of the press as guaranteed in Section 16 of the Constitution of the Republic of South Africa;
2.5. To promote the concept of independent press co-regulation involving exclusively representatives of the press and representatives of the public, as well as public awareness of the existence of the PCSA's mediation and adjudication services to deal with complaints about journalistic practice;
2.6. To cooperate with other press councils and similar organisations in South Africa and abroad that have the same aims and objectives as the PCSA; and
2.7. To undertake such other tasks as are necessary to further the objectives of the Council.

3. Powers and functions
3.1. The Council shall have the power to consider and decide on any matter arising from this Constitution or the functioning of any office appointed in terms of this Constitution;
3.2. The Council shall perform all such acts and do all such things as are reasonably necessary for or ancillary, incidental or supplementary to the achievement, pursuit, furtherance or promotion of the objects and principles contained in this Constitution, the Press Code, Complaints Procedure or any function considered necessary by the Council; and
3.3. The PCSA may set up a management committee and/or other sub-committees to deal with particular issues, as it sees fit.

4. Composition of Council
4.1. The Council shall consist of a retired judge and 12 individuals representing members of the public and members of the media. The judge shall hold no other position in the Press Council or its appeals mechanism.
4.2. The outgoing PCSA shall request the Chief Justice of South Africa to recommend a judge who is no longer in active service to chair the Press Council.
4.3. Six of the representatives shall be appointed by the Appointments Panel, as set out in 5.1. of this constitution, from nominations received from members of the public.
4.4. Six of the representatives shall be from the press and shall be appointed by the constituent associations as follows:
4.4.1. One member by the Newspaper Association of South Africa (NASA);
4.4.2. One member by the Magazine Publishers Association of South Africa (MPASA);
4.4.3. One member by the Association of Independent Publishers (AIP); and
4.4.4. One member by the Forum of Community Journalists (FCJ).
4.4.5. The South African National Editors' Forum (SANEF) shall appoint two members, and in the event of a journalists' association being formed, SANEF shall relinquish one seat to the journalists' association.
4.5. In the appointments, the Appointments Panel and the constituent associations should strive to reflect the diversity of the people of South Africa.
4.6. After its appointment, the Council shall elect from among the members of Council a Deputy Chairperson, provided that in the event the deputy in one term is a public representative, the deputy in the following term will be a press representative, and vice versa.
4.7. The members of the Council shall serve for five years, but are eligible to re-apply for the positions at the end of the term. However, to ensure the necessary continuity, three press and three public members shall be appointed for two and a half years for the first term of appointment after this amended Constitution becomes operational. Thereafter, all the terms will revert to overlapping five years. At its first regular meeting, the first Council shall decide who shall serve for two and a half years and who shall serve for five years.
4.8. In the event of a press vacancy occurring, the organisation whose representative has left shall appoint a replacement for the balance of the term.
4.9. In the event of a public vacancy occurring, the Appointments Panel shall appoint a replacement, preferably from the shortlist of candidates previously considered.
4.10. The Director, Press Ombudsman and Public Advocate appointed in terms of 5.1.2. below shall serve ex-officio on the PCSA, without voting rights.

5. Structures and officers of the Council
The PCSA shall establish and maintain the following structures:
5.1. Complaints mechanism
5.1.1. The PCSA shall establish a mechanism to deal with complaints against the press. The mechanism - made up of the Public Advocate, the Press Ombudsman and their deputies, the Panel of Adjudicators and the Chair of Appeals, as enumerated below in this Constitution - offers a non-statutory avenue for the mediation and adjudication of complaints against the press. The offices and structures dealing with complaints shall act independently of the PCSA and the constituent media organisations.
5.1.2. The member publications of the associations listed in paragraph 1.2. above are subject to the Press Code, as amended from time to time by the PCSA, and to the jurisdiction of the PCSA's complaints mechanism.
5.1.3. The jurisdiction of the PCSA extends to the electronic media of member publications.
5.1.4. Where a complaint is made against a newspaper or magazine which is not a member of the associations listed in paragraph 1.2. above, the Public Advocate or Ombudsman shall approach such newspaper or magazine to establish whether it accepts the jurisdiction of the PCSA.
5.1.5. In the event that the newspaper or magazine refuses to submit to the jurisdiction of the Ombudsman, the Public Advocate or Ombudsman shall advise the complainant accordingly.
5.2. Appointments Panel
5.2.1. The PCSA shall request the Chief Justice of South Africa to recommend a judge who is no longer in active service to chair the Appointments Panel.

5.2.2. The Appointments Panel shall be responsible for the appointment of public members of the PCSA, the public members of the Panel of Adjudicators, the Ombudsman, the Director, the Public Advocate and any deputies for these officers when necessary.
5.2.3. These appointees:
5.2.3.1. Shall be citizens of and permanently resident in the Republic of South Africa;
5.2.3.2. Shall be committed to the values underpinning the South African Constitution, as well as to the Press Code of the PCSA; and
5.2.3.3. Shall be of high standing and integrity.
5.2.4. The sitting Council shall appoint up to four Council members, preferably consisting of two press and two public representatives, to assist the Chairperson of the Appointments Panel.
5.2.5. All appointments of the public members of the PCSA and the public members of the Panel of Adjudicators shall be made after invitations to the public for nomination have been advertised, a shortlist compiled and interviews conducted with shortlisted candidates.
5.2.6. The Director, the Ombudsman, and the Public Advocate will be appointed by the Panel after the positions have been widely advertised and it has interviewed shortlisted candidates.
5.2.7. The Appointments Panel will dissolve when it has completed its task but will be prepared to reconvene to deal with any vacancies that may arise.
5.2.8. In the event of a vacancy occurring for any reason, the Appointments Panel shall be requested to reconvene to appoint a replacement for the balance of the term, preferably from previously shortlisted candidates.
5.3. The Director
5.3.1. The Director shall lead the PCSA on a full-time, professional basis and will concentrate on public engagement regarding issues of ethical journalism and media freedom.
5.3.2. The Director shall serve a renewable term of five years.
5.4. The Ombudsman
5.4.1. The references to the Ombudsman in this section apply to the Deputy Ombudsman as well when he deputises for the Ombudsman.
5.4.2. The Ombudsman's term of office is five years, which may be renewed.
5.4.3. The Ombudsman shall adjudicate matters that cannot be resolved at the earlier level of mediation.
5.4.4. The Ombudsman may do so on the papers, without hearing evidence.
5.4.5 The Ombudsman may also conduct a hearing, for which the Ombudsman shall convene an Adjudication Panel, in which s/he shall be joined by one press and one public member of the Panel of Adjudicators.
5.4.6. The Ombudsman may also co-opt an assessor without voting rights to assist the Adjudication Panel with technically complex issues.
5.5. Public Advocate
5.5.1 The Public Advocate should ideally have media skills and understand the workings of the South African legal system, and have a finely tuned sense of public service and commitment.
5.5.2 The Public Advocate may serve a renewable term of five years.
5.5.3 The Public Advocate shall assist members of the public to formulate their complaints, attempt to resolve complaints amicably by liaising directly with the publication on behalf of the complainant.
5.5.4. Where the Public Advocate does not succeed in having a complaint settled within 15 working days after the complaint was lodged with a publication, he or she shall refer the unresolved dispute to the Ombudsman for adjudication as per the Complaints Procedures.
5.5.5. The Public Advocate may represent the complainant before the Ombudsman and/or the Appeals Panel.
5.6. The Panel of Adjudicators
5.6.1. The Panel of Adjudicators shall consist of eight public representatives and six press representatives, none of whom shall be members of the Council
5.6.2. The Appointments Panel shall appoint the eight public members of the Panel of Adjudicators and the constituent associations listed in 1.2 of this constitution shall appoint the press representatives.
5.6.3. Members of the Adjudication Panel who hear a case with the Ombudsman shall be drawn from the Panel of Adjudicators, as set out in paragraph 5.4.5. above.
5.6.4. The members of the Panel of Adjudicators shall serve for five years, but are eligible to re-apply for the positions at the end of the term. However, to ensure the necessary continuity three press and four public members shall be appointed for two and a half years for the first term of appointment after this amended Constitution becomes operational. Thereafter, all the terms will revert to overlapping five years. When the Panel of Adjudicators first convenes, the meeting shall decide who shall serve for two and a half years and who shall serve for five years.
5.7. The Chair of Appeals
5.7.1. The Chair of Appeals shall be a senior legal practitioner, preferably a retired judge, appointed by the Council on the recommendation of the Chief Justice and may be the same judge who chairs the Appointments Panel.
5.7.2. The Chair of Appeals shall deal with appeals against a ruling by the Ombudsman, acting with or without an Adjudication Panel.
5.7.3. Application for leave to appeal must be made to the Chair of Appeals, who may accept the application or refuse it.
5.7.4. The Chair of Appeals may also convene an Appeals Panel, in which the Chair of Appeals shall be joined by one press and up to three public members of the Adjudication Panel. The Chair of Appeals will have discretion on the number of public members to hear an appeal. Decisions of the Appeal Panel shall be by majority vote.
5.7.5. A person employed by a publication which is the subject of the complaint, or with any other vested interest in the matter, may not serve on an Appeals Panel to consider the matter.
5.7.6. The Appeals Panel may consider the matter with or without hearing oral argument or evidence.
5.7.7. The term of appointment of the Chair of Appeals shall be for five years and is part-time.
5.7.8. The Chair of Appeals shall depute a member of the Panel of Adjudicators to act as chairperson when the Chair of Appeals is not available.

6. Eligibility for membership of Council and of the Panel of Adjudicators

6.1. Members appointed to the Council must be persons who:
6.1.1. Are of high standing and integrity with a strong interest in the press, subscribe fully to the principles of a free press and the Press Code and who shall act in the furtherance of the aims and objectives of the Council; and
6.1.2. Shall be committed to the values underpinning the SA Constitution, as well as to the Press Code of the PCSA.
6.1.3. Press members of the PCSA are required to be working journalists at one of the constituent associations or have wide experience in this field.
6.1.4. The public members of the Council and the Panel of Adjudicators are required to have a keen sense of fairness and balance, and the skills to apply their minds to issues in the press. In addition, they are required to have a keen interest in communications, media and in social and political issues, and be advocates of freedom of expression and freedom of the press, but may not be in the employ of the press.
6.1.5. The press members of the Panel of Adjudicators must have extensive knowledge of the press and its workings and shall be former or current senior journalists.
6.1.6. The following persons may not be appointed to any position on the PCSA or the Panel of Adjudicators:
6.1.6.1. Persons under the age of 21;
6.1.6.2. Any person who is not legally able to manage his or her own affairs;
6.1.6.3. Any person who is disqualified from being or remaining a director in terms of any legislation with respect to the formation and management of companies;
6.1.6.4. Any person who has any financial interest in the media;
6.1.6.5. Any person who occupies a seat in a local, provincial or national legislative body;
6.1.6.6. Any person who is an office-bearer of a political party or movement or is in the employ of the public service;
6.1.6.7. Any person who is an unrehabilitated insolvent; and
6.1.6.8. Any person who was convicted of an offence after April 1994, whether in South Africa or elsewhere, for which such person has been sentenced to imprisonment without the option of a fine.

7. Cessation of membership

7.1. A person shall cease to occupy an office of the PCSA or the Panel of Adjudicators if:
7.1.1. He or she resigns;
7.1.2. He or she becomes incapable for whatever reason of fulfilling his or her duties, provided that if a dispute arises between the incumbent and the PCSA in this connection, the matter will be resolved by an arbitrator appointed by the Chair of the Johannesburg Bar Council in a manner which he or she deems fair; or
7.1.3. He or she is declared insolvent by a court or is found guilty of an offence listed in Schedule I or II of the Criminal Procedure Act 1977.
7.2. Any member who becomes ineligible to hold the post in terms of the criteria for appointment to the post shall automatically cease to be a member as from the date of such ineligibility.
7.3. The Council may, by a two-thirds majority at a general meeting, suspend or terminate the membership of any member if such a member has brought the good name of the PCSA into disrepute or if such member has omitted to attend two consecutive meetings in a year without good cause acceptable to the Council.
7.4. Such a resolution must be taken by a two-thirds majority of all the members of the Council and may be taken only at a meeting where at least two-thirds of the members are in attendance.
7.5. At least 21 days' prior written notice of such a meeting of the Council must be given to all members of the Council.

8. Finance

8.1. The Council shall establish a Finance and Remuneration Committee to consider all financial issues and the fair and proper remuneration of its staff and the remuneration of public members. The Director of the PCSA shall be a member of this Committee.
8.2. The Finance and Remuneration Committee shall prepare an Annual Budget for submission to the PMSA.
8.3. The PMSA shall cover the reasonable costs of the PCSA.
8.4. If the PCSA and the PMSA cannot reach agreement on the annual budget, it shall be treated as a dispute and dealt with in terms of Section 11 of this Constitution.
8.5. The Chair of Appeals will be remunerated by way of a retainer, a daily hearing fee plus
costs.
8.6. Public members of the Council will be remunerated per meeting and their costs for attending meetings will be paid by the PCSA.
8.7. The remuneration for the public members and the Chair of Appeals shall be determined by the PCSA at the beginning of its term and an annual increase of at least the official inflation rate (CPIX) shall also be determined at this stage.
8.8. Where members of the Panel of Adjudicators serve on an Adjudication Panel or an Appeals Panel, their costs and a reasonable daily rate for attendance shall be paid by the PCSA.

9. Meetings

9.1. The Council shall hold as many meetings per year as the Chairperson deems necessary, with a minimum of four meetings per year, or where three members require the Chairperson to hold a meeting on a specific matter, he or she shall do so within 21 days.
9.2. The quorum for a meeting shall be six members and resolutions shall be taken by majority vote except in so far as this Constitution requires otherwise. The Chairperson shall have a casting vote where the votes are equal.
9.3. Meetings of the Council may be held in person or by telephone or video conference or other appropriate electronic communications system or a combination thereof - provided that proper notice of such a meeting was given to all members and a quorum is in attendance.
9.4. Minutes shall be kept of the proceedings of meetings.
9.5. Unless all the members agree otherwise, a Council meeting shall be held within seven days' written notice by the Chairperson.

10. Amendments

10.1. Any amendment to this Constitution, the Code or the Complaints Procedure shall require the approval of two-thirds of the members of the Council voting either personally or in absentia, with the concurrence of the constituent associations.
10.2. No amendment shall be effective unless at least 21 calendar days written notice of a proposed amendment shall have been given to all members.

10.3. Votes submitted in absentia shall be in writing, signed by the relevant member and be recorded for or against the proposed amendment and no further amendments of the proposal may be made at such meeting unless a two-thirds majority of the Council is present at the meeting and votes for such further amendment.

11. Arbitration

11.1. In the event of any dispute within the PCSA or between the PCSA and its founding associations which are not capable of resolution between the parties within a period of two months, the PCSA and the associations shall appoint an arbitrator to resolve the problem and where the parties cannot agree on the arbitrator the Chair of the Johannesburg Bar Council shall be approached to appoint an arbitrator.

11.2. Each association which has appointed a representative in terms of 4.2 of this Constitution shall bear the costs of its representative carrying out the bona fide functions.

11.3. The cost of the arbitrator shall be shared equally by the disputing parties except in the case where the arbitrator decides otherwise.

11.4. The decision of the arbitrator shall be final and binding.

12. Seat of the PCSA

12.1. The seat of the PCSA shall be in Johannesburg and meetings shall be held in Johannesburg unless the management decides otherwise.

13. Dissolution

13.1. A resolution to dissolve the PCSA can only be passed at a special meeting called for this purpose, by a two-thirds majority of the members present, which two-thirds majority shall be not less than a simple majority of the total membership.

13.2. Not less than 21 days' notice shall be given of any such meeting and such notice shall give particulars of the purpose for which the meeting is called.

13.3. In the case of dissolution the assets will be handed back to the constituent associations.