

In the public interest versus of the public interest

In the public interest... it's a justification for publishing that rightfully rolls off the tongues of journalists performing their proper role in a democracy of seeking truths and passing them on to their audiences. The phrase, enshrined in journalism codes of ethics not just in New Zealand but around the world, is a necessary expression of a responsibility to hold those in power to account. As American journalism educator Melvin Mencher puts it:

The journalist knows that democracy is healthiest when the public is informed about the activities of captains of industry and chieftains in public office. Only with adequate information can people check those in power ... the central purpose of journalism is to tell the truth so that people will have the information to be sovereign.

In its role as watchdog for the public, the press is relentlessly scrutinised and attacked, Mencher reminds us. "Journalists understand that the path of the truth teller is not always smooth, that people are sometimes disturbed by what the journalist tells them."

At its noblest, the "public interest" justification is a wonderful expression of journalistic purpose and courage. It has occasionally, in extreme circumstances, been held to justify breaking the law. It was public interest, for instance, that recently saw *New York Times* reporter Judith Miller spend 85 days in jail for refusing to reveal the identity of a CIA source. Few would argue its use in exposing tyranny should New Zealand ever slip from its democratic path, or in bringing to light significant crime or public peril.

Far more difficult to judge, however, is its expression in cases involving private lives, whether of those in high office, celebrities or ordinary citizens. Can the blanket paparazzi attention of troubled pop singer Britney Spears be justified, for instance? Does some news media's insatiable thirst for celebrity news cross the line? Or do celebrity and power bring an expectation of greater scrutiny?

As far as the law goes in New Zealand, media law expert John Burrows interprets "public interest" as meaning of "public importance". He points out that "public interest" is different from "what the public is interested in", and should be taken as covering matters of public concern. The judgment arising out of celebrity broadcaster Mike Hosking's objection to photographs taken of his twin daughters in a shopping mall included:

The line is to be drawn when the publicity ceases to be the giving of information to which the public is entitled, and becomes a morbid and sensational prying into private lives for its own sake, with which a reasonable member of the public, with decent standards would say that he had no concern. The limitations, in other words, are those of common decency, having due regard to the freedom of the press and its

reasonable leeway to choose what it will tell the public, but also due regard to the feelings of the individual and the harm that will be done to him by the exposure.

But where is the line to be drawn in dealing with people in power, or celebrities before the public as a role model? Which of their behaviours is important or reasonable for the public to know about, which not? As difficult as it is for the courts to make such judgments, how much more difficult for rulings based entirely on ethical considerations, especially when clear definitions are thin on the ground. Australian journalism ethicist Ian Richards refers to the dilemma as, “the uncertain boundary between the public’s right to information and the individual’s right to privacy”.

The British Press Complaints Commission’s Code of Practice makes a brave attempt at dealing with the issue. Its Principle 3 reads:

Everyone is entitled to respect for his or her private and family life, home, health and correspondence. A publication will be expected to justify intrusions into any individual’s private life without consent.

It goes on to provide the following:

1. The public interest includes:
 - i. Detecting or exposing crime or a serious misdemeanour.
 - ii. Protecting public health and safety.
 - iii. Preventing the public from being misled by some statement or action of an individual or organisation.

Where public interest is invoked by a news organisation, the Commission requires a full explanation by the editor demonstrating how the public interest was served. In cases involving children, editors must demonstrate an *exceptional* public interest to over-ride the normally paramount interest of the child.

Though not as clearly defined, judgments of the New Zealand and Australian Press Councils give currency to the British interpretation, particularly in stories concerning children and the vulnerable. The New Zealand Press Council’s third principle, on privacy, reads:

Everyone is entitled to privacy of person, space and personal information, and these rights should be respected by publications. Nevertheless the right of privacy should not interfere with publication of matters of public record, or obvious public interest.

Its Principle 5 adds to the mix:

Editors should have particular care and consideration for reporting on and about children and young people.

The Council’s principles also recognise the place of clear public interest in the use of reporter subterfuge. But in a climate of growing awareness of the rights of individuals to choose to stay out of the public eye, it is in the area of privacy that the defence is likely to be increasingly tested. In a recent judgment the New Zealand Press Council upheld a complaint over the naming of a 14-year-old son of a public

figure, for having posted material deemed homophobic on an Internet Bebo website. The judgment included: "The Press Council maintains that a public figure has every right to expect the privacy and self-respect of his or her young children to be protected, especially when there is no demonstrable justification for drawing the young person into the limelight." Recent Australian Press Council judgments have been notable for, like the British, placing the onus on the *newspaper* to justify its infringement of the right of privacy.

Press Council debates on such issues are particularly difficult for the lack of precise boundaries in what is a complex ethical arena. There can be no doubt that the agonising over right and wrong has been just as great for news media practitioners. Some extreme commentators argue that the right of the public to know outweighs an individual's right to privacy in all cases, unless direct physical harm is threatened. Another common call is that those entering into public life surrender their rights to personal privacy. A more reasoned resolution might be that journalists have a duty to report private detail – but only where such detail has relevance to the subject's public performance. This makes decision-making no easier.

Paradoxically, in the context of such turbulent waters, precise, rigid definitions might render decision-making even more problematic. Every case before the Council throws up more grey areas and a different set of variables to ponder. It is also the case, however, that justifications of genuine public interest should be defended with vigour. Stories in true public interest are often controversial which means that, in many such cases, private interests are also affected. Provided legal rules and ethical precepts of fairness, accuracy and balance are met, these will not be the stories for journalists to back down on.