

**2020-81 Kagan v Toronto Life**

March 10, 2021 – *for immediate release*

The National NewsMedia Council considered and dismissed a complaint about journalistic misrepresentation and accuracy in a November 1, 2020, article “The tragic end of a vicious divorce,” published by Toronto Life.

The magazine article told of the death of a four-year-old girl, who was found dead at the bottom of a cliff alongside her father. The divorced parents had been in a lengthy custody dispute, and the article described how the demise of the relationship revealed disturbing behaviour by the father. It also focused on the shortcomings of the court system in handling custody disputes. It included information obtained through interviews with the mother of the child and court documents.

Jennifer Kagan, the mother of the deceased child, filed a complaint with the NNC stating that the journalist who wrote the story had “misrepresented her intentions.” The complainant argued that the journalist approached her for an interview that would allow the complainant to tell her side of the story. The complainant said she was disappointed the published article did not meet those expectations and unfairly presented her former husband in a positive light.

The complainant also alleged that the article contained numerous gross inaccuracies, omissions, and improper use of language. In particular, she was concerned with the use of the term ‘high-conflict’ to describe the nature of the custody dispute. She stated that the description was inappropriate in cases involving abuse or violence, and that it inaccurately apportioned blame to both parties for the taxing nature of the custody dispute. In doing so, she argued that the article disregarded her former husband’s role in the conflict.

In its response, the news organization stated the writer was thorough in completing interviews and research related to the story. It pointed out that the writer was clear in stating to the complainant that she would develop her own view on the material, and said the story was fact-checked before publication.

The news organization rejected the complainant’s view that characterizing a custody dispute as ‘high-conflict’ excludes the aspect of abuse, and likewise rejected her view that using the term “high-conflict” defended the abuser. It pointed to information in the story to indicate that the father’s reputation was not exonerated by the article, and argued that an unbiased reader would find the father to be “a lying, abusive husband who likely murdered his own child.”

The NNC recognizes that the viewpoints of those involved in a tragedy will not be the same as those of an ordinary reader, no matter how sympathetic or analytic the journalism. Standard practice calls for sensitivity in reporting on people involved in tragedy or trauma. That said, the job of a journalist is to gather and verify facts, rely on various credible sources, and to determine the focus of the story. Journalistic practice also requires providing sources an opportunity to respond, and in cases where a

party is deceased, responsible journalism relies on information that can be supported by evidence, such as court reports.

In this case, Council found that standard journalistic practice was followed in relying on court reports, interviews and research to tell a complex story and to explain the shortcomings of the court system. An ordinary reading supports the view of the news organization that the facts portray the father as a lying and manipulative person. Council did not share the complainant's view that the story portrayed her former husband in a positive light, and in contrast, took the view that the article provided important contextual information about him that illustrated the fraught nature of the parental relationship and custody dispute.

Council examined the allegations of inaccuracy and determined that the majority of claims depended significantly on interpretation or contention over phrases and source materials. Word choice is the journalist's prerogative. In an ordinary reading of the article, the examples flagged as inaccuracy were not supported and did not contribute to a significant difference in the focus of the article.

Regarding the characterization of the custody dispute as 'high-conflict,' the NNC reviewed several pieces of research, both scholarly and popular, to evaluate the complainant's concerns. It was determined that the term 'high-conflict' is widely used to describe custody relationships that may include abuse or violence. While there is some use of a separate term for relationships involving violence, "high-conflict" appears to be well understood as a relationship with potential for harm. The term describes the nature of the dispute, but there is no indication that use of the term in this case apportions blame to both parties.

In reviewing this complaint, the NNC observed that a misunderstanding of widely accepted journalistic practice and of the job of journalism appeared to contribute to the allegation of misrepresentation. It is unfortunate that the misunderstanding led to unrealistic expectations related to telling a tragic story.

The NNC recognizes that the complainant takes a strong view of how the story should have been told. The complainant is entitled to her view of the article. However, news organizations have the prerogative to use editorial discretion to assess how a story should be presented based on publicly-available documents, interviews, and other research gathered during the reporting process. It is not a breach of journalistic standards if viewpoints or facts unaligned with those of an interviewee or subject are presented and discussed in an article.

Council emphasized that an ordinary reading of the article was sympathetic to a mother who lost her child in spite of desperate appeals to an ultimately unhelpful court system. Council members expressed compassion for the complainant, and recognized that the reporting of a tragedy of this nature would have significant impact on those affected. However, for the reasons outlined above, it found no breach of journalistic standards.