1. On 28 June 2018 Mr Dexter Smith (the "Complainant") filed a complaint with the Media Council (on his own behalf and that of The Royal Gazette) against BermudaReal (the Respondent) a media outlet operating in Bermuda that is a member of the Media Council and has adopted and agreed to be bound by its Code of Practice.

2. The Complaint centred on an article that was published on 15 June 2018 by BermudaReal and written by Ceola Wilson entitled "Just another Bermuda Real Follow UP on the real Story not printed by the RG".

3. The article, which was expressed to be an opinion, concerned the Non-Mariners Race. However, the Complaint does not focus on the subject matter of the article but rather the personal invective that was directed at him by the writer of the article.

4. The Complaint cites three Clauses of the Media Council's Code of Practice that is alleged to have been breached, namely Clauses 6, 12 and 13.

5. Clause 6 states, "6. HARASSMENT
A. Journalists shall not engage in intimidation, harassment or persistent pursuit.
B. Journalists shall not persist in questioning, telephoning, emailing/texting, pursuing or photographing or filming individuals once asked to desist; nor remain on their property when asked to leave and must not follow them. Exceptions arise in relation to the movement of accused or convicted criminals (usually under escort and in public places), where the public interest is paramount.
C. Editors/news directors/website managers should ensure these principles are observed by those working for them and take care not to use non-compliant material from other sources."

6. Clause 12 states, "12. DISCRIMINATION
A. The media shall avoid prejudicial or pejorative reference to an individual's skin colour, race, nationality (including citizenship), ethnic or national origin, religion, gender, sexual orientation, marital status, disability, illness, or age.
B. Details of an individual's skin colour, race, nationality (including citizenship), ethnic or national origin, religion, gender, sexual orientation, marital status, disability, illness, or age shall be avoided unless genuinely relevant to the story.
C. Media reports shall not place gratuitous emphasis on, skin colour, race, nationality (including citizenship), ethnic or national origin, religion, gender, sexual orientation, marital status, disability, illness, or age. Journalists should also avoid stereotyping based on the above.
D. Nevertheless, where it is relevant and in the public interest, the media may report and express its opinions in these areas, in news stories and commentaries respectively."
7. Clause 13 states,
13. INCITEMENT TO HATRED
A. The media have the right and the duty to report and comment on all matters of legitimate
public interest. This right and duty shall, however, be balanced against the obligation not to
publish/broadcast/post material that amounts to hate speech.
B. Editors/news directors/website managers shall take care in deciding how to report incidences
of hate speech without widening the dissemination of its content.
C. Hate speech is defined for the purpose of this Code as hateful, threatening, abusive or
insulting language intended or likely to cause grave offence or stir up hatred against an
individual or group on the basis of skin colour, race, nationality (including citizenship), ethnic or
national origin, religion, gender, sexual orientation, marital status, disability, illness, or age."

8. The BermudaReal article, expressed to be an opinion piece, was itself responding to an
article in The Royal Gazette in connection with the cancellation of the "Non-Mariners Race", a
boat race that takes place in the summer in Bermuda. The article, entitled "No surprise of loss of
Non-Mariners", contained the following:

"Jill Raine said that the modern event ‘didn't in any way resemble the beginning’. She added: ‘It
became something totally different.’ Ms Raine was a teenager at the time of the first Non-
Mariners Race held nearly six decades ago. The event was the brainchild of her older brothers
Eric and Anthony Amos and a group of their friends. Ms Raine said: ‘They were full of crazy
ideas at the time.’ She said the idea behind the event was to poke fun at the disciplined world of
yachting. Ms Raine added: ‘They just wanted to do a spoof on it and that was to show a non-
mariners race where everything was wrong.’"

9. In her article, the BermudaReal writer reported a conversation she had with an
undisclosed, unaccredited source regarding the origins of the race. The article alleges that the
person told the writer that the origin of the race was to

"make fun of the ill-fated sea-going vessels made by BLACK BERMUDIAN SLAVES trying to
GET OUT [sic] BERMUDA!"

10. We should stress at this point that the factual accuracy or otherwise of the BermudaReal
article and the preceding Royal Gazette article is not what is in question in this Complaint. The
The complaint states that the BermudaReal writer

"has used her website on June 15 to cast aspersions on myself and The Royal Gazette.
References to my race and the odious "Oreo Cookie" remark are among a consistent thread of
abuse including Xenophobia" (Complaint, p1)."

11. The article as a whole contains invective that is clearly intended to denigrate the
Complainant (and also The Royal Gazette). It included the following specific pejorative
statements:

"… And NO – I'm not republishing that CRAP! GO LAY DOWN RG."
"… That would be YOU and your WHITE FOREIGN REPORTERS AND Your First BLACK Oreo Cookie EDITOR!... Do the MAJORITY BLACK POPULATION of Bermuda a favour AND ASK YOURSELVES WHOSE [sic] NEXT!"

…

"See YOU & Your FOREIGN & WHITE newsroom is better than LOCAL MENTALITY."

…

"As RG's FIRST BLACK MALE EDITOR how HIS TRACK RECORD LOOKS on CIRCULATION! Better YET ASK HIM Why the ONLY Reporters & Sub-Editors hired on HIS WATCH COME FROM ENGLAND? ASK HIM?"

12. For the reasons set out below, the Council, having considered the article upholds the Complaint in respect of Clauses 12 and 13.

13. The Code expressly provides in Clause 12 that the media shall avoid prejudicial or pejorative reference to an individual's skin colour or race. The reference to "your first black oreo cookie editor" clearly was a deliberate pejorative reference to the individual's skin colour and race. The term "oreo" or "oreo cookie" is a widely recognised racial slur that means "black on the outside and white on the inside". It has a negative connotation denoting a person of African descent who is perceived to "act like a white person"; typically in a context where the person using the slur against another believes such perceived behaviour to have a negative stigma.

14. Clause 13 defines "hate speech" as "hateful, threatening, abusive or insulting language intended or likely to cause grave offence or stir up hatred against an individual or group on the basis of skin colour, race, nationality (including citizenship)."

15. In the Council's opinion, the BermudaReal article contained hateful, threatening and abusive language, which was intended and/or likely to cause offence against the individual concerned, both in his personal capacity and as editor of The Royal Gazette, on the basis of his skin colour and race[A01]. The "First Black Oreo Cookie" statement is in our view such a comment and amounts to a breach of Clause 13.

16. However, the Council does not support the Complaint in relation to Clause 6. In the Council's view Clause 6 relates to persistent, physical harassment by the press. Given that we were only provided with one article, the Council considered that there was not sufficient evidence of such harassment, physical or otherwise.

17. We note that the principal of BermudaReal was invited to respond to the Complaint, first verbally and then in writing by way of letter dated 18 October 2018. The Respondent sent a number of text messages to the Media Council's Chief Executive Officer. In the responses, she repeated the "Oreo Cookie" term for a second and third time in the texts. None of those text messages refuted the allegations. Instead, the Respondent's Ms Wilson stated, among other things, "Okay for the record LIKE I SAID, tell RG and their OREO COOKIE Salt R Us  F__k Head I said see you in court."
18. The Preamble of the Code of Practice states,

"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 to receive and to disseminate opinions freely.

The primary purpose of gathering and distributing news and opinion is to serve Bermuda by informing citizens and enabling them to make informed judgments on the issues of the time. The Code serves as a reference point for the public and also as an essential guide for journalists in Bermuda.

It is vital that this Code is honoured not only by the letter but also in spirit… It is the responsibility of editors, publishers and managers to apply the Code to editorial material. They should ensure it is observed rigorously by all editorial staff and external contributors, including non-journalists."

19. The writer of the BermudaReal article has in the Council's view acted in breach of express terms and the spirit of the Code. Having undertaken to be bound by it, she appears to have wholly disregarded these fundamental provisions.

20. In the circumstances, the Complaint is upheld insofar as it alleges there were breaches of Clauses 12 and 13 of the Code. Therefore, the Media Council directs BermudaReal to publish an apology to the Dexter Smith and The Royal Gazette. The apology should be published within seven days of receipt of this ruling on any day other than Saturday or Sunday. It should be positioned prominently on the BermudaReal Website on its home page under the heading "Apology to Dexter Smith and the Royal Gazette". It should read,

"This news outlet hereby offers its apology to Mr Dexter Smith and The Royal Gazette in respect of its article published on 15 June 2018. That article contained discriminatory and abusive language based on his skin colour and/or race. That language was insulting and contrary to the Media Council Code of Practice, and this news outlet regrets any and all offence that it caused."

Dated this 23 January 2019

The Board
Christian Luthi (Chair), Bruce Swan (Deputy), Evelyn James Barnett, Laura Bell, Dwayne Caines, Darlene Livingston, Amanda Outerbridge, Dejon Simmons