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**IN THE HIGH COURT OF NEW ZEALAND
AUCKLAND REGISTRY**

CIV2000-404-001568

BETWEEN CHINESE HERALD LTD & ORS
First Plaintiff

AND STEPHEN SIK FUN WONG
Second Plaintiff

AND STELLA HU
Third Plaintiff

AND NEW TIMES MADIA LIMITED
First Defendant

AND WEIJAN CHEN
Second Defendant

AND WEIMING CHEN
Third Defendant

AND WEIZHENG LIU
Fourth Defendant

AND DAVY WAI KEUNG KWOK
Fifth Defendant

Hearing: 9 and 10 February 2004

Appearances: B J Johns for the Plaintiffs
D J T Watt for the Second, Third and Fourth Defendants
No appearance on behalf of First and Fifth Defendants

Judgment: 11 March 2004

RESERVED JUDGMENT OF PATERSON J

Solicitors:

Brookfields, P O Box 240, Auckland
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Introduction

[1] The Chinese Herald and the New Times Weekly are Chinese language newspapers circulating in Auckland. In a judgment on an interlocutory matter given on 31 October 2003, Harrison J described them as being publications on the opposite sides of the Chinese political divide. The first plaintiff (CHL), a 'body corporate', is the publisher of the Chinese Herald. Mr Wong and Ms Hu, the second and third plaintiffs, were at the relevant times both shareholders and directors of CHL. Mr Wong described himself as the primary editor. All three plaintiffs allege that they have been defamed by articles published in the New Times Weekly and seek redress from the defendants.

[2] At the relevant times, the New Times Weekly was published by the first defendant (Madia). Madia has since been struck off the Companies Register and was not represented at the hearing. Despite Madia no longer being in existence, the New Times Weekly is still published. The second, third and fourth defendants were at the relevant times shareholders and directors of Madia. They have acknowledged being the authors of the relevant articles.

Background

[3] The Chinese Herald was at the relevant time published once a week and distributed freely to the Chinese community through Chinese supermarkets, restaurants and similar places where Chinese people congregate. Its circulation, both in 2000 at the time of the publication of the relevant articles, and now, is 20,000 notwithstanding that the number of Chinese language newspapers has increased markedly since 2000. The exact number of Chinese language newspapers published in Auckland, and CHL's share of the market for such newspapers, cannot be accurately determined. Counsel for CHL gave certain figures in opening but, as no evidence was led to establish those figures, they cannot be taken into account. In response to a question from the Bench, Mr Wong indicated that a lot more newspapers had come into the market since 2000, and there are about 20 newspapers publishing now. Revenue is generated by CHL selling advertising in the newspaper.

[4] Prior to the publication of the first article, there had been a confrontation in a restaurant between Mr Wong and Mr Weiming Chen. The circumstances surrounding that confrontation were not before the Court, apart from Mr Wong's allegation that he was assaulted by Mr Chen.

[5] Mr Wong and Ms Hu are partners both in business and in life. Because it is relevant to some of the alleged defamatory statements, it is noted that Mr Wong acknowledged in evidence that he had left his wife to live with Ms Hu.

[6] These proceedings and particularly the defendants' part in them have had a chequered history. The proceedings were issued in August 2000. In June 2001, the defendants, through their then solicitors, filed a statement of defence raising without any particulars truth and honest opinion as affirmative defences. An application by CHL to strike out these defences did not proceed for reasons which are not apparent. A second amended statement of claim was filed in May 2002 and the statement of defence to that filed in June 2002 once again pleaded truth and honest opinion in a more comprehensive form but, once again, without providing sufficient particulars. Shortly after that statement of defence was filed, the defendants dispensed with legal assistance and began acting for themselves.

[7] An application by CHL for further and better particulars resulted in an order by Master Faire on 2 July 2002 which gave the defendants 42 days from the date of service of the order to file the relevant particulars, failing which the two affirmatives defences would be struck out. The defendants took no action, and on 3 September 2002, the Master struck out these two defences. The matter was given a substantive fixture to commence on 25 November 2002, but this fixture was later vacated to accommodate the defendants.

[8] Previously on 12 June 2002, Master Gambrill had declined the defendants' application to consolidate the trial of this proceeding with two separate proceedings which the defendants had brought against the plaintiffs. A second application for consolidation was declined by Master Faire on 21 May 2003 at which time the proceeding had a trial date fixed for 30 June 2003. The defendants were ordered to serve their briefs of evidence by 6 June 2003. However, on 4 June 2003, they

applied to vacate the fixture. This application succeeded and the trial was adjourned to 25 August 2003 and the defendants were given until 13 June 2003 to submit their briefs of evidence. They failed to do so and CHL then applied for further orders.

[9] As a result of CHL's applications, Harrison J on 16 July 2003 ordered that the defendants serve all briefs of evidence by 9 am on 1 August 2003 and pay outstanding costs of \$1690. Harrison J also ordered that if the defendants failed to comply with either of these orders, their defences would be struck out and the claim would proceed on formal proof. On 21 July 2003, the defendants made a further application for an extension of time to serve their briefs. Harrison J declined this application on 25 July 2003, and warned the defendants that if they failed to comply with the existing terms of the timetable order, they faced the risk that CHL would apply to strike out their defences.

[10] On 1 August 2003 CHL applied to strike out the defences on the grounds of non compliance with the previous orders. Harrison J struck the defences out and directed that the trial proceed by way of formal proof on 25 August 2003. The fixture was vacated when the defendants retained a solicitor who applied both to reinstate the affirmative defences and to allow the defendants to plead qualified privilege as a defence. By that time, the defendants had served their briefs of evidence although they appear to have been served after the deadline on 1 August 2003. Harrison J noted that of the 15 witness statements tendered, only one or two could possibly qualify as relevant and admissible at the hearing.

[11] After hearing submissions, Harrison J, on 31 October 2003:

- a) Set aside his order of 4 August 2003 which meant the defendants at trial could be heard only on the issues of, first, whether or not the articles published by them were defamatory; second, whether they referred to the Chinese Herald and/or the Wongs; and, third, relief;
- b) Dismissed the application to review Master Faire's order of 3 September 2002 which struck out the affirmative defences of truth and honest opinion;
- c) Dismissed the application for leave to file an amended statement of defence to plead the affirmative defence of qualified privilege.

The defendants were also ordered to pay costs of \$10,000.

[12] It was on the basis of Harrison J's orders of 31 October 2003 that the matter came before me for disposition. The only issues which the defendants were able to raise were whether the articles were defamatory, whether they referred to the plaintiffs and if so, what relief should be granted. There was an eleventh hour application to adjourn the hearing on the basis that the defendants wished to subpoena a witness who lived in Christchurch and who they thought might, when giving evidence in Court, support their case notwithstanding that it was obvious that she was a reluctant witness. There was hearsay evidence and submissions as to what this witness might say, but no acceptable evidence of what she actually would say. This application was declined and a separate ruling issued on 9 February 2004 gives the reasons for declining the application.

[13] The first article of which the plaintiffs complain was published on 28 July 2000 (the first article). There were two further articles published on 4 August 2000 (the second article and the third article). The final article was published on 11 August 2000 (the fourth article). An English translation, accepted by all parties, of the four articles appears as Appendices 1-4 to this judgment.

[14] CHL seeks in respect of the four articles a declaration pursuant to s 24 of the Defamation Act 1992 (the Act) together with solicitor and client costs. Mr Wong seeks damages in respect of the second, third and fourth articles, such damages to include punitive damages in accordance with s 28 of the Act. In the statement of claim, Mr Wong seeks as an alternative remedy a declaration under s 24 of the Act, but this matter was not pursued at the hearing. Ms Hu seeks relief only in respect of the second article and seeks damages including punitive damages. Both Mr Wong and Ms Hu seek costs on a solicitor and client basis.

[15] Another procedural matter needs to be noted. At the hearing, counsel for the plaintiffs assumed that the defendants had filed a further statement of defence in July 2003. A document entitled "Final Statement of Defence Dated [blank] July 2003" was evidently served on them, presumably with the briefs of evidence. It was not filed in this Court and no application was made by Mr Watt for the defendants for

leave to file it. I proceed on the basis that it was not part of the pleadings. It was prepared by the defendants themselves and was obviously drafted without legal advice.

The issues

[16] In view of the limitations placed by Harrison J on the defendants' ability to defend these proceedings, the following issues require determination:

- a) Were the articles or any one of them defamatory?
- b) If an article was defamatory, who was defamed? This has particular application to Ms Hu's allegation that she was defamed by the second article. It did not refer to her by name.
- c) If an article was defamatory, what relief should be granted with particular reference to:
 - i) CHL's entitlement to relief in view of s 6 of the Act?
 - ii) The amount, if any, to be awarded by way of damages to Mr Wong and/or Ms Hu?
 - iii) Whether punitive damages are appropriate?
- d) Is this a case for solicitor and client costs?

[17] The three defendants in their statement of defence admit authorship and publication. They did not give evidence and no evidence was called on their behalf. If damages are awarded, no issue of apportionment arises because where several defendants are joined in an action for defamation, there can only be a single award of general damages: see *Jensen v Clark* [1982] 2 NZLR 268 at 276.

Was the first article defamatory?

[18] The defamatory allegations in the first article are made only by CHL. As the matter proceeded without a jury, it is necessary for me to determine whether the passages in the article meant what CHL alleged they meant, and, if so, whether they

were defamatory. This task has been made more difficult by the pleadings quoting large portions of the article and not particularising which part of the article leads to the alleged meaning. Further, counsel in final submissions in some cases added to or modified the pleaded meanings. The only witnesses called for the plaintiffs were Mr Wong and Ms Hu. Most of their evidence was merely a restatement of what was in the articles and submissions as to what the article meant. These comments apply to all four articles. The defendants' task was made difficult because the previous Court orders had denied them the right to raise the affirmative defences of truth, honest opinion or qualified privilege.

[19] In considering whether they are defamatory, I am required to apply an objective test and determine, under the circumstances in which the words were published, what an ordinary reasonable person would understand by them. That person is to be taken as one of ordinary intelligence, general knowledge and experience of wordly affairs. It is the meaning which the ordinary reasonable person would as a matter of impression carry away in his or her head after reading the publication. That meaning necessarily includes what the ordinary reasonable person would infer from the words used in the publication as an ordinary person has considerable capacity for reading between the lines. The words must be read in context and should not be given a strained or forced interpretation: see *Darby v Bay of Plenty Times Ltd* (1994) 8 PRNZ 211.

[20] I do not propose to set out all of the statements which are relevant to the alleged meanings. The English translation is Appendix 1 to this judgment. However, the following summary of quotations taken from the first article is sufficient to determine whether the alleged meanings would have been understood by the ordinary reasonable person to convey the meanings alleged:

So why has the *Chinese Herald* always treated the *New Times Weekly* as an enemy, seeking every opportunity to attack it viciously and to speak out against democracy? They have hidden themselves in dark corners, and launched sneak attacks all over the place by writing deliberately malicious articles under pennames. (quote A)

... this newspaper is the overseas mouthpiece of the Chinese Communist Party? (quote B)

Even the mouthpiece of the Chinese Communist Party ... would not have dared to stoop to their choice of words, sentence patterns and examples cited, such was their general maliciousness and level of absurdity. (quote C)

This level of sycophancy towards the Chinese Communist Party is rarely seen. (quote D)

... there is no one inside the Chinese Communist Party who would be willing to wear the laurels of a Murderer. (quote E)

... that such a small overseas newspaper can be audacious enough to publicly preach that the killing of people is justified and merited, means that they have finally reached the stage of showing utter contempt for everything and being willing to act in total defiance of normal bounds of behaviour. (quote F)

An evil person always starts himself on a path to doom by first hurting someone else, and always finally ends up by hurting himself. This is more or less what can be definitely predicted here as his final fate. (quote G)

Is it because they believe in communism that the *Chinese Herald* is so willing to lead the overseas opposition to democracy on behalf of the Chinese Communist Party? They are only behaving like this because they are eyeing up their profits. (quote H)

What they are really trying to do is to cover up their sordid, obscene and unspeakable behaviour. (quote I)

It is our sincere hope that the *Chinese Herald* will manage to mend its ways and really become "an upright newspaper" put together by "upright newspeople." (quote J)

Most of the above quotations appear in contexts which give further support to their meaning. It is not, however, necessary to cite more than the above quotations.

[21] It is necessary to refer to each pleaded meaning and then to determine whether the words are capable of that meaning. The alleged meaning is contained in the heading in each of the following sub-paragraphs:

- a) CHL, as a media organ, opposes democracy: This meaning is clearly apparent from quote A. Further, quote H clearly suggests that CHL opposes democracy. There is a direct reference to attacking anyone who speaks out against democracy.
- b) CHL behaved in an underhand and devious manner: There are several statements which bear this meaning. These include statements that CHL wrote deliberate malicious articles under pennames (quote A); it had finally reached the stage of showing utter contempt for everything and being willing to act in total defiance of normal bounds of

behaviour (quote F); CHL was an evil person (quote G); and CHL was not an upright newspaper run by upright people (quote J). A person who is not upright is neither righteous nor honourable nor honest. There were therefore several statements which conveyed the impression that CHL behaved in an underhand and devious manner.

- c) CHL has adopted a biased practice to reporting: The suggestion that CHL was the mouthpiece of the Chinese Communist Party, in itself does not mean that CHL adopted a biased practice to reporting (quote B). However, set against the unchallenged evidence that the *Chinese Herald* reported both sides of the Chinese political spectrum it does bear the meaning that CHL was not impartial in its reporting.
- d) CHL's reporting was malicious and absurd: More than one reference could imply malicious and absurd reporting, but quotes A and C both refer to maliciousness and the latter refers to absurdity. The words carry the meaning that CHL was malicious and absurd in its reporting.
- e) CHL was a sycophant and has acted in an obscene manner: Quote D alleged that the *Chinese Herald* was a sycophant of the Chinese Communist Party and quote I alleged that CHL was trying to cover up its sordid, obscene and unspeakable behaviour. This meaning is clearly apparent from those quotations.
- f) CHL has shown utter contempt for everything and was willing to act in total defiance of normal bounds of behaviour: In my view, none of the quotations or any part of the articles which I have not cited, establish this alleged meaning.
- g) CHL was evil and acted dishonourably: Some of the quotations already referred to impute dishonesty towards CHL. Quote G when read in context can only be taken to mean that CHL, because it is an evil person, will end up hurting itself. The meaning is established.
- h) CHL was solely profit motivated in denouncing democracy: This meaning does come naturally from reading quote H. A statement that they were only behaving this way because they are eyeing up their profits, after a question as to the reason for them opposing democracy, does establish this meaning.
- i) CHL had a very poor reputation: Clearly, CHL had a poor reputation in the eyes of the *New Times Weekly*. However, there is nothing in the articles as I read them to suggest this was the general reputation of CHL. This meaning is not established.
- j) CHL was a less than an upright newspaper: That meaning is established by quote J which can be read in no other way than that the

Chinese Herald is not an upright newspaper. To be not upright means that the person is not righteous, nor strictly honourable, nor honest.

[22] Mr Watt, for the defendants, had a difficult task in that he could not raise the defences of truth, honest opinion or qualified privilege. He submitted that the evidence did not establish that right thinking members of the community thought that the reputation of CHL had been lowered. This was because of the financial position of the company which I will return to later. I note that a person may be defamed without suffering financial loss. Mr Watt also made several submissions on behalf of the defendants which I am unable to accept because they were not based on evidence. Many of his submissions related to Mr Wong and Ms Hu and I will note them when dealing with the latter articles and relief.

[23] There was no evidence adduced upon which I can draw an inference that it was more likely than not that CHL was a biased newspaper. Mr Wong gave evidence that it was a neutral newspaper which published articles on both sides of the spectrum. Certain articles were put to Mr Wong in cross-examination, and these did indicate a slant towards the Communist view. However, some articles are not sufficient to rebut the evidence of neutrality.

[24] Many of the meanings which I have found to be established are defamatory. No other conclusion can be drawn when the article is read in context. The particular meanings which I hold to be defamatory are that CHL behaved in an underhand and devious manner, adopted a biased practice to reporting, was malicious and absurd in its reporting, was a sycophant and acted in an obscene manner, was evil and acted dishonourably, and was a less than upright newspaper. The statement that CHL as a media organ opposes democracy was in the circumstances defamatory but if it had stood on its own without the other comments, it would have not led to more than nominal damages. I do not hold that the statement that it was solely profit motivated in denouncing democracy to be defamatory in the circumstances.

Was the second article defamatory?

[25] There were two separate articles published on 4 August 2000 which are subject to complaint. It is alleged that in the first of these articles Ms Hu, as well as CHL and Mr Wong, were defamed. This is the only article in respect of which Ms Hu alleges defamation against her. She is, however, not mentioned by name in the article. The English translation of this article is Appendix 2 to this judgment.

[26] There are two passages on which CHL relies. They are:

Pursuing some contemptible and ulterior motive, the *Chinese Herald*, working on their own, put together a “news story” about an assault by our chief editor Chen Weiming. (quote K)

We have selected him as an involved party for our first feature under the title ‘In-depth Report on the Migrant Community: The Truth about the *Chinese Herald* as an “Upright” Newspaper.’ This is to provide some inspiration to other victims, since during Mr Dai Wei’s struggle with the evil forces of the *Chinese Herald’s* Wong Sik Fun and XX, he had to resort to legal channels for resolution. (quote L)

[27] In its claim, CHL alleges that three defamatory meanings arise from the two quotations. Those alleged meanings and my findings on those meanings are:

- a) CHL is a poor newspaper that makes up stories: I do not consider that this is necessarily the meaning to be taken from either of these quotations. While some people might take that meaning from the quotations, I am not satisfied that the reasonable person reading the quotations would give that meaning to them.
- b) CHL has a poor reputation: For the reasons given in para 21 (i) above, I do not accept this meaning.
- c) CHL is less than an upright newspaper: There are comments in quote L which clearly convey the meaning that CHL is less than an upright newspaper.

[28] The meaning which indicates that CHL is a less than upright newspaper, is, in my view, defamatory. This meaning was less defamatory to CHL than were the meanings in the first article.

[29] There are several statements in the second article which Mr Wong alleges were defamatory of him. Some were also allegedly defamatory of Ms Hu. Once again, it is not necessary to quote all these statements. Relevant ones are:

Many readers provide concrete evidence of Wong Sik Fun's and XX's evil doings: copies of documents they had unlawfully fabricated, XX ruining someone else's family, so-called "love letters" detailing jealous quarrels and so on. (quote M)

Yet it is due to exactly such an attitude that a small handful of opportunistic wrongdoers have had the space to operate in. It is also due to the existence of such bad people in the midst of our Chinese community that we cannot enjoy a single day of peace; only after we Chinese have got rid of such scum from around us can we then look to reassert our image as Chinese. (quote N)

Our newspaper has conducted several interviews with some of the parties involved with regard to a number of really terrible things done by the *Chinese Herald's* Wong Sik Fun and XX. In order to help the Chinese people at large to recognise their real "non-upright" nature, we will feature a series of these interviews in our newspaper for our readers. (quote O)

He is an insidious person, who is never open and aboveboard. He does things in a disgusting way. When he realises that you are weak, he will bully you. (quote P)

He then used some legal loopholes to force that partner to pay him various kinds of expenses. The whole thing ended up with that partner warning him to "wear protective clothing when he went outdoors." If I hadn't acted as a go-between, I'm afraid he would have had his legs broken long ago. (quote Q)

I was very careful when I was his business partner; when it came time for any documents to be signed, I never ever felt safe with just the two of us there, and mostly had a third person present as a witness. (quote R)

She came back to New Zealand and into the arms of Wong, becoming very arrogant and domineering in the office and was loud and noisy, badmouthing the employees behind their back, referring to the advertising salesperson as "beggars" despite the fact that they made such a huge contribution to the newspaper. (quote S)

Untrustworthy people like him try to get out of things if they can; if they cannot, they use delaying tactics; if they cannot delay any further, they start to renegotiate. (quote T)

Reporter: It's been a while now since your departure from the *Chinese Herald*, but have you heard anything about how they cheat people on immigration matters?

Dai: I find it hardly surprising that they are cheating and swindling people and doing terrible things. (quote U)

Reporter: Mr Dai Wei, Thank you very much for this interview. One more question, a very key question, how do you suggest handling such a bad person?"

Dai: There are two ways: one is to resort to legal means; the other is to go for "private" settlement. There are many ways of settling privately, it just depends on Wong's own judgment of the situation at the time. (quote V)

[30] Mr Wong and Ms Hu between them allege 12 defamatory meanings from the second article. Those meanings, together with my findings as to whether they mean what is alleged, are set out below. It is alleged that the first five defame both Mr Wong and Ms Hu, the next six defame Mr Wong, and the twelfth defames Ms Hu.

- a) Mr Wong and Ms Hu are evil and commit evil deeds: There is a statement in quote M that both Mr Wong and XX have committed evil doings and that they have unlawfully fabricated documents. In quote O there is a reference to a number of “really terrible things” done by Mr Wong and XX. Clearly, there are statements that Mr Wong and XX are evil and have committed evil deeds, and I accept that this is the meaning conveyed by these quotations.
- b) Mr Wong and Ms Hu are bad people, scum, less than upright: In addition to the quotations referred to in the previous subparagraph, there is a direct reference to “scum” in quote N which refers to both Mr Wong and XX. There is a reference in quote O to the “non-upright” nature which, in my view, refers to Mr Wong and XX.
- c) Mr Wong and Ms Hu have committed fraud: The reference to Mr Wong and XX fabricating documents (quote M) and the question referred to in quote U, and its answer suggest that “they are cheating and swindling people.” These are allegations of fraud and I accept that this meaning is established in respect of both Mr Wong and XX.
- d) Mr Wong and Ms Hu are dishonest: There is a certain overlap in the alleged meanings. The quotations already referred to in the previous subparagraphs do convey the meaning that Mr Wong and XX are dishonest.
- e) Mr Wong and Ms Hu have poor reputations: For the reasons given in para 21(i) above, I do not accept this meaning.
- f) Mr Wong is insidious and a bully: Both these allegations are made in quote P and their normal meaning must be taken from them.
- g) Mr Wong as an unprofessional accountant, is unprofessional: I do not form the view that any of the quotations are capable of this meaning.
- h) Mr Wong is untrustworthy: There is a direct statement in quote T which refers to untrustworthy people and must in context refer to Mr Wong. There are other statements in quotes M, O, P and R which are capable of bearing this meaning.

- i) Mr Wong is petty and a troublemaker: While there are quotes of bearing this meaning, this is one of the less serious allegations. Being petty and a troublemaker is an incident of some of the other meanings.
- j) Mr Wong is a nuisance of a person: There are quotations which are capable of this meaning but these are insignificant in the context of this case.
- k) Mr Wong is arrogant and a bad person: There are quotations, many of which have already been referred to, from which it can be inferred that Mr Wong is a bad person but none from which I would infer that he is an arrogant person.
- l) Ms Hu is arrogant, back stabbing and abusive: Quote S is capable of being interpreted in this manner and has this meaning, if XX is Ms Hu.

[31] In his submissions, Mr Watt had the difficult job of endeavouring not to put forward affirmative defences of truth and fair comment. At times, he strayed into these forbidden fields. He submitted that a reasoned analysis of Mr Wong's views led to him being referred to as "a immoral scumbag." I note that if these words are defamatory, the defendants cannot rely upon truth. It was submitted by Mr Watt that while persons trained to think clearly and reason logically would not express their political opinions in the way that the defendants have done, many people do think like the defendants and articulate their thoughts accordingly. It was also submitted that the motive was not to direct an attack on Mr Wong, or to discredit him personally, but rather it was an extremely strong attack on what the defendants think Mr Wong stands for based on the article he admitted publishing on the Tiananmen Square massacre. They see Mr Wong as an apologist for the dark forces of oppression in China. Mr Watt submitted the defendants cannot travel to China without fear of arrest from the security police and believe that Mr Wong holds radical ideas. To them, he is an evil force because he allows his paper to publish articles which condones abuse of human rights and crimes against humanity.

[32] As already noted, many of the submissions referred to in the previous paragraph are not based on evidence. I cannot seriously consider them. I note, however, that sincerely held views of the type published by these defendants may nevertheless be defamatory, particularly when published in a newspaper which is fairly widely read by the Chinese community in Auckland. It was further submitted

that some of the terms sounded as though they had been lifted from comic books and presumably the submission was meant to suggest that they were not defamatory because they were unbelievable. The phrases “doers of evil deeds” and “persons who hide in dark corners” were in this category. Another submission made by Mr Watt was that Mr Wong was by his own evidence a successful and confident man of business. As such, he had presumably developed a strong personality and a thick skin in order to survive in a very competitive business environment. It was submitted, in effect, that in such circumstances the words were not defamatory.

[33] Subsequently, Mr Wong and Ms Hu sold their interest in CHL for \$600,000. The *Chinese Herald* had been transferred to Mr Wong by the *New Zealand Herald* at no cost. It was submitted that the successful sale of the shares in CHL indicated that in the circumstances the articles could not have caused any harm to Mr Wong. This submission verged on the forbidden defence of truth. If the submission has relevance, it is to the question of damages and will be considered at that stage.

[34] In my view, many of the meanings which have been established were defamatory. These include the meanings that Mr Wong and Ms Hu are evil and commit evil deeds, are bad people, scum, less than upright, have committed fraud, and are dishonest. In respect of Mr Wong, he was defamed by being called insidious and a bully, untrustworthy, and an arrogant and bad person. Ms Hu was also defamed by being termed arrogant, back stabbing and abusive. These findings in favour of Ms Hu are only of benefit to her if she was the XX referred to in some of the quotations.

Was the third article defamatory?

[35] A further article was published on 4 August 2000, the English translation of which is Appendix 3 to this judgment. Both CHL and Mr Wong allege that they were defamed by statements in this article. The article can only be seen as a further step by the *New Times Weekly* to discredit both the *Chinese Herald* and Mr Wong.

[36] The following quotations allegedly contain statements defamatory of CHL:

It is public knowledge that the *Chinese Herald* is a pro-Communist newspaper ... You are quite at liberty to be pro-Communist or to defend dictatorial systems. There is nothing to stop you from being sycophantic either, as long as the recipient is happy about it and you feel good about doing it; no one is going to be really too bothered about it, as long as it is done using acceptable methods. However, there is something a little obscene in the way the *Chinese Herald* goes about being sycophantic. (quote W)

With regard to the way that the *Chinese Herald* was able to be so sycophantic, if we assume that there really had been a letter to the editor criticising the Communist Party, would they not have been totally delighted? Not only would they not have to spend so much time and to go to so much effort to fake a letter, would they not then have been able to avoid incurring liability for the crime of forgery and been able to happily send off the letter to the Chinese government agency here and claim their reward? (quote X)

Although we still do not know whether this has been the case or not, judging from the shoddiness involved in the forwarding of the faked "article to the editor" to the Chinese government agency here, it does not take much deduction on any one's part to work out the answer to the above question. (quote Y)

That the *Chinese Herald* wants to be sycophantic towards the Communist Party would not necessarily lead us to want to criticise them ... Yet given the excessive meanness displayed in the way they went about being sycophantic, we felt that public disclosure of it was better, in order to help the general public understand what is going on. (quote Z)

[37] CHL's allegations as to the meaning to be taken from some of the quotations and my findings on the alleged meanings are:

- a) CHL, as a media organ, opposes democracy: I do not find that meaning in the quotations.
- b) CHL is a sycophant and has acted in an obscene and excessively mean manner: The article was intended to convey that CHL was a sycophant and there are also statements that can only mean that it acted in an obscene and excessively mean manner (see quotes W, X, Y and Z).
- c) CHL forged letters to its own editor: There is clearly such a statement in quote X. This meaning is apparent.
- d) CHL had acted in a shoddy manner: This meaning may possibly be included in some of the quotations but there is no express reference to "shoddy" and it adds nothing to the other meanings which have been established.
- e) CHL had a very poor reputation: For the reasons given in para 21(i) above, I do not accept this meaning.

[38] Mr Wong also alleges that various meanings defamatory to him appeared in the third article. It is only necessary to summarise the relevant portion of the article at this stage. It notes that the proprietor of a newspaper, Mr Wong, in order to be sycophantic, actually went so far as to forge a letter condemning the Communist Party and sent it on to the Chinese government agency in Auckland pretending that it was a letter to the editor. He told the government agency that his paper would not publish the letter and did this to express his loyalty to the party. This was clearly a case of someone “trying to deceive the Emperor” and reflected the great deviousness of a sycophant. There was then an explanation as to how a sycophant operated. The article went on to note that the version of sycophancy used by Mr Wong was something different again because it involved him in a degree of risk which, if handled badly, might end up backfiring on him. This was because before he can be a sycophant it was necessary to forge and deceive and the more venomous wording in the forged document the better, and the baser the means of deception used, the better.

[39] The meanings alleged from this article and my findings on them are:

- a) Mr Wong was a sycophant: This is stated on more than one occasion and the meaning is clear.
- b) Mr Wong forged documents and acted deceptively: The natural and ordinary meaning of the words convey this meaning.
- c) Mr Wong was devious: The description of Mr Wong in the article clearly states that he was devious. It refers to his deception.
- d) Mr Wong had a poor reputation: For reasons already given, I do not accept that this defamatory meaning can be taken from the article.
- e) Mr Wong is dishonest: A person who is a sycophant, forges documents and is deceptive is obviously dishonest. This meaning is made out.

[40] The meanings that Mr Wong was a sycophant, forged documents and acted deceptively, was devious, and is dishonest, are all, in my view, defamatory of Mr Wong.

Was the fourth article defamatory?

[41] A further article appeared on 11 August 2000. It is alleged that it defames both CHL and Mr Wong. The English translation of this article is Appendix 4 to this judgment.

[42] The statements upon which CHL relies are:

... although I was never very much taken with his newspaper which delights in printing those so-called “letters to the editor”, they are personal attacks, it had never occurred to me that he was actually such an immoral scumbag. (quote AA)

The *Chinese Herald* boasts that it is an upright newspaper, put together by upright newspeople. But it is headed by someone who cannot stay upright on his feet, and sways from side to side. So from where do they get their upright? (quote BB)

[43] Four meanings are alleged which are said to be defamatory. Those meanings and my findings are:

- a) CHL publishes material which amounts to mere personal attacks: This meaning is clearly stated. (see quote AA)
- b) CHL is less than upright newspaper as it is headed by a less than upright person: This meaning is also clearly stated and appears from the natural meaning of the words used. (see quote BB)
- c) CHL has a poor reputation: For reasons already given I do not find this meaning.
- d) CHL is unprofessional: I do not accept that this meaning is necessarily contained in the quotations.

[44] I find that the allegation that CHL is less than an upright newspaper is defamatory of it. Also, as CHL is unable to establish truth, I find that the allegation that it publishes material which amounts to mere personal attacks is also defamatory.

[45] Mr Wong relies upon three particular quotations which he alleges defame him. They are:

After reading the news printed in your recent issues, as well as the interview with Mr Dai Wei, I was astounded to learn that someone with such a bad record as Wong of the *Chinese Herald* could actually be paying the role of a moral instructor to mankind through the newspaper he runs. That he should

have the audacity to try and educate the general public and push social justice and fairness, really is an insult to we readers. (quote CC)

... although I was never very much taken with his newspaper which delights in printing those so-called “letters to the editor” that are personal attacks, it had never occurred to me that he was actually such an immoral scumbag. Great! If he really was assaulted, it serves him right. (quote DD)

What I think you should be making an outcry about is the humiliation you have to put up with by working for such a morally corrupt boss. A practitioner of journalism should, first up, show himself as a person of integrity, and an example and model for others. (quote EE)

[46] The alleged meanings and my comments on them are:

- a) Mr Wong has a bad record: This meaning is established as it clearly appears in quote CC.
- b) Mr Wong operates a newspaper which publishes material which amount to mere personal attacks: This meaning can clearly be taken from quote DD.
- c) Mr Wong is an immoral scumbag who deserves to be assaulted: A combination of the plain meaning and innuendos in quote DD lead to this meaning.
- d) Mr Wong is morally corrupt: There is a clear statement to this effect in quote EE.
- e) Mr Wong is an unprofessional journalist: While there are statements from which this meaning could probably be inferred, I do not intend to infer it in this case. The meaning is not so clearcut.
- f) Mr Wong lacks integrity: There is a clear inference in quote EE to this effect. I accept the meaning.
- g) Mr Wong has a poor reputation: For reasons already given I do not accept this meaning.

[47] I find that the statements that Mr Wong has a bad record, operates a newspaper which publishes material which amounts to mere personal attacks, is an immoral scumbag who deserves to be assaulted, is morally corrupt, and lacks integrity, to be defamatory.

Summary on defamatory allegations

[48] In summary, there were statements in the first article which defamed CHL, statements in the second article which defamed CHL, Mr Wong and XX, and statements in both the third and fourth articles which defamed both CHL and Mr Wong. The statements were defamatory because they tended to lower CHL, Mr Wong and XX in the estimation of right thinking members of society generally, are to their discredit, and in my view, are calculated to injure their reputations or expose them to contempt or ridicule. It is necessary to determine whether Ms Hu was defamed.

Was Ms Hu identified in the second article?

[49] Ms Johns, for the plaintiffs, submitted that there were sufficient details in the second article to identify Ms Hu as being XX. In particular, the article stated that Mr Wong and XX worked together, they had a love affair, and they moved in together. I note that there are references in the article to “concrete evidence of Wong Sik Fun’s and XX’s evildoings”, “XX ruining someone else’s family,” “so-called ‘love letters’” detailing jealous quarrels and so on. There was then a reference to “really terrible things done by the *Chinese Herald’s* Wong Sik Fun and XX.” A further reference was to “the evil forces of the *Chinese Herald’s* Wong Sik Fun and XX.” Mr Dai, in his interview with the reporter, said:

Over two years ago, XXX came to work for the newspaper. Her pen name was XX and her English name was XXX. To begin with, she and Mr G planned to marry but then all havoc broke loose, and it was said that she was caught doing it in bed with Wong; G was extremely indignant but my view was that private matters should never be tangled up with business matters, so Mr G was made to quit.

Dai also said in the same article:

But XXX began to make trouble and her love affair with Wong became more and more obvious to all, so, with the agreement of Wong, I gave her a job assignment which took her back to mainland China ... when I came back two months later, I discovered that XXX was acting as if she was the boss’s wife. It was said that she went back to Mainland China for the sole purpose of obtaining a divorce, and left behind a very young child there. She came back to New Zealand and into the arms of Wong, ...

[50] The evidence established that Ms Hu had worked for the newspaper for three or four years, being the co-editor up until 2000 when she left to take up full time study. Although she was a student during 2000, this was not generally known. It was also acknowledged in evidence by both Mr Wong and Ms Hu that they had a sexual relationship while Mr Wong was still married to his former wife. Mr Dai in the article was referring to past events.

[51] Mr Watt, through cross-examination, attempted to raise an inference that XX may have been another staff member, indeed, the person whom the defendants had hoped could be subpoenaed to give evidence. I have little doubt that the article created a clear imputation that XX was Ms Hu. She was the person who had had the love affair with Mr Wong who had gone back to China and who had been involved in a position of responsibility in CHL. I find that it was Ms Hu who was referred to in the second article as XX.

Is CHL entitled to a remedy?

[52] Section 6 of the Defamation Act provides that where proceedings for defamation are brought by a body corporate, they shall fail unless the body corporate alleges and proves that the publication of the matter that is the subject of the proceedings either caused pecuniary loss or is likely to cause pecuniary loss to that body corporate. This section, in my view, creates serious difficulties for CHL in this case.

[53] I reconfirm the view which I expressed in *Tairawhiti District Health Board & ors v Steven Perks* [2002] NZAR 533. The pecuniary loss caused or likely to be caused should normally arise from damage to the claimant's business interest or goodwill. The pecuniary loss arises from injury to the reputation of the plaintiff's trade or business. The loss need not necessarily be confined to loss of income and can include loss of goodwill. Commercial loss of this or a similar type must be proved before a body corporate can obtain relief under the Act.

[54] In this case, CHL has neither proved pecuniary loss nor the likelihood of future pecuniary loss arising from the defamatory statements. The circulation of

CHL has remained constant from the date of publication of the articles to the date of hearing notwithstanding that there has been a considerable increase in the number of Chinese language newspapers during that period. While there was some evidence to suggest there might be less advertising content in the newspapers today, there was also evidence from Mr Wong that “the number of advertisements may be 10% more but the number of pages will be 50% more.” This was because greater space was being given for the same cost. The statement suggests an increase rather than a decrease in revenue between the date of publication of the articles and the present day. There was no evidence which would suggest either a loss of revenue or less revenue than would normally be expected was caused by the defamatory statements. If expectations were not as great as anticipated, this may well be because of the increased number of newspapers in the marketplace. While there may now be more readers of Chinese language newspapers, although there was no evidence on this point, it is more likely than not that the increased number of newspapers would lead both to a drop in circulation and a drop in advertising. If there has been a drop in advertising revenue, and the evidence did not suggest this, it is more likely that it was caused by competition.

[55] Further, there was no evidence of loss of goodwill. Mr Wong took over the *Chinese Herald* from the *New Zealand Herald*. His evidence was that he purchased the newspaper in 1997 but he acknowledged that he did not pay the *New Zealand Herald* for the newspaper. He and Ms Hu sold 70% of the shares in CHL in December 2002, with the final 30% shares being sold in December 2003. The total consideration for these share sales was \$600,000. A sale of the total share capital of CHL for \$600,000 entered into a few months after the publication of the articles, when it had been acquired for nothing, does not suggest that CHL lost goodwill.

[56] Ms Johns, relying on *Rural News Ltd v Communications Trumps Ltd* (High Court Auckland, AP404/167/00, 5 June 2001, Fisher J) submitted that this Court was able to draw an appropriate inference regarding the likelihood of causing pecuniary loss and that actual evidence was not required. There may be cases where an appropriate inference can be drawn. This is not one of them. There are no facts on which I can draw an inference that CHL has either suffered pecuniary loss or is likely to suffer pecuniary loss because of the defamatory statements. In fact the

evidence in this case given by Mr Wong himself suggests that there was no pecuniary loss suffered by CHL.

[57] There needs to be an evidential basis before pecuniary loss can be inferred. The need to prove pecuniary loss was noted by the Court of Appeal in *Midland Metals Overseas Pte Ltd v The Christchurch Press Co Ltd* [2002] 2 NZLR 298. Gault J noted at p294, “[p]ecuniary loss to a corporate plaintiff, including of course loss in the value of its goodwill, will be a matter for proof at trial.” Tipping J said at p303, “[t]he amount of harm caused by the wrong to the plaintiff’s economic interests is simply a matter of proof on ordinary causation principles.” There was no proof from which an inference could be drawn in this case. Accordingly, in terms of s 6 of the Act, CHL’s claim must fail.

Damages

[58] Mr Wong and Ms Hu do not seek the alternative remedy of a declaration. Ms Johns submitted that such a remedy was inappropriate and insufficient to achieve justice in this case. They seek an award of compensatory damages to provide some solatium for the wrong that has been done to them, to vindicate their reputation and to convince a reasonable bystander as to the baselessness of the allegations made by the defendants. A total of \$1 m. damages is sought made up of \$250,000 for each of the three articles which defamed Mr Wong, and \$250,000 for the article which defamed Ms Hu. They also seek punitive damages.

[59] On behalf of Mr Wong and Ms Hu, it was submitted that the defendants’ conduct was relevant to the amount of damages, with particular reference to the manner in which they had conducted this litigation. It was necessary to seek injunctive relief against them, they have refused to provide an apology or publish a retraction, and instead continue to deny the claims. Further, it was submitted that the defendants have continued to challenge the integrity and reputation of the plaintiffs in an attempt to undermine their claim at every avenue possible. In this respect, Ms Johns relied on unsuccessful applications to consolidate these proceedings with similar proceedings being brought by the defendants against the plaintiffs, their attempts to pursue the defences of truth, honesty and qualified privilege, the various

adjournments granted because of the manner in which they conducted their case, and the endeavour that the defendants have made to use the proceedings to grandstand their political beliefs and allegiances.

[60] Mr Watt made submissions on the defendants' behalf without an evidential base. However, it was apparent from them that there are strong political undertones in this dispute between the two rival newspapers. The defendants, in submissions through their counsel, still consider Mr Wong to be an evil force, and it was clear from comments which Mr Watt made that the defendants cannot bring themselves to apologise. These two latter comments are more relevant to increasing damages, rather than decreasing them. It was submitted that Mr Wong had obviously developed a thick skin and the evidence did not show that he had been shunned by those who normally invited him to social functions. He still received invitations but felt apprehensive about going. Mr Watt also through cross-examination and submissions referred to the fact that Mr Wong and Ms Hu had chosen not to marry and that there was some evidence that Mr Wong had underpaid a previous employee. Thus, any gossip that may exist was not caused by the articles. It was submitted that there was no evidence before the Court, other than from Mr Wong, that he had been defamed. The CHL had obviously still operated successfully and he and Ms Hu had made a handsome profit on the sale of the shares in the company. There had been no decrease in the circulation of the *Chinese Herald* which suggested that there had been no financial loss. In fact, the evidence suggested he had expanded the business since the publication of the articles.

[61] This is not a case where Mr Wong and Ms Hu seek special damages. It is therefore not necessary for them to prove any financial loss. Compensatory damages are awarded for the loss of reputation and the injury to feelings. By New Zealand standards, the defamatory statements made of Mr Wong fall into a moderately serious category. There were three publications which defamed him. The defendants were not prepared to apologise and did not produce cogent evidence of bad reputation. If evidence of bad reputation is to be taken into account, it must be in the fields in which the defamatory statements have been made. In this case, the suggested shortcomings of Mr Wong were unrelated to many of the defamatory allegations against him. Putting the defamatory statements in context, they appeared

in a newspaper which had a circulation of less than 20,000. Although the circulation figures for the *New Times Weekly* were not provided in evidence, and should have been, the inference I draw from Mr Wong's submission and counsels' submissions was that its circulation was smaller than that of the *Chinese Herald*. This circulation was far less than the wider circulations in those cases where there have been substantial awards of damages. I do not take as aggravating factors several of the matters submitted by Ms Johns. The defendants were entitled to try and have their proceedings consolidated with the present proceeding, and were entitled to try and run the defences of truth, honest belief and qualified privilege. Many of their problems have been caused by their decision to represent themselves. This was foolhardy. I also take into account that the defamatory statements were in the context of a bitter contest between two newspapers, although I accept that this does not excuse the defendants from making the defamatory statements they made. On my view of the circumstances, the defamatory statements in three articles published over a week period entitles Mr Wong to damages of \$125,000. This is more in line with the awards normally made in this country than the amounts sought by Mr Wong.

[62] Ms Hu was defamed in one article only and although the defamatory remarks were moderately serious, they were less serious than those made against Mr Wong. Even in that one article, Mr Wong was more seriously defamed than she was. At the time, she was not employed by CHL although her evidence had suggested she was. She was not the prominent person there that Mr Wong was. Further, she was not identified by name. This would reduce the effect of the defamatory statements on her reputation because many readers would not know she was the person being referred to. In the circumstances, it is my view that an appropriate award to Ms Hu is the sum of \$25,000.

[63] I am not prepared to award punitive damages. Section 28 of the Act provides that they can be awarded if the defendants acted in flagrant disregard of the rights of the plaintiff. Awards of punitive damages in this country are rare. They should only be awarded where "compensatory (including aggravated) damages are not enough to punish the defendant and to deter the defendant and others from defaming people in flagrant disregard of their rights" – see *Television New Zealand v Quinn* [1963] 3

NZLR 24 at p36. This is a case which comes near to the threshold for punitive damages but, in my view, does not surmount that threshold. In my view, the damages awarded are sufficient to punish the defendants and to deter them and others from defaming people in flagrant disregard of their rights.

Result

[64] Because it has been unable to establish pecuniary loss, the claim by CHL fails notwithstanding that defamatory statements were made against it.

[65] Mr Wong was defamed in three articles and is entitled to an award of damages of \$125,000.

[66] Ms Hu was defamed in one article and is entitled to an award of \$25,000.

[67] The claim for punitive damages is dismissed.

[68] In the circumstances, the interim injunction granted at the beginning of these proceedings will be discharged.

Orders

[69] It is ordered:

- a) That the second, third and fourth defendants pay to Mr Wong the sum of \$125,000 as compensatory damages for the defamatory statements made against him, and pay to Ms Hu the sum of \$25,000 compensatory damages for the defamatory statements made against her;
- b) The interim injunction granted by this Court on 11 August 2000 is discharged.

Costs

[70] Mr Wong and Ms Hu seek full indemnity costs. I heard submissions on costs at the end of the hearing, but neither counsel referred to s 43 of the Act. In this case, CHL has failed but Mr Wong and Ms Hu have succeeded. Normally the latter would be entitled to costs, unless s 43 of the Act applies. My provisional view is that if s 43 does not apply, this may be a case for greater than category 2B costs, but not for full indemnity costs. If s 43 applies, the defendants will be entitled to full indemnity costs.

[71] I invite written submissions on the question of costs with particular reference to the position of CHL and to the application of s 43 of the Act. The plaintiffs are to file and serve their submissions within 14 days, and the defendants have a further 14 days to file submissions in reply.

Signed at *S.07* ~~am~~/pm on *11 March* 2003



B J Paterson J

APPENDIX 1



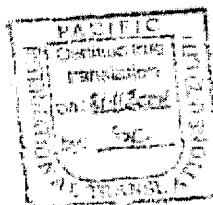
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WHAT EXACTLY IS THE CHINESE HERALD ALL ABOUT?

Anyone who pays the slightest attention to the local media will know that the *New Times Weekly* is a newspaper that advocates democracy and opposes corruption as well as a newspaper trying to remould the conscience of China. In face of the general practice of most overseas Chinese language newspapers of operating commercially for profit, it should be considered quite a fortunate thing for our Chinese community to have such a newspaper as the *New Times Weekly* brave enough to challenge evil forces, tell the truth and try and emphasise matters of conscience. This is particularly so given that the *New Times Weekly*, from its chief editor down to its columnists, has everything for a very long time been totally open in whatever it has done and has disclosed about itself to the general public. It has never hidden away its political point of view: this alone should be enough to show the integrity and fearlessness of the newspaper's proprietor. So why has the *Chinese Herald* always treated the *New Times Weekly* as an enemy, seeking every opportunity to attack it viciously and to speak out against democracy? They have hidden themselves in dark corners, and launched sneak attacks all over the place by writing deliberately malicious articles under pennames. The sort of usual tactic it adopts can be said to be exactly the same as that used by the Chinese Communist Party's *People's Daily* newspaper. What other explanation can there be then, other than that this newspaper is the overseas mouthpiece of the Chinese Communist Party?

A government publication such as the Chinese Communist Party's "White Paper on Taiwan" was published in their newspaper, and they have portrayed themselves as being a New Zealand publication which reprints [articles] from the chain of newspapers who are the mouthpieces of the Chinese Communist Party: the *People's Daily* and the *Wenhui Bao*. The article they ran last week vehemently defended the universally condemned June Fourth Massacre. Even the mouthpiece of the Chinese Communist Party, the *People's Daily* and the *Wenhui Bao* would not have dared to stoop to their choice of words, sentence patterns and examples cited, such was their general maliciousness and level of absurdity. Not only that, [the article] also very eccentrically described the June Fourth Massacre as "another one of the great contributions made by Deng Xiaoping to the people of China". Even Deng Xiaoping himself, if he could learn in his grave about the great honour being conferred on him and the commendation being offered to the Chinese Communist Party, would probably demur at the thought of himself being thought so 'clever'. This level of sycophancy towards the Chinese Communist Party is rarely seen; not only would the innocent victims of June Fourth not be able to forgive them for the sheer obscenity of what they did, the dead souls of





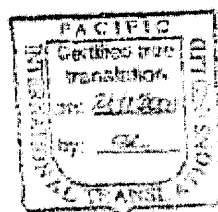
those who perpetrated the massacre would not be able to either, for there is no-one inside the Chinese Communist Party who would be willing to wear the laurels of a Murderer.

In such a democratic and law-abiding society as New Zealand, where human rights are respected and where even mistreatment of cats and dogs render one liable for prosecution, that such a small overseas newspaper can be audacious enough to publicly preach that the killing of people is justified and merited, means that they have finally reached the stage of showing utter contempt for everything and being willing to act in total defiance of normal bounds of behaviour. That they should be so sycophantic towards the Chinese Communist Party is truly crazy. An evil person always starts himself on a path to doom by first hurting someone else, and always finally ends up by hurting himself. This is more or less what can be definitely predicted here as his final fate.

Is it because they believe in communism that the *Chinese Herald* is so willing to lead the overseas opposition to democracy on behalf of the Chinese Communist Party? Of course not. They are only behaving like this because they are eyeing up their profits. They are vainly hoping they might be offered a few leftover crumbs by the profit-making consortium that makes up the Chinese Communist Party.

The *Chinese Herald* proclaims itself to be "an upright newspaper put together by upright newspeople". It even prides itself without any justification on "refusing to publish pornography" and ridicules and mocks other Chinese-language newspapers for running so-called "porn ads". But what do they think they are doing? On the same page of their newspaper where they are hurling insults at other newspapers for being "unwholesome", they openly print an advertisement for so-and-so's massage parlour. Food and sex are part of human nature: even people living way back in the time of Confucius very clearly understood this. What is the motivation behind the tactic used by the *Chinese Herald* of diverting attention away from their own problems by publicising their own "upright" character? Gaining kudos from a crack-down on pornography? Anyone who is in the know about what's going on will be disgusted by such behaviour, their wanting to be a whore but still be considered chaste. What they are really trying to do is to cover up their sordid, obscene and unspeakable behaviour. [The statement that they are] "an upright newspaper put together by upright newspeople" can only be regarded as a brilliant example of how to hang oneself by proclaiming one's innocence too vigorously.

It is our belief that any person with a sense of justice will feel ashamed that such a newspaper could emerge from the Chinese migrant community. It is our sincere hope that



Zhi Yan

the *Chinese Herald* will manage to mend its ways and really become "an upright newspaper" put together by "upright newpeople".

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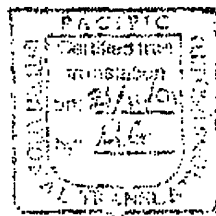




THE TRUTH ABOUT THE *CHINESE HERALD* BEING "A NEWSPAPER PUT
TOGETHER BY UPRIGHT NEWSPEOPLE"

(As reported by this newspaper): In the last issue of our newspaper we mis-transliterated STEPHEN SIK FUN WONG as Si Di Wen . Shi Xun . Wang*, but our checks have shown that it should have been Si Di Wen . Xi Xun . Huang*. His penname is "Ling Hu Chong", under which his writings normally appear. His penname is said to have been derived from a character in the martial arts novels by Jin Yong. Two years ago, Mr "Ling Hu Chong" had to make a public apology to Ms Patsy Wong for defamation.

Pursuing some contemptible and ulterior motive, the *Chinese Herald*, working on their own, put together a "news story" about an assault by our chief editor Chen Weiming. When this was exposed by our newspaper, we received many phone calls, letters and even personal visits to our newspaper offices from our readers. Apart from wanting to express their concern and good will towards the *New Times Weekly*, many readers provided concrete evidence of Wong Sik Fun's and XX's evil doings: copies of documents they had unlawfully fabricated, XX ruining someone else's family, so-called "love letters" detailing jealous quarrels and so on. There were countless examples of actions and behaviour that were in complete contradiction to the word "upright" and things have now gone too far to be kept hidden. We are intending to hand over part of these documents to the New Zealand Immigration Service and to other government departments of New Zealand. Generally speaking, we Chinese people believe that we should not wash our dirty linen in public, because we don't want people in the mainstream community to think we are always "squabbling amongst ourselves". Yet it is due to exactly such an attitude that a small handful of opportunistic wrongdoers have had the space to operate in. It is also due to the existence of such bad people in the midst of our Chinese community





that we cannot enjoy a single day of peace; only after we Chinese have got rid of such scum from around us can we then look to reassert our image as Chinese.

Our newspaper has conducted special interviews with some of the parties involved with regard to a number of really terrible things done by the *Chinese Herald's* Wong Sik Fun and XX. In order to help the Chinese people at large to recognise their real "non-upright" nature, we will feature a series of these interviews in our newspaper for our readers. Furthermore, if there are any victims who need help, our newspaper will do the best it can to help them. Please contact our newspaper. Our phone number is 8286368.

The following is an excerpt from our interview with Mr Dai Wei, a former director of the *Chinese Herald*. We have selected him as an involved party for our first feature under the title 'In-depth Report on the Migrant Community: The Truth about the *Chinese Herald* as an "Upright" Newspaper.' This is to provide some inspiration to other victims, since during Mr Dai Wei's struggle with the evil forces of the *Chinese Herald's* Wong Sik Fun and XX, he had to resort to legal channels for resolution. His experience can serve as a strong and successful example to those people who are trying to resolve things through legal channels.

Reporter: Do you understand the personality of Wong Sik Fun?

Dai: Having worked with him for such a long time, you could say that I have a very deep understanding of him. He is an insidious person, who is never open and aboveboard. He does things in a disgusting way. When he realises that you are weak, he will bully you. If he thinks you are someone strong, he will try and curry favour with you and be close to you. If he cannot achieve this, he keeps a great distance from you. It was on account of the various despicable things he did, that to my knowledge, he nearly got chopped up on three occasions. I helped him





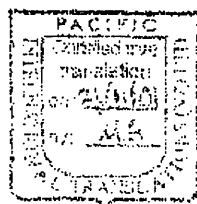
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sort it out on one occasion. On the other two occasions, it was his former wife's younger sister, or as you would say, his in-law, who went to help "talk it over" and who managed to resolve things amicably for him. Otherwise, Wong Sik Fun as you see him now would be missing an arm or a leg.

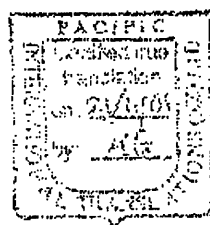
Reporter: How did you come to cooperate with him on running a newspaper?

Dai: To start with, we ran a restaurant business together. He did not have much capital, and there was a person from Hong Kong who had a bit of money. I had a small amount of money, so we set up the restaurant together. Wong Sik Fun used to work as an accountant, and all our receipts and disbursements were handled only by him. But because the accounts became messy and so on, things were very unpleasant between him and another partner. But Wong, having such a lot of prior experience in litigation, gave up the running of the business voluntarily and wrote a letter of resignation. He then used some legal loopholes to force that partner to pay him various kinds of expenses. The whole thing ended up with that partner warning him to "wear protective clothing when he went outdoors". If I hadn't acted as a go-between, I'm afraid he would have had his legs broken long ago. I was very careful when I was his business partner; when it came time for any documents to be signed, I never ever felt safe with just the two of us there, and mostly had a third person present as a witness. I never ever regarded him as a friend. From day one of our partnership, I was watching out for him. We first bought the *News Weekly* from a mainland Chinese and started our business. At that time there was another partner from Mainland China, Mr G. Mr G was an editor by profession. Later on we also took over the *Chinese Herald*. All the while I was being very





cautious in my relationship with Wong. We were only on very superficial terms at a personal level. Over two years ago, XXX came to work for the newspaper. Her penname was XX and her English name was XXX. To begin with, she and Mr G planned to marry but then all havoc broke loose, and it was said that she was caught doing it in bed with Wong; G was extremely indignant but my view was that private matters should never be tangled up with business matters, so Mr G was made to quit. There was a change in our company and our business resumed again with Wong and me each holding 50% of the shares. But XXX began to make trouble and her love affair with Wong became more and more obvious to all, so, with the agreement of Wong, I gave her a job assignment which took her back to mainland China. I went away on a business trip too, to Hong Kong, but when I came back two months later, I discovered that XXX was acting as if she was the boss's wife. It was said that she went back to Mainland China for the sole purpose of obtaining a divorce, and left behind a very young child there. She came back to New Zealand and into the arms of Wong, becoming very arrogant and domineering in the office and was loud and noisy, badmouthing the employees behind their back, referring to the advertising salesperson as "beggars" despite the fact that they made such an huge contribution to the newspaper. It was really too much: she turned the lines of power upside down within the company, lording it over me, although I was a boss. I could not stand it any longer and told Wong that I would quit my shares and leave the entire newspaper business for them to run.





Reporter: Your request seemed to be reasonable, because if you don't share common objectives, it is hard to be in partnership with someone.

Dai: It was not as simple as you might imagine. Wong is very much a miser in money matters. Do you think he would be agreeable to paying out any money? In the beginning he did not agree, and rudely said, "If you want out, just go, but I'm not going to buy out your shares, and I won't sell mine to you either." I had no choice but to carry on working every day and swallow my resentment and anger. Due to our worsening relationship, we could not even stand the sight of each other. Finally on his own initiative he proposed that I should leave, with him deducting all the expenses we spent on setting up the newspaper business; he then told me that there was no money left. [He told me] how much was paid out for the office building rent, the phone lines, and the computers, so that, all in all, there was not a single cent left. If I wanted to go, I had to go empty-handed. There was absolutely no money left. I pointed out to him that, didn't the company business itself have a monetary value? I had put up a lot of money for the company to be set up. How could it be that my investment was not money? He then put together some figures which I accepted as I was so keen on getting away from them.

Reporter: Did he then pay you?

Dai: No way! Do you think he is that kind of a straightforward person? He only gave me a very small amount and then stopped. His excuse was either that he had no money or that he would pay me next month. There was delay after delay and he never once just simply gave me the money. What he was actually trying to do was to end up not paying anything. I had no choice but to instruct a solicitor to pursue collection. It was

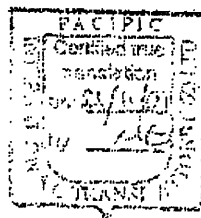




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fortunate that I had a thorough understanding of his personality, and also fortunate that I had kept evidence of everything from when we were working together, because oral evidence would have been no use. Untrustworthy people like him try to get out of things if they can; if they cannot, they use delaying tactics; if they cannot delay any further, they start to try to renegotiate. I thought very hard about how to handle him. Actually, I had to spend a large sum of money on instructing my solicitor, but I did it to see justice done. Someone like him, who has come from an accounting background and who has become battle-hardened after involvement in constant legal suits, can be said to be an expert in identifying legal loopholes. But I was not at all intimidated. During the period of time we spent trying to collect the debt, he deliberately wrote letters to my solicitor for no valid reason, just to try and increase my legal bill with my solicitor. It even went to the extent of him writing a letter to my solicitor just because he had seen a court scene during a television programme, saying he had seen a movie yesterday which had a court scene in it and so on and so forth. My solicitor had to spend time dealing with this, and had to phone me or write a letter to him. This all cost money. One day, I spotted him in a bookshop and went over and asked him when he was going to pay me my money. After he took off, he wrote a letter to my solicitor saying this and that, saying that he would be paying me the money, but that Dai Wei's attitude to him was such and such. Basically he just wasted my lawyer's time, pestering him about nothing. Petty people like him always take pleasure in causing trouble. Later on, when he really had no choice and just had to pay me, say \$900 dollars a month, he would make payments of various amounts of dollars and cents, at different

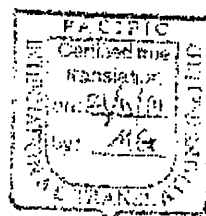




times, which meant my solicitor had to spend time doing the calculation. If it totalled less than \$900, letters would be sent to him, and he would then request to see the bank statement to check the amount, before feigning surprise and exclaiming: "You're right, there is an amount missing!" He really is such a nuisance of a person! After a very long delay, when confronted with the law, he finally just had to give me my money back.

Reporter: It's been a while now since your departure from the *Chinese Herald*, but have you heard anything about how they cheat people on immigration matters?

Dai: I find it hardly surprising that they are cheating and swindling people and doing terrible things. Wong is a very sly man, who generally uses his favourite trick of running the company he is involved with into the ground so it has no money, or is in the red, and its accounts show a deficit. But he has quite a few other companies and he breaks his capital up into small sums and has them transferred to these other companies of his. As far as I know, he has about six or seven companies; he probably has so many he doesn't even know how many altogether. After all, it only takes a phone call to register a company and less than fifteen minutes and twenty or thirty or forty dollars and it's all done, it's that easy. From what I know, some of his companies are not even registered in his name, but in XXX's name or in G's name instead. When he swindles someone and the case winds up in court, and it looks as if the other person is going to win, he will close his company and have himself declared bankrupt. This means that his victims are very unlikely to receive any money, so I feel a need to warn victims that if you begin a lawsuit, you need to watch out for Wong's way of doing





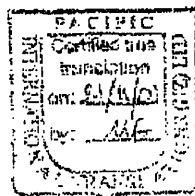
things which gives him lots of outs. In my last lawsuit, because I knew Wong so well and knew what he would get up to, I included even his family assets in my law suit, in other words, if his company did not have any money to pay me he would have had to sell his house to give me my compensation. Wong had not yet started to co-habit with XXX and he still had a house on the North Shore with his wife, so he was considered to have assets. I don't know which company purchased the house he has now and I don't know which company or which person bought the house he cohabits with XXX, but if you are going to bring a lawsuit against him you can check these details about him through legal channels, so as to pre-empt the situation whereby he uses the normal solvency laws to get out of paying in the event that he loses the lawsuit. He is someone who never believes himself to be bad and actually thinks he is someone really, really clever. "Just look at me, none of you is a match for me".

Reporter: Mr Dai Wei, Thank you very much for this interview. One more question, a very key question, how do you suggest handling such a bad person?"

Dai: There are two ways: one is to resort to legal means; the other is to go for "private" settlement. There are many ways of settling privately, it just depends on Wong's own judgement of the situation at the time.

Translator's Remarks:

* as rendered in Mainland China's *pinyin* romanisation.



APPENDIX 3



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HOW THE *CHINESE HERALD* SWINDLED THE CHINESE GOVERNMENT AGENCY IN AUCKLAND

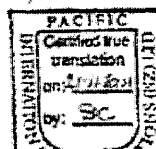
Zhi Qing Zhe [penname: "person in the know"]

It is public knowledge that the *Chinese Herald* is a pro-Communist newspaper. For a newspaper to have its own ideological slant is very normal, particularly in such a democratic country as New Zealand. You are quite at liberty to be pro-Communist or to defend dictatorial systems. There is nothing to stop you from being sycophantic either, as long as the recipient is happy about it and you feel good about doing it; no one is going to be really too bothered about it, as long as it is done using acceptable methods. However, there is something a little obscene in the way the *Chinese Herald* goes about being sycophantic.

The proprietor of that newspaper, Wong, in order to be sycophantic, actually went so far as to forge a letter condemning the Communist Party, and sent it on to the Chinese government agency in Auckland, pretending that it was a "Letter to the Editor", and saying that his newspaper had received the letter but that "our paper would not run it". His meaning was very clear, which was to express his loyalty to the Party. But, in times gone by, to express loyalty this way would have got him beheaded, as it is very clearly a case of someone "trying to deceive the emperor". And although his ploy was simplistic enough, it does reflect the great deviousness of a sycophant. We, in China, are all survivors of all sorts of political campaigns and we have seen quite a few sycophants in action around us. The methods they used to be sycophantic were all quite artfully intricate and varied. Some people would try in fact to lend support to the person they were being sycophantic to, while at the same time voicing some minor criticisms; some would pretend to be fair and impartial, but in reality were sycophantic, and some would be disgustingly nauseating in their total exaggeration as they tried to be sycophantic. But the version of sycophancy used by Wong, the proprietor of the *Chinese Herald*, is something different again, because it involves him in a degree of risk, which, if handled badly, might end up backfiring on him. This is because before he can be sycophantic, some forgery and deception is first involved, and the more venomous the wording in the forged document, the better, and the baser the means of deception used, the better. But, when the whole thing is finally brought to light, the deceived party would not only not appreciate his loyalty, but would be certain to feel totally embarrassed as well as totally furious.

With regard to the way that the *Chinese Herald* was able to be so sycophantic, if we assume that there really had been a letter to the editor criticising the Communist Party, would they

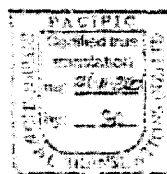
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not have been totally delighted? Not only would they not have to spend so much time and to go to so much effort to fake a letter, would they not then have been able to avoid incurring liability for the crime of forgery and been able to happily send off the letter to the Chinese government agency here and claim their reward? Although we still do not know whether this has been the case or not, judging from the shoddiness involved in the forwarding of the faked "article to the editor" to the Chinese government agency here, it does not take much deduction on any one's part to work out the answer to the above question.

That the *Chinese Herald* wants to be sycophantic towards the Communist Party would not necessarily lead us to want to criticise them. Newspapers, as do individuals, all have their own preferences for certain things, which need not concern other people. Yet given the excessive meanness displayed in the way they went about being sycophantic, we felt that public disclosure of it was better, in order to help the general public understand what is going on.

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APPENDIX 4



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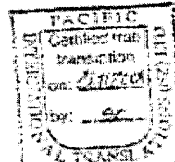
YOU BECOME CRIMINALLY LIABLE IF YOU SPOT A SNAKE BUT DO NOTHING ABOUT IT

Bai Lan

After reading the news printed in your recent issues, as well as the interview with Mr Dai Wei, I was astounded to learn that someone with such a bad record as Wong of the *Chinese Herald* could actually be playing the role of a moral instructor to mankind through the newspaper he runs. That he should have the audacity to try and educate the general public and push social justice and fairness, really is an insult to we readers. The longwinded article run by the *Chinese Herald* on 20 July in which it was claimed he was assaulted, did, despite its vulgarisms of language, arouse some sympathy from us for the assault, for did he not describe himself as being "primly dressed", and he was portrayed as someone courteous and restrained in manner; although I was never very much taken with his newspaper which delights in printing those so-called "letters to the editor" that are personal attacks, it had never occurred to me that he was actually such an immoral scumbag. Great! If he really was assaulted, it serves him right.

On 3 August, the *Chinese Herald* organised a bunch of people to write and publish such articles as "A Cry for our Personal Honour", "A Brief Commentary on the Solemn Declaration", "After Reading the *New Times Weekly's* Solemn Declaration", "A Few of my Views on June Fourth and Democracy" and so on. I have read the articles published in recent issues of the *New Times Weekly*, and the *New Times Weekly* did not insult all you staff members, so what is your outcry all about? What I think you should be making an outcry about is the humiliation you have to put up with by working for such a morally corrupt boss. A practitioner of journalism should, first up, show himself as a person of integrity, and an example and model for others. In the article "After Reading the *New Times Weekly's* Solemn Declaration", the author says that the "Solemn Declaration" is full of malicious language. This friend is supposedly a man of letters; but for an article to be devoid of adjectives is like a man standing there [in front of you] unadorned, unclothed and fully naked. Would you be happy looking at him? The "Solemn Declaration" is like a sharp knife that has been plunged into a vital spot, making the targeted party uneasy and unable to work out what he should be doing, and, this knife, by ripping off the target's outer covering with one painful peeling movement, is allowing his true nature to be revealed in all its full detail. It is not so unexpected that the other party should feel extreme annoyance. In fact, it would have been more disturbing if he did not show any feeling. You claim that you have

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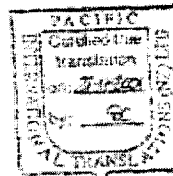




tried all along to handle the case with minimum publicity. No way. You were the one who started it, so how can you expect other people not to follow up on it. Was it not in your newspaper that the news first appeared? What are you afraid of? Do not the real picture and the truth come out through debate? Are you afraid of the light of day or are you afraid of the truth?

I became quite puzzled upon reading "A Few of my Views on June Fourth and Democracy" and wondered whether the author suffers from split personality, which has landed him up with double standards? On the one hand, he is denouncing the regime of white terror of the Kuomintang Nationalist Government during the February Twenty-eighth and April Twelfth Massacres, but on the other hand, he is affirming the regime of red terror of the Communist Party during the June Fourth Massacre. You might say that governments of any country around the world have the right to use violent means towards anyone who refuses to carry out decisions passed by governments in full accordance with the law. But why then do you not castigate the Communist Party for their defiance of decisions passed by the then government in accordance with the law way back at Jing Gang Mountain and in Yan'an, and for their setting up of a separate central government? (I do not believe he would dare to have done so, as he would have ended up a 'martyr' a long time ago, and would not have been around to produce such a masterpiece of writing today). His claiming not to be a Communist Party Member, or a Communist Youth League Member is probably a little too modest of him, as with his ideological stance, and his born-again outlook on life which makes him want to change the world, he not only should be a communist, he should be considered more of a communist than communists. Deng Xiaoping should be his apprentice, as even Deng Xiaoping did not dare to say that his decision to allow the June Fourth killings to go ahead should be regarded as a great contribution to the Chinese people. Such bold assertions on his part left him with no room to manoeuvre, and, having no further options available, he has had to bring out his final murderous weapon. This gentleman's kind and generous praises of Deng Xiaoping can only be described as being his great contribution to Deng Xiaoping, but if Deng Xiaoping really heard from his grave about what was going on, he would certainly try and come back to life and make his government officials give up their posts to him. He did not have any children or family members among the victims of June Fourth (it is not known whether this gentleman does have any children), so why not talk big about major contributions. What would have it been like for him if the victims of June Fourth had included some of his children or family members? He most certainly would not have felt his nose twitch and tears flow, but would have instead set off fireworks and held wild celebrations, because he would have then joined the "Great Contributors Club". He

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also says that the majority of Chinese people do not understand what genuine democracy is all about, implying that he is the only one who understands what democracy means, and that he hopes that China moves towards democracy as soon as she can. What a feeble smokescreen. Anybody who has read his masterpiece will be in no doubt about him being a genuine, out and out watchman for a tyrannical regime. He also goes on to say: "how surprising it is that he (she) should know the thoughts of these dead people....could it have been written by a dead soul and sent to the (X newspaper) from the nether world for publication?" How ridiculous can you get. How can you be a writer and be ignorant of such a basic literary device. Perhaps you do not know that our world still allows positive and healthy tendencies to exist? Perhaps you might then ask: quantify these positive and healthy tendencies, has anyone been able to physically see if these positive and healthy tendencies are white or red?" Well, if he did, he would have his head laughed off.

The *Chinese Herald* boasts that it is an upright newspaper, put together by upright newspeople. But it is headed by someone who cannot stay upright on his feet, and sways from side to side. So from where do they get their upright [adjective]? If someone is not upright, then his or her influence on others will not be upright. If we readers see that he or she is not upright and their behaviour really contemptible, but do not try to voice our criticisms but instead show indulgence, are we not hurting the general public? You become criminally liable if you spot a snake but do nothing about it. From time to time, we readers do need to issue some warning signals to them.

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