

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

CIV 2004-404-003311

BETWEEN	WINSTON RAYMOND PETERS Plaintiff
AND	TELEVISION NEW ZEALAND First Defendant
AND	RADIO NEW ZEALAND Second Defendant
AND	YVONNE TERESA DOSSETTER Third Defendant
AND	DAVID CARTER Fourth Defendant
AND	KENNETH SHIRLEY Fifth Defendant

Hearing: 14 September 2007

Appearances: B P Henry and TLV Walker for Plaintiff
W Akel and JWS Baigent for First Defendant
C A McVeigh QC and S M Dwight for Fourth Defendant

Judgment: 20 December 2007

JUDGMENT OF WOODHOUSE J

*This judgment was delivered by Justice Woodhouse on 20 December 2007 at
3:00 pm pursuant to r540(4) of the High Court Rules 1985.*

Solicitors / Counsel:
Mr B P Henry, Barrister, Auckland
Mr W Akel, Simpson Grierson, Solicitors, Auckland
Mr C A McVeigh QC, Barrister, Christchurch

[1] This is an application by the plaintiff (Mr Peters) for review of a decision of Associate Judge Christiansen on applications to strike out by the first defendant (TVNZ) and the fourth defendant (Mr Carter).

[2] In this proceeding Mr Peters brings claims in defamation against five defendants. There are three causes of action against TVNZ. The second cause of action concerns a television broadcast on the Holmes show. The essence of Mr Peters' contention in the TVNZ cause of action was that TVNZ was asserting that Mr Peters was guilty of serious misconduct. The Associate Judge held that the broadcast was not, in any part of it, or in its entirety, capable of bearing the meaning alleged. He struck out the pleadings alleging that meaning, but did not otherwise strike out the cause of action.

[3] There was only one cause of action against Mr Carter. The contentions as to meaning in respect of a press statement by Mr Carter were that Mr Carter was saying there was cause for suspicion that Mr Peters was a party to serious misconduct and there was cause for suspicion that he was in contempt of Parliament. The Judge held that the statements were not capable of bearing the meanings alleged. The cause of action was struck out in its entirety.

Factual background

[4] On 29 January 2004 an affidavit was sworn by the third defendant (Mrs Dossetter). The affidavit refers to a parliamentary select committee inquiry into the scampi industry in New Zealand and, in particular, the involvement in that industry of Simunovich companies. Mrs Dossetter stated that, at a meeting attended by Mr Peters and Mr Ross Meurant, representatives of the Simunovich companies agreed to pay Mr Peters and Mr Meurant \$300,000 so that their interests "would be looked after" in the select committee proceedings. Mrs Dossetter said in the affidavit that she believed the payment was made. Mr Peters is a member of Parliament and was a member of the select committee. Mr Meurant had been a member of Parliament in the political party led by Mr Peters and was subsequently employed by Mr Peters.

[5] On 22 June 2004 the affidavit was referred to in a news item broadcast by TVNZ. This included statements by Mr Carter which were the subject of the claim against him which has now been struck out. There is also a claim against TVNZ in respect of this broadcast. This claim is not presently relevant.

[6] On 23 June 2004 the fifth defendant (Mr Shirley) disclosed the contents of the affidavit in the House of Representatives. This disclosure is, therefore, subject to absolute privilege. In the evening of 23 June there was a Holmes show television broadcast by TVNZ. This referred to the disclosure of the affidavit in the House, referred to some of the content of the affidavit, contained some editorial comment, and broadcast interviews with Mrs Dossetter and Mr Shirley. This broadcast is the subject of the second cause of action against TVNZ now in issue.

Principles on review

[7] The decision under review is one made following a defended hearing and is supported by recorded reasons. Consequently r 61C(4) of the High Court Rules applies: the review is to proceed as an appeal by way of rehearing. Mr Peters has the burden of persuading me that the decision was wrong – that it rested on unsupportable findings of fact or applied wrong principles of law.

[8] Mr Akel for TVNZ, and Mr McVeigh QC for Mr Carter, also referred me to *Associated Newspapers Ltd v Burstein* [2007] EWCA CIV 600. That was an appeal from an interlocutory order concerning the meaning of words in a defamation action. At [11] the Court said, per Keene LJ:

It has been emphasised a number of times that this Court will be slow to interfere with an interlocutory ruling on meaning by a first instance Judge, though this approach of judicial self-denial will be somewhat more relaxed where the Judge has “erred on the side of unnecessary restriction of meaning” ...

However, such self-denial cannot mean that this Court will never intervene even where the Judge has adopted a generous approach to meaning. As was said in *Berezovsky [v Forbes Inc]* [2002] EWCA CIV 1251] at para [14]:

“There is no defensible way in which the Courts can adjust the meaning so as to include things which no sensible reading of the words would embrace.”

[9] I approach the question of meaning as determined by the Judge in accordance with r 61C(4) and assisted by the observations in *Burstein*.

Principles on striking out claims

[10] The applicable principles are well established and were not in issue before me. It was not argued that the Judge was in error in this regard. The only aspect requiring brief mention is that a cause of action, or pleading, should not be struck out if the perceived difficulty can be cured by an amended pleading.

Principles as to ascertaining meaning in defamation claims

[11] It was not argued for Mr Peters that the Associate Judge applied a wrong legal test for determining the meaning of the words in question. All counsel accepted that the relevant principles are as stated by Blanchard J in *New Zealand Magazines Ltd v Karen, Lady Hadley, No. 2* [2005] NZAR 621 at 625 (CA). I respectfully adopt the summary of the principles without recording them.

[12] Mr Akel and Mr McVeigh also referred me to *Gillick v Brook Advisory Centres* [2001] EWCA CIV 1263 at [7]; *Charleston v News Group Newspapers Ltd* [1995] 2 AC 65; *Lewis v The Daily Telegraph Ltd* [1964] AC 234. It is unnecessary to discuss these cases in any detail. However, in respect of the Holmes show broadcast by TVNZ, it is apposite to cite part of Lord Devlin's speech in the *Lewis* case. He said (at 277):

My Lords, the natural and ordinary meaning of words ought in theory to be the same for the lawyer as for the layman, because the lawyer's first rule of construction is that words are to be given their natural and ordinary meaning as popularly understood. The proposition that ordinary words are the same for the lawyer as for the layman is as a matter of pure construction undoubtedly true. But it is very difficult to draw the line between pure construction and implication, and the layman's capacity for implication is much greater than the lawyer's. The lawyer's rule is that the implication must be necessary as well as reasonable. *The layman reads in an implication much more freely; and unfortunately, as the law of defamation has to take into account, is especially prone to do so when it is derogatory.* [Emphasis added.]

[13] It is also important to bear in mind that, when the claim relates to a television broadcast, meaning is not conveyed solely by what may be discerned from a transcript of what was said. The message may be altered from what appears from the transcript by what is heard and seen. And it may be altered by television presentation techniques. In *Amalgamated Television Services Pty Ltd v Marsden* [1998] 43 NSWLR 158, in delivering the judgment of the Court of Appeal of the Supreme Court of New South Wales, Hunt CJ at CL said (at 40):

I recognise that the techniques of defamation by modern media communications have developed in a way which Alexander Pope could never have envisaged, and that the *application* of the principles laid down by the House of Lords and the High Court must keep up with those developments. The advent of radio and television has already resulted in trial Judges in cases involving such publications more readily leaving it to a jury to decide whether an imputation has been conveyed than they would in relation to a written document case.

And see *Channel 7 Sydney Pty Ltd v Parras* [2002] NSWCA 202 at [10].

The TVNZ strike-out application

The pleading against TVNZ

[14] The statement of claim records the full text of the broadcast, apart from a short segment at the end. TVNZ submitted that the entire broadcast needs to be considered. I agree. A transcript of the entire broadcast is reproduced as an appendix to this judgment. Some of the passages are marked or highlighted. The passages which are highlighted and also marked with two vertical lines in the right hand margin, are reports of what was said in the House of Representatives by Mr Shirley. Parts of these passages are further marked with a single vertical line in the left hand margin. These are statements which Mr Peters says in his statement of claim he does not rely on “except for the purpose of understanding the meaning of” other words in the broadcast. This is discussed below. At the end of the transcript there are underlined passages. This is the part of the transcript not reproduced in the statement of claim.

[15] The statement of claim refers to Mr Shirley's disclosure of the affidavit in the House. It then sets out the transcript of TVNZ's broadcast that evening (excluding the final sentences, as mentioned). As the Associate Judge noted, the remainder of the pleading against TVNZ is not easy to follow. In summary:

a) Paragraph 10 refers to the TVNZ reporter's words "Yvonne Dossetter says she still stands by her claims in the affidavit". From this it is pleaded that "the public would understand the first defendant was referring to" allegations as directly expressed in the affidavit and which are reproduced in para 7 of the statement of claim. These are as follows:

(a) "Around the same time, in April or May 2003 Ross told me that he had attended a meeting at Ivan Simunovich's olive farm. He said that Peter Simunovich, Ivan Simunovich, Vaughan Wilkinson, and Winston Peters were all at the meeting. Ross also said that at the meeting the Simunovichs agreed to pay Ross and Winston Peters \$300,000. Ross said that Ivan Simunovich had described it as a good investment for the Simunovich business. I took it from what Ross said that the Simunovichs were making the payment so that their interests would be looked after in the Select Committee hearing."

(b) "Although I did not actually see the brown paper bag or the cash change hands, I had no reason to disbelieve what Ross had told me with regard to the cash payment. He left me in no doubt that he was providing cash to Winston Peters from the Simunovichs. I did not question Ross' actions as our relationship was beginning to sour and I did not want to cause trouble or get involved."

b) Paragraph 11 says that Mr Shirley's reference to "the affidavit" would be known by the viewer to be a reference to the allegations in the affidavit, including those pleaded at para 7.

c) Paragraph 12 summarises some of the words used by Mr Shirley and then attributes meanings to some of those words. The essence of the meaning alleged is that Mr Peters was guilty of serious misconduct, had been involved in "serious criminal behaviour" and "was in

contempt of Parliament”. (I will refer to the various forms of wrongdoing alleged as “misconduct”.)

- d) Paragraph 13 states that Mr Peters expressly does not rely on certain words in the broadcast “except for the purpose of understanding the meaning of the words ‘Yvonne Dossetter says she still stands by her claims in the affidavit’”, with those claims including the words set out in sub-para a) above. The words not relied on except to this extent are the words in the transcript marked with the single vertical line.
- e) Paragraph 14 contains further allegations of meaning. Here Mr Peters expressly alleges that TVNZ itself was asserting, in essence, that Mr Peters was guilty of misconduct, including acceptance of a bribe from Simunovich companies in return for seeking to influence the outcome of the parliamentary select committee inquiry.

The Associate Judge’s decision

[16] After summarising the submissions for Mr Peters, the Judge dealt firstly with paragraphs 10-12 of the statement of claim. He said:

[I]t cannot be that by this pleading there has been a publication of the affidavit outside of Parliament. Clearly nowhere in the statement of claim has it been alleged that those particular affidavit allegations were broadcast by TVNZ, or indeed by anyone else.

[17] I agree that the pleading does not disclose any actionable broadcast by TVNZ of any part of the affidavit itself. However, it is not so clear that there was not an effective repetition by Mrs Dossetter at least, if not Mr Shirley, of the allegations in the affidavit. I will come back to this.

[18] The Judge then turned to the contentions in the statement of claim as to what TVNZ was itself asserting. The allegations are, principally, those in paragraph 14 of the statement of claim. The Judge recognised the need to look at the broadcast in its entirety. Looking at it in this way, and in the light of the pleading, he concluded that the broadcast was not capable of meaning that TVNZ itself had adopted the

allegations as true and was itself alleging the conduct reported on. He said that viewers would not regard TVNZ as itself adopting allegations in the affidavit, even if there was a sufficient link between what was broadcast and the content of the affidavit itself, which was not apparent. The Judge also pointed to express statements in the broadcast pointing to TVNZ's own position: reported statements being referred to as "allegations"; the reporting of a categorical denial on behalf of the Sumunovich companies; Mr Shirley's express statements that he was not making allegations; and similar expressions.

[19] His Honour concluded, in respect of the claim against TVNZ:

[M]y judgment goes only so far as rejecting the notion that a reasonable person of ordinary intelligence, general knowledge and experience of worldly affairs, even reading between the lines, would consider that the Holmes show asserts Mr Peters had been guilty of either serious misconduct or contempt of Parliament.

The formal order was to strike out pleadings alleging that the meaning conveyed by the TVNZ broadcast was that Mr Peters was involved in serious misconduct, that his conduct was potentially criminal, or that he was in contempt of Parliament.

Submissions for Mr Peters on the TVNZ claim

[20] It appears that the main thrust of the submissions for Mr Peters before the Associate Judge was that the broadcast included assertions by TVNZ itself that Mr Peters was guilty of misconduct. This submission was maintained before me by Mr Henry. But the main focus was on the proposition that TVNZ, in effect, broadcast a repetition by Mrs Dossetter of the statements made by her in the affidavit, which allegations up to that point had not (apparently) been broadcast by any actionable means. The way in which this part of the argument was developed before me by Mr Henry does not appear to have been before the Associate Judge.

Submissions for TVNZ

[21] At the forefront of Mr Akel's submissions for TVNZ was the importance of "the role of the media in a free and democratic society". He referred to judicial

observations in this regard as well as s 14 of the New Zealand Bill of Rights Act. This was the broad underpinning of a submission that TVNZ was merely reporting a matter of legitimate public interest, that this would be understood by viewers, and the meaning to a reasonable viewer would be, at most, that TVNZ was saying that there were grounds for inquiry. Mr Akel emphasised the “flags” to viewers that TVNZ was solely reporting allegations and not itself making allegations. This was the point made by the Associate Judge and referred to above.

[22] In respect of the pleading of part of the content of the Dossetter affidavit, in para 7 of the statement of claim, Mr Akel submitted: “While viewers would have knowledge of the existence of the affidavit, they would have no knowledge of the contents and would be unable to obtain a copy”. For this reason, it was submitted, the broadcast had to be considered solely on its own terms, without reference to the specific contents of the affidavit.

[23] TVNZ did broadcast, through Mr Shirley’s direct words or by summary, some of what was allegedly contained in the affidavit. It was submitted that there could be no reliance on this because it was a report of the words used in the House of Representatives and reliance on this would call into question what was said by Mr Shirley in the House.

Discussion

[24] I am satisfied that the Associate Judge was, with respect, correct in his conclusion that the TVNZ broadcast is not capable of meaning that TVNZ itself was asserting that Mr Peters was guilty of misconduct. But I am also satisfied, contrary to the submission for TVNZ, that the broadcast is capable of meaning that TVNZ itself was asserting that there were grounds for suspicion that Mr Peters may have been involved in misconduct. I am also satisfied, on the point not apparently developed before the Associate Judge, that there is an apparent basis for a separate cause of action to the effect that TVNZ broadcast a direct allegation by Mrs Dossetter that Mr Peters was in fact guilty of misconduct.

[25] Because of the shift in emphasis of submissions for Mr Peters from the submissions to the Associate Judge and those to me, it is unnecessary to discuss the Judge's conclusion on meaning. A reasonable reading of the text of the broadcast, with full allowance for what may have been discerned aurally and visually, does not convey an assertion by TVNZ itself of misconduct.

[26] Contrary to TVNZ's submission, however, a fair reading of the text is capable of conveying the meaning that TVNZ itself was asserting that there were grounds for suspicion that Mr Peters may have been involved in misconduct. This is conveyed at least by the following:

- a) The TVNZ reporter, Ms Janes, at the foot of the first page:

... Mr Peters strenuously denied the accusations.

But the story just wouldn't go away.

This was followed by a statement from Mrs Dossetter.

- b) On the second page Ms Janes reported that Mr Peters said he had not known that Mr Meurant was working for Sumunovich Fisheries as well as, at the time, working for Mr Peters. This might be seen as one of the "flags" referred to in the submissions for TVNZ as indicative of TVNZ's neutral reporting. However, this is to be contrasted with TVNZ's own statement, through Mr Holmes at the commencement of the broadcast, that "Mr Meurant worked for both Mr Peters and Sumunovich Fisheries during the scampi inquiry".
- c) Perhaps most significantly, Ms James' report on the second page that Mr Peters said he did not know Mr Meurant was also working for Sumunovich Fisheries, was immediately and directly challenged in the following segment by TVNZ itself, not by anything taken from Mr Shirley's disclosure in the House of Representatives or anything asserted by Mrs Dossetter on the Holmes show. TVNZ referred to details of a phone account TVNZ had obtained. The plain assertion being made in this segment is that Mr Meurant, on two occasions

when the Parliamentary Select Committee was about to meet, had telephone discussions with Mr Sumunovich or his associate, Mr Wilkinson, and separately with Mr Peters, with the conversations being in very quick succession. TVNZ recorded the precise timing of each telephone call and the length of each call. Mr Henry, in his submissions for Mr Peters, gave emphasis to this part of the broadcast. There was no direct argument to the contrary for TVNZ.

[27] The meaning I have found is not a finding contrary to the Judge's conclusion. It is also one which takes no account of the visual, aural and technical aspects of a television broadcast; these are unlikely to modify the meaning contrary to my conclusion.

The repetition cause of action against TVNZ

[28] The existing pleading of the second cause of action against TVNZ contains the substance of a cause of action to the effect that TVNZ defamed Mr Peters by broadcasting Mrs Dossetter's effective repetition of the allegations made in the affidavit.

[29] I do not agree with the submission for TVNZ in this regard, the essence of which is set out at [22]-[23] above. The first part of the submission is directed to the adequacy of the pleading, rather than a question of principle as to whether regard can be had to extrinsic evidence to prove that a publication bore a defamatory meaning. As stated by the Court of Appeal in *Hyams v Peterson* [1991] 3 NZLR 648 at 656:

It is clear that an extrinsic fact known to readers of an article may be proved in order to show that the article refers to a plaintiff or bears a defamatory meaning.

And as *Hyams* also makes clear, the extrinsic evidence may be what was disclosed in the House of Representatives. TVNZ objected to the pleading in para 7 of what was expressly alleged in the Dossetter affidavit. This may be capable of being rectified by re-pleading. If it is alleged that the Dossetter affidavit, or paragraphs in it, was disclosed in the House, or by some other means was accessible to viewers of the

Holmes show, and if it is alleged that viewers would have had knowledge for that reason, then these matters should be pleaded.

[30] The second limb of TVNZ's argument was a submission that this case does not fall within a different aspect of the principles stated in *Hyams v Peterson*. I do not agree with the submission that a claim based on Mrs Dossetter's affirmation, on the Holmes show, of what she said in the affidavit, brings into question what Mr Shirley said in the House of Representatives. Mrs Dossetter's statement that she did not resile from what she said in her affidavit comes within the principle affirmed by the Privy Council in *Jennings v Buchanan* [2005] 2 NZLR 577. In that case, Mr Jennings made a defamatory statement in the House. Outside the house he was interviewed for a newspaper and said he did not resile from the claim he had made in the House. The judicial committee said, at [18]:

The situation is analogous with that where a member repeats outside the House, in extenso, a statement previously made in the House. The claim will be directed solely to the extra-parliamentary republication, for which the parliamentary record will supply only the text.

[31] Although in this case the disclosure in the House was by the Member of Parliament, Mr Shirley, and the impugned statement is that of Mrs Dossetter on the Holmes show, there is no difference in principle.

The claim against Mr Carter

The statement of claim

[32] The claim against Mr Carter struck out by the Associate Judge was an amended claim. An earlier claim was the subject of a strike out application determined by Paterson J on 5 November 2004. The question before Paterson J was whether the words now in question (and another statement no longer relevant) were capable of meaning that Mr Peters was guilty of serious misconduct. Paterson J held that they were not.

[33] The amended pleading as to meaning is that Mr Carter was saying there was “cause for suspicion” that Mr Peters was involved in serious misconduct. Mr Carter contended before the Associate Judge that the words were not capable of bearing this lesser meaning. The Judge agreed.

[34] The allegedly defamatory statement by Mr Carter was at a press conference. The statement as pleaded in paragraph 37 of the third amended statement of claim is:

I immediately passed it [the Dossetter affidavit] to the Speaker. The allegations contained in this signed affidavit were very, very serious and I felt the Speaker of Parliament had to be aware ...

... the Speaker has now come back to me and said that if I think the allegations are serious then I should formally write to him suggesting that he investigate.

I sent it [the Dossetter affidavit] to the Speaker seeking his advice as to what to do with this affidavit. The response I got from him gave me no choice but to formally lodge it with the Speaker for him to determine whether it is in fact a breach of standing orders.

[Reporter]: Isn't there a risk that this is playing into someone else's political agenda?

[Mr Carter]: It's not for me to determine whether the allegations are correct or not. It is a signed affidavit and on that basis it cannot simply be buried. It has to be resolved one way or the other.

[35] In paragraph 38, and the only other paragraph of relevance on the present application, there are statements of two types. The first are, as the Associate Judge said, “little more than a verbatim account of what was said”. These are the statements in the first five bullet points of paragraph 38. The last two bullet points are the central allegations of meaning to the effect that Mr Carter was saying that there was “cause for the suspicion that [Mr Peters] was a party to serious misconduct in the course of the Select Committee” and “there was cause for suspicion that [Mr Peters] was in contempt of Parliament”.

The Associate Judge's decision

[36] The Associate Judge noted the two types of allegation in paragraph 38. As to the first he observed, without formally concluding, that the pleading may be

inadequate because it fails to convey meaning as required by s 37(2) of the Defamation Act 1992.

[37] On the central issue of meaning, the Judge's conclusion was as follows:

15. I consider that the statements made by Mr Carter are capable of bearing these meanings:
 - i) Mr Carter had received an affidavit which contained serious allegations in it
 - ii) Mr Carter referred the affidavit to the Speaker for inquiry because there was a possibility that the plaintiff may or may not have been guilty of breach of privilege and/or misconduct; and
 - iii) Mr Carter could not say whether the allegations were correct or not.
16. ... They do not go so far as to say that Mr Carter gave the impression that there were any reasonable grounds for suspicion that Mr Peters had been a party to serious misconduct or was in contempt of Parliament. There is nothing to suggest that Mr Carter adopted the allegations. He passed no comment about the merit of them. He specifically stated it was not for him to judge "whether the allegations were correct or not".

[38] The Associate Judge also referred to the fact that Mr Carter was chairperson of the select committee, as well as a Member of Parliament, and this was a context which would be understood by reasonable listeners and viewers as, in effect, supporting the conclusion that Mr Carter was not himself making any adverse imputation against Mr Peters, but simply acting responsibly by referring the affidavit to the Speaker.

Submissions for the parties on the Carter claim and discussion

[39] I agree with the Judge's conclusion that the statement by Mr Carter does not mean there was cause for suspicion that Mr Peters was a party to serious misconduct or that there was cause for suspicion that Mr Peters was in contempt of Parliament. It is convenient to deal with Mr Henry's submissions in the course of my discussion.

[40] In his submissions for Mr Carter, Mr McVeigh referred first to the pleading in the first five bullet points of paragraph 38; those which the Judge indicated appeared to be an inadequate pleading because it is not a pleading as to meaning but rather “an almost verbatim repetition of the words” said to have been used by Mr Carter. I agree. For this reason, and because of my conclusion on the main issue, it is unnecessary to consider this aspect of the pleading any further.

[41] In respect of the central issue of meaning, as pleaded in the last two bullet points of paragraph 38, Mr McVeigh supported the Judge’s reasoning as well as his conclusion. He advanced alternative grounds for striking out the claim. Again, it is unnecessary to discuss the detail of this submission because of my conclusion on the main issue.

[42] Mr Henry referred to a statement of Patterson J in the 2004 strike-out judgment. The Judge said he could see no objection to an amended pleading that Mr Carter’s statements were capable of meaning there was a suspicion of serious misconduct or contempt of Parliament. Mr Henry, properly, did not advance this as creating some type of estoppel. Moreover, Mr McVeigh pointed out that there was no argument on the matter. I am satisfied there was no error by the Associate Judge in treating the hearing before him as an original hearing on the new meaning contended for.

[43] Mr Henry submitted that the Judge, at [15] (see [37] above) “over simplified” Mr Carter’s statement. Mr Henry undertook a careful analysis of particular words. He submitted that the expression “very, very serious” was inflammatory and designed to emphasise to the viewer the gravity involved. He said that Mr Carter’s reference to a “signed” affidavit had a similar effect. I do not agree that statements such as these, considered in isolation or, as they should be, in context, mean that Mr Carter was saying there was cause to suspect Mr Peters of misconduct. Mr Carter is doing no more than describing the allegations as serious. Double adjectives such as “very, very” in relation to the seriousness of allegations, makes no difference to the message conveyed in respect of Mr Carter’s belief. The same applies to Mr Carter’s comment that the allegations were in “a signed affidavit”. No reasonable listener or viewer would take that as meaning that Mr Carter considered there were grounds for

suspicion because the allegations were in an affidavit. In context, the reference to the affidavit is part of a different meaning conveyed by Mr Carter; the matter could not be left up in the air and the responsible way of dealing with it was to refer it to the Speaker.

[44] Central to Mr Henry's submissions on meaning was the proposition that, because the Speaker had referred the affidavit back to Mr Carter with advice that he should refer it back formally if he thought the allegations were serious, and Mr Carter had then formally referred it back, that amounted to a statement by Mr Carter that he had himself judged that there was cause for suspicion of misconduct by Mr Peters. Again, I disagree. The message conveyed by Mr Carter's conduct is no different from the message conveyed by his words. The matter needed to be dealt with in a responsible way, but Mr Carter was not expressing or implying an opinion on the validity of the allegations as opposed to the nature of the allegations. As with the analysis of particular words, the analysis of some of the actions of Mr Carter needs to be put into the overall context. And all of the words need to be considered. Mr Carter could not be clearer in his answer to the reporter, including the unambiguous statement:

It's not for me to determine whether the allegations are correct or not.

[45] Mr Henry advanced further submissions to the effect that there were inconsistencies in the judgment under review. He submitted that the Judge's conclusion was inconsistent with his finding at [15] ii) that Mr Carter's statement meant "There was a possibility that the plaintiff may [or may not] have been guilty of misconduct." These, of course, are not the words of Mr Carter but an interpretation of them. If the Judge was intending to say that Mr Carter's statement meant there was a possibility of guilt then, with respect, I do not agree. And such a conclusion would come close to being contrary to the binding decision of Patterson J. But I do not consider that the Associate Judge was intending to say this.

[46] Mr Henry submitted that the Judge's finding that the statements meant that an investigation was warranted, logically meant that there are grounds for suspicion. This was because otherwise Mr Carter would be lodging a frivolous complaint. As a matter of analysis, the conclusion to the argument does not follow. The complaint

was lodged because the allegations were serious. That is, with respect, the end of the analysis.

[47] I am satisfied that the Judge was correct in his conclusion.

Result

[48] The application for review of the orders made by the Associate Judge is dismissed.

[49] Mr Peters has leave to file an amended statement of claim in respect of what is presently the second cause of action against TVNZ, which amended statement of claim may in that regard plead separate causes of action against TVNZ to the following essential effect:

- a) By the Holmes show broadcast on 23 June 2004, TVNZ itself asserted that there was cause for suspicion that Mr Peters may have been guilty of serious misconduct.
- b) TVNZ broadcast allegations by Mrs Dossetter which:
 - i) affirmed the report by TVNZ in the same programme of what was recorded in her affidavit; and
 - ii) if such be the case, affirmed express allegations in her affidavit, with a pleading in this regard to articulate the matters referred to in [29] of this judgment.

[50] If required, memoranda on costs should be filed for the defendants by 22 February 2008 and any memorandum in reply for Mr Peters by 7 March 2008.

APPENDIX 1

HOLMES
23 JUNE 2004

Holmes: First tonight... serious allegations were made in Parliament today under the protection of parliamentary privilege.

ACT MP Ken Shirley has read some of an affidavit. The affidavit says that a proposal was made at a meeting at the Simunovich Olive Farm that a payment of \$300,000 to Ross Meurant would be a good investment for the Simunovich business. Mr Shirley said, in Parliament, the affidavit says at the meeting were Ross Meurant and Winston Peters.

The affidavit was originally sworn and provided to the Holmes programme by Yvonne Dossetter, she is the former partner of Ross Meurant. Mr Meurant worked for both Mr Peters and Simunovich Fisheries during the scampi inquiry.

The story so far. This from Robyn Janes.

Janes: It's a story that involves a small prawn like crustacean... and four major players.

Simunovich Fisheries executives Peter Simunovich and Vaughan Wilkinson. New Zealand First leader Winston Peters. And advisor to both Simunovich and Mr Peters... former MP Ross Meurant.

Back in the early nineties Simunovich Fisheries cornered the lions share of the One Hundred Million Dollar scampi market.

It's that historical catch record that will be used to allocate scampi quota.

One inquiry has found that Simunovich Fisheries was treated more favourably than other scampi fishers by the Ministry of Fisheries.

In February 2003 a Select Committee inquiry into the scampi industry began.

New Zealand First leader Winston Peters often sat on that Committee.

In December the Committee cleared Simunovich Fisheries of any wrong doing.

In January of this year scampi was back in the headlines... Winston Peters was accused of having a series of free meals at Kermadec Restaurant... which is owned by Simunovich Fisheries... Mr Peters strenuously denied the accusations.

But the story just wouldn't go away...

Dossetter: I have some major concerns at the impartiality at the Government Select Committee inquiry regarding scampi issues

due to the relationships between Mr Peters, Mr Meurant and the Simunovich family companies.

Janes: Ross Meurant's former partner Yvonne Dossetter swore in an affidavit to TVNZ that Mr Meurant was working with both Winston Peters and Simunovich Fisheries during the time of the inquiry.

Dossetter: Ross would often talk to Simunovich Fisheries, Peter Simunovich, and then he would often talk on the phone then to Winston Peters.

Janes: In a relatively quick succession?

Dossetter: Yes.

Janes: Ross Meurant resigned as Mr Peters adviser ... the New Zealand First leader saying he had not known he was also working with Simunovich Fisheries.

Since then Holmes has obtained copies of Yvonne Dossetter and Ross Meurant's home phone bill.

It shows many instances where calls were made in quick succession to Simunovich executives and Winston Peters.

One example on the 15th of February last year... just two days before a Select Committee hearing:

12.38pm – Rings Peter Simunovich speaks for 3 minutes.

12.49pm – Rings Vaughan Wilkinson speaks for 6 minutes.

12.55pm – Rings Winston Peters speaks for 2 minutes.

12.59pm – Rings Winston Peters speaks for 1 minute.

Another example... the 18th of March... a day the Committee met:

7.37am – Rings Winston Peters speaks for 3 minutes.

7.42am – Rings Vaughan Wilkinson speaks for 5 minutes.

7.59am – Rings Vaughan Wilkinson speaks for 7 minutes.

8.19am – Rings Winston Peters speaks for 1 minute.

Yvonne Dossetter's affidavit also contained more serious allegations that have never been independently verified.

Today some of those were raised under Parliamentary Privilege by ACT MP Ken Shirley.

Shirley: Ross Meurant met at Simunovich's olive farm following the infamous Kermadec restaurant meal and the proposal was put that the payment of \$300,000 to Meurant would be a good

investment for Simunovich's business.

Janes: Mr Shirley went on to say that the affidavit said that Winston Peters was also at the meeting at the Simunovich's olive farm and Mr Shirley told Parliament the affidavit alleged the deed was done and the money was to be available from an Australian bank account.

Yvonne Dossetter says she still stands by her claims in the affidavit.

Back in February she told *Holmes* she believes the integrity of the scampi Select Committee inquiry could have been comprised.

Dossetter: I feel if there was to be a fresh hearing there would be the opportunity to expose my information along with that of other interested parties with regards to the impartiality of the original inquiry.

Holmes: So Ross Meurant first of all did not return our calls today. Winston Peters is overseas.

In a statement issued tonight, just before the news at 6 o'clock, Simunovich Fisheries managing director Peter Simunovich says "any allegation that the company has acted inappropriately in relation to Mr Peters, or any other politician for that matter, is without any foundation whatsoever and we reject it categorically."

He also says "previous allegations of corrupt behaviour and illegal behaviour made against Simunovich have been dismissed and this latest allegation is no different."

He says "the success of our business is based on hard work and risk taking – no one at Simunovich has ever resorted to illegal behaviour."

He says "the allegations are so serious I am considering what legal options are available."

Alright then with us now is ACT MP Ken Shirley who read from the affidavit in Parliament today.

Holmes: Ken Shirley, good evening.

Shirley: Good evening Paul.

Holmes: How did you get the affidavit?

Shirley: No, I am not prepared to divulge how I came by the affidavit.

Holmes: Did it come from another MP?

Shirley: No, I am not prepared to divulge how I acquired the affidavit.

Holmes: In reading the affidavit, or from the affidavit, today in Parliament are you making an allegation?

Shirley: No I stress I am making no allegation. What I am aware of is the incredibly serious nature of these allegations that are contained in the affidavit and I am looking for a process where it can be resolved. Possibly...

Holmes: The serious nature, the serious nature of what you're not telling us, I mean what is the point...

Shirley: Paul, I understand that TVNZ has a copy of the affidavit and have had it for a good long while so I take it you're in a position to divulge its content.

Holmes: Let me ask you this way, what concerns do you have about what you saw in the affidavit might indicate?

Shirley: Um, they are very serious allegations which I am sure you are aware of. We can't just leave those unresolved. They have been swirling around. It actually reflects on the Parliament as a whole and I think there are a number of courses of action required. Possibly Winston Peters needs to make a personal statement to the Parliament, perhaps it needs to go before the Privileges Committee, perhaps it needs a Commission of Inquiry, perhaps it needs to be referred to the Police. I think all of those are courses of action which need to be considered.

Holmes: Did you spell out in Parliament, however, what the principal allegation, concerns you had?

Shirley: I read out the...and revealed the contents of the affidavit.

Holmes: The affidavit of course, albeit a sworn affidavit therefore to lie in such an affidavit is perjury. The affidavit is one person's word, why put it in the public domain?

Shirley: Well I think its been swirling around, TVNZ has actually put it in the public domain previously as recently as last night again. Its very serious allegations that do need clarifying.

Holmes: Mr Simunovich denies any wrongdoing.

Shirley: Well that may well be, and that may well be the truth, and that's why we need a process to establish that.

Holmes: And you would prefer which process?

Shirley: Well its not a question of what I would prefer, it's a question of what's most appropriate.

Holmes: And you have spelt out a number of options or is this just politics?

Shirley: No its not. It's a very serious allegation. You can't just leave allegations like this floating in the air, as it were, it does need

resolving.

Holmes: Ken Shirley, the ACT MP, thank you very much for your time.

Shirley: Thank you.