

AIDE MEMOIRE:

The Press Council of SA and SA Jewish Report

It is unfortunate that the SA Jewish Report has responded to its expulsion by attacking the Press Council's integrity.

This is actually a very simple matter. The SA Jewish Report was ordered to publish an apology by the Acting Press Ombud, Johan Retief, in January last year. They appealed the finding, but the Chair of Appeals, Judge Bernard Ngoepe, dismissed their application for leave to appeal in March. They were paid-up members of the Press Council at the time the ruling was made and had been members since 2018.

They then attempted to withdraw from the Press Council rather than publish the finding against them, despite the obligation to give three years' notice, in accordance with the Press Council's Constitution.

To refuse to publish the apology undermines the entire mediation and adjudication processes of the Press Council's independent co-regulatory structure.

We apply the Press Code objectively and those who join the Press Council are bound by and commit themselves to publish rulings by the Ombuds and the Chair of Appeals. They cannot simply resign from the Press Council because they have an adverse finding against them.

These are the facts:

Three complaints were lodged against the SA Jewish Report between October 2020 and June 2021.

In the first complaint, ***SA BDS Coalition and GIWUSA vs the SA Jewish Report***, the SA BDS Coalition and GIWUSA complained that the article published in the SA Jewish Report wrongly labelled them as anti-Semites. This was after the SA BDS Coalition republished a GIWUSA cartoon about a labour dispute at Clover Dairy on its Facebook page.

In his ruling, Mr Retief said:

"Let me be crystal clear on this issue – Feinberg [the SA Jewish Report journalist] has all the freedom in the world to interpret the cartoon in whichever way she sees fit; she also has the freedom to put pen to paper. The editor is correct in that Section 16 of the Constitution of this country guarantees that freedom; and so does the Press Code (in its preamble). But there is a condition – an important one, at that. It should be clear that her opinion is just that – *an opinion*.

"The question, therefore, is not *if Feinberg was wrong* by interpreting the cartoon as having been anti-Semitic (she was free to do so) – the question is *how* she presented it."

Regarding the headline, he stated: "Both parties (once again) argue the merits of the statement that the cartoon was anti-Semitic. I have ignored those arguments, as the only issue here is the question if the headline was in breach of the Press Code, or not."

In his sanction against the SA Jewish Report, Mr Retief stated:

“The SA Jewish Report is directed to apologise to the BDS Coalition for portraying both in the headline and in the story, **as fact**, that the cartoon was anti-Semitic – and in this process, labelling them as anti-Semites or being anti-Semitic.” [Our emphasis.]

We only apply the Press Code to evaluate and adjudicate complaints. In this instance, the article published by the SA Jewish Report was a news story, not an opinion article, and thus Section 1 of the Press Code which deals with the gathering of news, applied.

Mr Retief did not overrule the opinions of international experts as claimed by the SA Jewish Report. He made no finding about whether the cartoon was anti-Semitic. He ruled that the SA Jewish Report had published the opinions that it was anti-Semitic **as fact** and therefore was in breach of section 1.3 of the Press Code that states, “Where a report is ... founded on opinion... it shall be presented in such a manner as to indicate this clearly”.

This was confirmed by Judge Ngoepe in his dismissal of the application for leave to appeal: “... What is stated as a fact cannot be turned into an opinion, or anything else, by views expressed by so-called experts, even less so if they are not category in their views, and worse still contradicted by others – all of which was the case in the present matter. The Ombud’s view that the charge was stated as a fact was therefore correct.”

The SA Jewish Report informed the Press Council that it would take the matter on judicial review. They never did.

In the second complaint by the SA BDS Coalition, the SA Jewish Report appealed the decision by the Public Advocate to accept the complaint, objecting to the standing of SA BDS Coalition to lodge a complaint. This appeal was dismissed by Press Ombud Carmel Rickard on 17 June last year. SA Jewish Report’s further application for leave to appeal was also dismissed by Chair of Appeals Judge Ngoepe on 3 September.

The complaint was then referred back to the Public Advocate for mediation or arbitration. Despite repeated attempts by him, the SA Jewish Report failed to respond to the complaint. Again, this constitutes a breach of the Press Council’s Complaints Procedure by the SA Jewish Report, and is unfair to the complainant.

In the third complaint, and one that the SA Jewish Report fails to mention, the Deputy Ombud and, on appeal, the Chair of Appeals, found in favour of the SA Jewish Report because they published an opinion-page article, clearly marked as opinion. A different section of the Press Code, namely on Protected Comment, was applied to evaluate the complaint.

In conclusion:

On 22 October last year, in breach of our Constitutional requirement for members to give three years’ notice, the editor of the SA Jewish Report told us in an email that their membership had expired. On 11 November she informed our financial administrator that they were withdrawing from the process.

We made several representations to urge them to comply. We informed them that we were prepared to meet them, but only after they had published the rulings against them. We

discussed the issue at our November 2021 and February 2022 Press Council meetings. They were put on terms to publish the rulings within 14 days or face expulsion. Our last letter was sent in March this year and they only responded to us in May, shortly before our Council meeting. It was at this meeting that the Press Council decided to expel them.

We cannot have members refusing to comply with rulings against them. This is not fair to complainants and undermines the integrity of the regulatory processes of the Press Council.

All South Africans are entitled to a media that is fair, responsible and accountable, acts with integrity and follows the Press Code.

Issued by:

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