IN THE DISTRICT COURT
AT AUCKLAND

CIV-2006-004-001784

BETWEEN	NEIL EDWARD WELLS, WYN HOADLEY AND GRAEME JOHN COUTTS AS TRUSTEES OF THE ANIMAL WELFARE INSTITUTE OF NEW ZEALAND First Plaintiffs
AND	NEIL EDWARD WELLS Second Plaintiff
AND	GRACE HADEN First Defendant
AND	VERISURE INVESTIGATIONS LIMITED Second Defendant
AND	ANIMAL WELFARE INSTITUTE OF NEW ZEALAND Third Defendant

Hearing: 13 March 2008 (formal proof and mitigation)

Appearances: N Wright for First and Second Plaintiffs
First Defendant in Person and as agent for Second Defendant
Assisted by McKenzie Friend, V Siemer

Completion of Written Submissions: 16 April 2008

Hearing of Late Interlocutory Applications of First and Second Defendants: 3 July 2008

Appearances: N Wright for First and Second Plaintiffs
First Defendant in Person and as agent for Second Defendant

Judgment: 30 July 2008

JUDGMENT OF JUDGE RODERICK JOYCE QC
[FORMAL PROOF PROCEEDINGS IN RESPECT OF CLAIMS OF PASSING OFF AND DEFAMATION AND INTERVENING BEFORE JUDGMENT APPLICATIONS]

PRELIMINARY

[1] I record that on 3 July 2008 (thus subsequent to the 13 March formal proof hearing) I heard applications by Mrs Haden, filed in May 2008 and thereafter, by which she ever so belatedly sought to revisit the later discussed matters of the striking out of her defences last July including the determinations of Judge Sharp which had led to that event and thus to this proceeding devolving into a matter of formal proof, subject to evidence in mitigation of damages.

[2] From a procedural point of view it is both necessary and appropriate to pronounce my determination in respect of those applications before embarking on the judgment which follows for, had that determination been the opposite of that next recorded, delivery of a substantive judgment at this juncture would not have been required.

STAY/REVIEW APPLICATIONS DISMISSED

[3] Those applications by which a stay of proceedings to allow (with any necessary leave) a review then sought of earlier interlocutory orders are dismissed altogether. The reasons for dismissal will issue separately and as soon as is practicable.

[4] I therefore turn to the matters that were at hand prior to the filing of those applications.

INTRODUCTION

[5] The statement of claim in this proceeding originally sought (for the first plaintiffs) passing off and Fair Trading Act 1986 (including injunctive) remedies against the first and third defendants and (in favour of the second plaintiff and against the first, second and third defendants) damages (and injunctive relief) for defamation.

[6] When the proceeding came before me on 13 March 2008, the scope of the claims had been reduced as is now explained:

- No remedies were now sought against the third defendant;

- As against the first and second defendants, and with respect to the passing off cause of action, injunctive relief only was sought;

- The second cause of action under the Fair Trading Act was no longer pursued at all; but

- The third cause of action for defamation (of the first plaintiff alone) was still pursued (in terms of the prayers for general and punitive damages against the first and second defendants and for an injunction in terms of para (b) of the plea for that relief).

HEARING CONFINED TO DAMAGES

[7] Strictly speaking, the hearing on 13 March 2008 was by way of formal proof, as the defences and counter claims of the defendants had been struck out in July 2007.

[8] Nevertheless (see later) the first and second defendants were entitled to give evidence in mitigation of damages.

THE PARTIES

[9] The first plaintiffs are trustees of a trust called the Animal Welfare Institute of New Zealand (known as AWINZ 2000, or AWINZ for short), the formal trust deed for which was executed on 1 March 2000.

[10] The second plaintiff (Mr Wells) was a founding, and is a continuing, trustee of that trust. He is employed by Waitakere City Council (Waitakere) as its manager (animal welfare) and has held a position as a part-time lecturer at Unitec.

BACKGROUND – 'Approved Organisation'

[11] In November 1999 Mr Wells wrote to the Minister of Agriculture advising that approval was sought for what he then called AWINZ 2000 (the acronym ascribed by Mr Wells to the bundle of trusteeship responsibilities for which he and others ultimately became formally accountable) to be declared an "approved organisation" under s 121 of the Animal Welfare Act 1999 (AWA).

[12] The AWA had been passed on 14 October 1999. It was to come into force, and did so, on 1 January 2000. Its s 3 provides that an "approved organisation" is "an organisation declared, under s 121, to be an approved organisation for the purposes of this Act".

[13] In direct terms, there is no more specific definition than that. The Shorter Oxford Dictionary relevantly offers for "organisation" the meaning "an organised body", and speaks of to 'organise' as to form a whole from interdependent parts.

[14] Section 121 itself provides:

> **121 Approved organisations**
>
> (1) The Minister may from time to time, on the application of any organisation, declare that organisation, by notice in the Gazette, to be an approved organisation for the purposes of this Act.
>
> (2) The application must include—
>
> (a) The full name and address of the applicant; and
>
> (b) The area in which the applicant will, if declared to be an approved organisation, operate as an approved organisation; and
>
> (c) Information that will enable the Minister to assess whether the organisation meets the criteria set out in section 122.

[15] Of those criteria, s 122 says:

> **122 Criteria**
>
> (1) The Minister must, before declaring an organisation to be an approved organisation for the purposes of this Act, be satisfied, by the production to the Minister of suitable evidence, that—
>
> (a) The principal purpose of the organisation is to promote the welfare of animals; and
>
> (b) The accountability arrangements, financial arrangements, and management of the organisation are such that, having regard to the interests of the public, the organisation is suitable to be declared to be an approved organisation; and
>
> (c) The functions and powers of the organisation are not such that the organisation could face a conflict of interest if it were to have both those functions and powers and the functions and powers of an approved organisation; and
>
> (d) The employment contracts or arrangements between the organisation and the organisation's inspectors and auxiliary officers are such that, having regard to the interests of the public, the organisation is suitable to be declared to be an approved organisation; and
>
> (e) The persons who may be recommended for appointment as inspectors or auxiliary officers—
>
> (i) Will have the relevant technical expertise and experience to be able to exercise competently the powers, duties, and functions conferred or imposed on inspectors and auxiliary officers under this Act; and
>
> (ii) Subject to section 126, will be properly answerable to the organisation.
>
> (2) The Minister may, in making a declaration under section 121, impose, as conditions of the Minister's approval, conditions relating to the establishment by the organisation of performance standards and technical standards for inspectors and auxiliary officers.

[16] In no other part of the AWA to which my attention has been drawn, is there to be found any specific to the AWA explication or qualification of the ambit of the word “organisation”.

[17] Certainly – vide e.g. s 122(1)(d) – the AWA contemplates that an approved organisation would be one capable of entering into employment contracts but, and

pertinent to what is to come, an unincorporated trust could achieve that per medium of the engagement of employees by the trustee or trustees.

[18] So it seems to me that an 'organisation' with potential for AWA recognition may be identified in terms of a state of affairs where two or more persons have joined in a common AWA purpose, which joinder might be as a group of affiliated persons, or as an incorporated society, or as trustees, or as an incorporated company, or as some like and composite entity.

[19] Certainly, I cannot discern any basis for saying that an AWA "organisation" must actually be incorporated. The need for that observation will come clear later.

AWINZ

[20] A year or more after the initial application, and 10 or so months after execution of its formal deed of trust on 1 March 2000, AWINZ was gazetted as an approved organisation under s 121 of the Act on 18 January 2001 under, initially, the name "Animal Welfare Institute of New Zealand (Inc)".

[21] By March 2001 that description had rightly been corrected by the deletion of the abbreviation "(Inc)" from all references to the name of the organisation. Notice of that correction was gazetted on 8 March 2001.

[22] The organisation has since performed various functions including the provision of animal welfare services to local authorities and the playing of animal welfare monitoring roles in the making of such as the "Lord of the Rings" trilogy, "The Lion, the Witch and the Wardrobe," "Bridge to Terabithia" and "Water Horse".

[23] AWINZ also administers what is called the New Zealand Fund for Human Research, which funds university research in alternatives to the use of animals in research, testing and teaching.

MRS HADEN

[24] The first defendant (Mrs Haden) describes herself as a licensed private investigator, as a director of the second defendant (Verisure) and as trustee of the third defendant which, at one point, was known as "Animal Welfare Institute of New Zealand (Inc)" and is now identified by her as the "Animal Owners Support Trust (Inc)".

[25] The virtual identity of the former name of the (no longer pursued) third defendant with that of AWINZ should not mislead the reader into thinking that Mrs Haden has ever been associated with AWINZ.

[26] As its full 'Verisure Investigations Limited' name would indicate, Verisure provides private investigator services and, in a practical sense, it is often the operational instrument, or alter ego, of Mrs Haden.

SCOPE OF HEARING

[27] In the events which have happened since this proceeding was commenced, not only all cross-claims by one or more of the defendants, but also all defences to the plaintiffs' now remaining claims, ended up struck out.

[28] Such claims and defences were despatched to the wayside when, despite ample opportunity to do so, relevant costs orders were not met with payment. This appears to have been a deliberate (in some way even seen by her, perhaps, as tactical) decision on the part of Mrs Haden rather than one born, for example, of impecuniosity.

[29] Thus, when the proceeding came before me on 13 March this year, it was one principally scheduled to proceed for the purposes of assessment of defamation damages, and for consideration of other relief, in a formal proof hearing context. The question of the scope of such a hearing thus arises.

[30] I start with R 463 of the District Courts Rules (DCR) which deals with the ability, where there is no defence, to gain judgment without a hearing in respect of a liquidated demand in money.

[31] The commentary to this rule in Lexis Nexis District Courts Practice (Civil) notes that:

> If the statement of defence has been struck out or withdrawn by the defendant, the defendant is in the same position as if he had filed no statement of defence and judgment by default may be obtained by the plaintiff: *Haigh v Haigh* (1885) 31 Ch D 478; *Urwin v Waite* [1993] DCR 913, 915.

[32] Of course (see below) there cannot be such a peremptory entry of judgment for compensation for damage or loss, the fact of which has to be proved.

[33] In *Urwin* (as in the present case) the defence had been struck out for failure to comply with interlocutory orders. In dealing with (and ultimately granting in the circumstances of that case) an application for relief in the form of a rehearing, the judge in question said at 915:

> … In my view, the statement of defence having been struck out, the situation then arises that the matter can be dealt with as if no statement of defence had been filed and, indeed, I view the judgment which was ultimately given in the matter as having been given pursuant to RR 467 and 468.

[34] Those Rules (the current High Court equivalents of which are RR 463-464) provide that:

> **467. Unliquidated Demand-**
>
> If the relief claimed by the plaintiff is payment of an unliquidated demand in money and the defendant does not file a statement of defence within the number of days stated for that purpose in the notice of proceeding, the proceeding shall be heard for the purpose of assessing damages.
>
> **468. Evidence at Hearing-**
>
> (1) At any hearing for assessment of damages under R 465(2) or R 467, no defendant shall, except by leave of the Court, adduce evidence, save in mitigation of damages.

> (2) The plaintiff shall adduce, by affidavit, evidence of such aspects of the defendant's liability as are required to be shown and evidence of the plaintiff's damages unless the Court directs otherwise.

[35] In the present proceeding, no application for such leave was made, nor either was there any, particular to the proceeding, direction as to the mode of evidence.

[36] Brookers' *District Courts Procedure* commentary to Rule 468 includes the observations that-

> The requirement to adduce evidence of such aspects of the defendant's liability as are required to be shown (words absent from the corresponding High Court Rule) begs the question of what aspects of the defendant's liability are required to be shown. *Dibble Bros Limited v Tamanui* [1971] NZLR 1144 held that, as in the High Court, liability did not have to be proved by a plaintiff in the Magistrates Court. However, the decision is of no direct assistance because the wording of the Rule was materially different in 1971.
>
> Rule 468 has to be construed in the context of RR 465(2) and 467, to which it refers. The relevant words of these Rules provide for assessing value or assessing damages; so under neither Rule is the plaintiff required to prove liability. That is confirmed by cases on the corresponding High Court Rules: *Barton-Ginger v Moulder* 12/6/86, Eichelbaum J, HC Wellington, A 311/80; *Morahan v Stubbs* (1993) 7 PRNZ 178. In light of RR 465(2) and 467 it is difficult to see what aspects of the defendant's liability are required to be shown at a R 468 hearing; except, perhaps, some damage where damage is an ingredient of the cause of action: *Morahan v Stubbs***.** In any event, a defendant would not, without leave, be entitled to adduce evidence to contradict any evidence of liability that the plaintiff is required to adduce.

[37] In *Barton-Ginger* Eichelbaum J had this to say:

> In *(Dibble)* Perry J discussed the nature of the proof required of a plaintiff proceeding under R 230 of the Code of Civil Procedure, the then equivalent of the present R 463. Perry J held that in such a case all that was required was proof for the purposes of assessing damages. He considered that the plaintiff did not have to prove the cause of action, in that case negligence. The rationale, as I read the judgment, was that the defendant having been served with the statement of claim alleging negligence, had chosen not to deny it. The conclusion that liability on the cause of action alleged against the defendant is assumed rather than proved is, I think, implicit in R 163. Logically, it also seems to follow from R 130(3) to the effect that every allegation not denied in a statement of defence, is deemed to be admitted. A defendant who does not file a statement of defence at all should not be in any better position than one who files a defence but fails to deny any particular allegation.

(I note that the emphasis is mine and that the R 130(3) mentioned is matched in the District Court Rules by R 136(3).)

[38] In the more recent *Morahan* case, Anderson J had said:

> In relation to R 463 *(in the DCR 467)* I do not accept that the effect of the Rule is to treat the default by a defendant as giving rise to the entry of judgment by default in respect of liability. If that were the case then R 464 would not make reference to leave of the Court in relation to the adducing of evidence otherwise than in mitigation of damages. R 464 would contemplate the setting aside the judgment on liability rather than a granting of leave to address matters not related to damages. The true effect of RR 463 and 464 *(DCR 467 and 468)*, in my opinion, is to define the scope of trial in terms where liability need not be established by a plaintiff and where the issues may be confined to damages. There are, of course, certain causes of action where liability is dependent upon proof of loss. One could not contemplate the entry of judgment in respect of liability when no loss has been proven since no cause of action could have arisen in such cases without proof of loss. Thus the plaintiffs, assuming conformity with all formal requirements in relation to R 463, cannot rely on that rule to treat any defendant as subject to judgment for liability.

[39] As far as matters for the present proceeding, the relevant points come down to the following:

- If the cause of action requires proof of damage then that proof must be offered even in the absence (whether for lack of the filing or because of the striking-out) of a statement of defence;

- Subject to that, and in the absence (however arising) of a statement of defence with pertinent denials, R 136 deems admitted every relevant allegation of a plaintiff in a statement of claim, at least insofar as same bears on liability; and, in particular

- The position in that last respect is no different where a statement of defence has been struck out; so that

- subject to such qualifications as now follow, and absent any particular order or direction to the contrary,

- the hearing is to be confined in evidential terms to

- such evidence as is pertinent to establish (the degree of) damage or loss and/or justify any other relevant remedy; and when, as here, there is a defendant's appearance;

- matters relevant to mitigation of damage; but

- nothing more unless leave has been granted otherwise.

[40] How, then, do those conclusions impact here? As the main focus of the hearing was the defamation claim, it is to that which I now turn.

[41] The Defamation Act has these provisions at ss 28-32:

> **28 Punitive damages**
>
> In any proceedings for defamation, punitive damages may be awarded against a defendant only where that defendant has acted in flagrant disregard of the rights of the plaintiff.
>
> **29 Matters to be taken into account in mitigation of damages**
>
> In assessing damages in any proceedings for defamation, the following matters shall be taken into account in mitigation of damages:
>
> (a) In respect of the publication of any correction, retraction, or apology published by the defendant, the nature, extent, form, manner, and time of that publication:
>
> (b) In respect of the publication, by the defendant, of any statement of explanation or rebuttal, or of both explanation and rebuttal, in relation to the matter that is the subject of the proceedings, the nature, extent, form, manner, and time of that publication:
>
> (c) The terms of any injunction or declaration that the Court proposes to make or grant:
>
> (d) Any delay between the publication of the matter in respect of which the proceedings are brought and the decision of the Court in those proceedings, being delay for which the plaintiff was responsible.
>
> **30 Misconduct of plaintiff in mitigation of damages**
>
> In any proceedings for defamation, the defendant may prove, in mitigation of damages, specific instances of misconduct by the

plaintiff in order to establish that the plaintiff is a person whose reputation is generally bad in the aspect to which the proceedings relate.

31. Other Evidence in Mitigation of Damages-

In any proceedings for defamation, the defendant may prove, in mitigation of damages, that the plaintiff –

(a) has already recovered damages; or

(b) has brought proceedings to recover damages; or

(c) has received or agreed to receive compensation –

in respect of any other publication by the defendant, or by any other person, of matter that is the same or substantially the same as the matter that is the subject of the proceedings.

32 Defendant's right to prove other matters in mitigation of damages not affected-

Nothing in section 29 or section 30 or section 31 of this Act limits any other rule of law by virtue of which any matter is required or permitted to be taken into account, in assessing damages in any proceedings for defamation, in mitigation of damages.

COURSE OF HEARING

[42] As contemplated by the relevant Rules, evidence in chief was exchanged in affidavit form prior to the hearing. Thus, although I allowed some additional oral evidence in chief on each side, the hearing was largely occupied with cross examination arising out of the affidavits.

[43] Despite the technical parameters (procedurally speaking) and given that Mrs Haden was a litigant in person, I made clear at the outset of the hearing that, speaking generally, I would not encourage any sustained endeavours to contain or restrain the nature of the cross examination. But I remained fully conscious that it would fall to me ultimately to determine, when necessary, where the boundaries lay.

[44] Thus it was possible for the hearing to proceed (as in fact it did) with little by way of interruption or diversion.

[45] In that process, and as a matter of fact, Mrs Haden was actually able to give, or allude to, all of the evidence she apparently had that might have been adduced at a defended hearing - although, of course, she could not run her originally pleaded defences as such.

[46] In my view, that pragmatic approach has been advantageous to the ends of justice.

STATEMENT OF CLAIM

[47] Nevertheless, because of the striking-out of all their defences and the recently discussed procedural consequences of that, Mrs Haden and Verisure must (because they are ones extracted from the statement of claim) be taken to admit the facts so far recited in this judgment. The references to the thus far recited facts are to be found in paras 1-7 inclusive of the statement of claim.

[48] And, in any event, and when giving evidence, Mr Wells verified under oath the contents of the statement of claim as being, to the best of his knowledge and belief, true and correct.

[49] The ensuing paras 8 and 9 of the statement of claim together assert (which assertions are also deemed admitted) that:

> Between March and July 2006, the first and second defendants sent numerous emails and facsimile messages to the trustees of the Auckland Air Cadet Trust, committee members of the Kaimanawa Wild Horse Preservation Society Inc of which (Mr Wells) is a patron, academic staff at Unitec, Waitakere City Council (including the Mayor, councillors and staff), and to the Mayor and councillors of North Shore City Council. These communications included incorrect statements about (Mr Wells) and cast a doubt on the legitimacy of AWINZ 2000. In March 2006, the defendant set up a website with a domain name almost identical to that used by AWINZ 2000.

[50] Paragraphs 10-16 of the statement of claim (likewise to be deemed admitted) say this:

> 10. The first and third defendants have registered, and continue to use, a name, being the name of the third defendant, which they were and are aware was identical to that of AWINZ 2000.

11. The first defendant has also registered a domain name, www.awinz.co.nz ("the website"). The website address closely resembles that used by AWINZ 2000, www.awinz.org.nz, which the first defendant knew when the website was established.

12. The website contains statements that recognise the existence of AWINZ 2000, but seek to directly challenge its legitimacy, and to assert AWINZ 2006 as the "legal AWINZ" in particular:

> "The Animal Welfare Institute of New Zealand came into existence because a trust with a similar name was being run under the pretence of being a legitimate organisation. Neil Wells a barrister, largely wrote the Animal welfare (sic) Act. In doing so he included the ability for an organisation to become an "approved organisation" so that it could delegate authority from the crown (sic) to Animal Welfare Officers.
>
> After the bill became Law, Wells applied to the then minister (sic) of Agriculture, Sutton, for the Animal Welfare Institute of New Zealand to become an approved organisation, this was granted and AWINZ became an approved Organisation.
>
> In reality the trust did not exist, there was no evidence of any other trustees other than Neil Wells. The website www.awinz.org.nz was registered in his name and documents that were produced only ever had his name on them.
>
> …
>
> We decided to legitimise AWINZ so that good comes out of bad.
>
> …
>
> Basically what it means is that we are a legal entity and the Neil Wells (sic) Group is a group of people who have formed a Trust which can only be represented by the individuals in it but the name itself has no legal standing.
>
> …
>
> Is it possible that the money you give intending it to be for the animals of Waitakere is actually going to other causes that you may not wish to support?
>
> By donating to a New Zealand registered legal trust you can have those assurances. By donating to a group of people who hide behind a veil of secrecy and no obligations to disclose their financial accounts you can never be certain what you are supporting.
>
> …
>
> To DONATE to the only LEGAL AWINZ CHARITY Click here"

[51] I interpolate that Mrs Haden has offered no evidence that her "legal AWINZ charity" has ever actually pursued any charitable purpose – indeed ever functioned at all: nor, for that matter, that she herself has, or ever had, any special interest in animal welfare.

[52] The pleading continues:

> 13. The website contains assertions that AWINZ 2006 has performed work that was actually carried out by AWINZ 2000. The statements on behalf of the third defendant seek to "take the credit" for that work and for the experience and reputation AWINZ 2000 has earned.
>
> 14. The relevant statements read:
>
> "Animal welfare in Movies
>
> Welfare officers have been involved in the overseeing the use of animals in the making of movies. The Animal Welfare Institute of New Zealand can provide suitably qualified officers for this task.
>
> The money earned after the wages for the welfare officers have been paid for the time will be used for our charitable purpose (sic)".
>
> 15. The first and third defendants in:
>
> (a) registering the name of AWINZ through incorporation under the Charitable Trusts Act 1957, knowing that AWINZ 2000 was an existing and operating charitable trust with an identical name;
>
> (b) registering the domain name www.awinz.co.nz and establishing the website, knowing that it was substantially similar to the existing AWINZ 2000 website address;
>
> (c) publishing on the website false information, stating or implying that:
>
> (i) AWINZ 2006 was responsible for conducting animal welfare work that was actually undertaken by AWINZ 2000; and
>
> (ii) AWINZ 2006 is a provider of animal welfare services, like AWINZ 2000, and has appropriately qualified staff;
>
> Have made misrepresentations calculated to confuse or mislead prospective customers or supporters of AWINZ 2000 and to injure its business and associated goodwill.
>
> 16. On 6 July the web hosting company responsible for hosting the website took action to remove various materials, including these statements from the site. However, the first defendant has indicated that she will seek to open a new website which includes the removed material.

[53] Obviously enough, those last two paragraphs have particular reference to the cause of action in passing off.

PASSING OFF

[54] The elements of the tort of passing off can be identified as:

(i) a reputation acquired by the plaintiff;

(ii) a misrepresentation by the defendant relating to that reputation; and

(iii) resultant damage to the plaintiff's business.

[55] Fleming's *The Law of Torts* 9th Ed at 738 says that:

> neither actual deception nor actual resulting damage need be proved. It is sufficient that the defendant's practice was likely to mislead the public [and] involved an appreciable risk of detriment to the plaintiff.

[56] The same text makes plain that the scope of the tort has now increased so that:

> … any misrepresentation in the course of trade to prospective customers or consumers of his goods or services, prejudicial to the plaintiff's goodwill, constitutes an actionable wrong in the absence of any exceptional competing policy.
>
> - ibid 785

[57] And at 786:

> … nor is protection "confined to traders" in the narrow sense of businessmen engaged in the marketing of goods…
>
> - ibid 786

[58] The verified (and undenied) content of the statement of claim plainly evidences such a cause of action. For the present, however, I revert to the principal cause of action in the proceeding.

DEFAMATION

[59] Paragraphs 20-38 of the statement of claim assert (and are to be deemed admitted) as follows:

> 20. Between March and July 2006, the first … defendant caused to be published on the website a number of defamatory statements regarding the second plaintiff.
>
> 21. The statements include the following:
>
> (a) "Neil Wells is unable to prove any legitimacy of his trust other than referring to the gazette entry of AWINZ which came about when he pulled the wool over the ministers (sic) eyes by pretending that AWINZ existed as a trust and was being registered …
>
> This has to be of concern to the council as your animal welfare Officers are founded on what appears to be fraud (sic). Waitakere has paid AWINZ a lot of money, if it does not exist … (sic) where has it gone it certainly is not a charitable trust as Wells claims it to be, because if it was we would not have been able to establish a legal charitable trust in the same name. That in itself has to be the proof that he cannot be taken on his word."
>
> (b) "What emerged was that AWINZ appeared no more than a name that Wells had given himself."
>
> (c) "I have previously alerted you to the antics of Neil Wells and his sham trust AWINZ."
>
> (d) "It also presents [sic] a Cover up by Wells. We wonder what has happened to al [sic] the money that has gone into the so called charity? Whose pocket did the money from movies go into, who received the balance of the money from movies such as Narnia and Lord of the Rings after the workers were paid."
>
> (e) "This page is dedicated to him so that his cover up can be exposed."
>
> (f) "[D]og control was not legitimately done for many years and is being actively covered up by Wells and Waitakere."
>
> (Emphasis added by the Court)
>
> 22. The statements set out in paragraph 21 above mean, or were meant to imply, that:
>
> (a) The second plaintiff has created an illegitimate "sham trust".
>
> (b) The second plaintiff is not properly accounting for moneys received by AWINZ 2000 or is not using such monies for the charitable purposes of AWINZ 2000.

(c) The second plaintiff is dishonest, and has taken money intended for charitable purposes for himself.

(d) The second plaintiff has acted fraudulently and/or illegitimately and/or he is involved in a "cover up".

23. In like vein and on 13 June 2006 *(and shades of later identified website assertions)*[1] the first defendant sent an email to the Mayor and Councillors of Waitakere City Council which included the following statement:

> "Neil Wells is unable to prove any legitimacy of his trust other than referring to the gazette entry of AWINZ which came about when he pulled the wool over the ministers [sic] eyes by pretending that AWINZ existed as a trust and was being registered …
>
> This has to be of concern to the council as your animal welfare Officers are founded on what appears to be fraud [sic]. Waitakere has paid AWINZ a lot of money, if it does not exist … [sic] where has it gone it certainly is not a charitable trust as Wells claims it to be, because if it was we would not have been able to establish a legal charitable trust in the same name. That in itself has to be the proof that he cannot be taken on his word."

24. The statements set out at para 23 above mean, or were meant to imply, that:

(a) the second plaintiff deliberately misled a Minister of the Crown in seeking to have AWINZ accepted as an approved organization;

(b) the second plaintiff has created an illegitimate trust;

(c) the second plaintiff has committed "fraud";

(d) the second plaintiff has misappropriated a lot of money paid to AWINZ 2000 by the Waitakere City Council; and

(e) the second plaintiff is untruthful and untrustworthy.

25. On 23 May 2006 the second defendant sent an email to the Mayors, Councillors and Community Board Members of Waitakere and North Shore City Councils, which included the following statement:

> "Neil Wells made false representations when he applied for AWINZ to become an approved organization."

26. The statements set out at paragraph 25 above mean, or were meant to imply, that:

(a) The second plaintiff made false representations when he applied to have AWINZ accepted as an approved organization; and

(b) The second plaintiff is untruthful and untrustworthy.

---

[1] The italicised words are the Court's interpolation.

27. On 14 May, the second defendant sent an email to the Mayors and Councillors and Community Board Members of Waitakere and North Shore City Councils, which included the following statement:

> "Neil Wells is trying to cover up a scam trust you have the right to know that your animal welfare officers have been working for a non existent trust…"

28. The statements set out at paragraph 27 above mean, or were meant to imply, that:

    (g) AWINZ is a "scam" or non-existent trust, which fact the second plaintiff is trying to cover up;

    (h) the second plaintiff is seeking to mislead the Mayors and Councillors and Community Board Members of Waitakere and North Shore City Councils;

    (i) the second plaintiff is untruthful and untrustworthy.

29. On 15 May 2006, the second defendant sent an email to the committee members of the Kaimanawa Wild Horse Preservation Trust Inc which included the following statement:

> "[Neil Wells] … treats animals better than his fellow humans, He [sic] did the dirty on me and as a result I discovered that he was behind a sham trust … AWINZ".

(The last statement is, as will later appear, particularly instructive.)[2]

30. The statements set out at paragraph 29 above mean, or were meant to imply, that:

    (a) the second plaintiff does not treat humans well;

    (b) the second plaintiff dealt with the second defendant in a dishonest or dishonourable manner;

    (c) the second plaintiff is hiding behind a "sham trust";

    (d) the second plaintiff is untruthful and untrustworthy.

31. On 17 March 2006, the first defendant sent an email to the Board members of the Auckland Air Cadet Trust which included the following statement:

> "Neil some more advertising that seems to sum you up".

32. There followed an illustration of a "Wheel of Physical Abuse" which included:

    (a) Emotional abuse;

    (b) Economic abuse;

---

[2] The Court's interpolation.

(c) Intimidation;

(d) Using Children or Pets;

(e) Using Privilege;

(f) Sexual Abuse; Threats; and,

(g) Isolation.

33. The statements set out in paragraphs 31 and 32 above mean, or were meant to imply, that the second plaintiff abuses people in the manner set out in the "Wheel".

34. On 12 March 2006, the first defendant sent a fax to the entire staff of the Animal Welfare Section of the Waitakere City Council, which included the following statements:

> "Have you been bullied by Neil Wells? I have been and I want to support any one who is being subjected to his cruel and unscrupulous practices …"

35. The statements set out at paragraph 34 above mean, or were meant to imply, that:

(a) The second plaintiff is a "bully", and treats people in a "cruel and unscrupulous manner";

(b) The second plaintiff spreads malicious gossip and indulges in "character assassination";

(c) The second plaintiff is corrupt; and

(d) The second plaintiff has "gutter ethics".

(Emphasis under 'first' or 'second' is to identify particular defendant prima facie responsible in each case)

36. The published statements particularised in paragraphs 20 to 35 above are defamatory of the second plaintiff.

37. As a result of the publication of those statements, the second plaintiff's reputation has been seriously damaged and he has suffered considerable distress and embarrassment.

38. The second plaintiff will rely on the following facts and matters to support a claim for punitive damages pursuant to s 28 of the Defamation Act 1992:

(a) The defendants did not confirm the correctness of the various assertions made, either adequately or not at all, before publishing the allegations. This constituted reckless disregard for the truth.

(b) The defendants disseminated their statements as widely as possible, not only publishing the defamatory material on the internet, but also sending correspondence to effectively

every organisation (and often every member of those organisations) that they knew the second plaintiff had connections with.

(c) The first defendant was motivated by malice, and has stated to the second plaintiff that she was "enjoying herself" with respect to the suffering and embarrassment that she was causing him personally and to Mr Warwick Robertson, Team Leader, Environmental, North Shore City Council, words to the effect that she wanted to destroy Neil Wells.

(d) The primary target to suffer as a consequence of the defendants' allegations was the second plaintiff, who is a founder and trustee of a charitable trust, attacks upon whom ought to be regarded by the law as particularly reprehensible.

SLANDER AND LIBEL

[60] Historically, the tort of slander described and encompassed the cause of action where the complaint was of publication in impermanent fashion such as by words, and the tort of libel the cause of action where the defamation was recorded in fashion more tangible or enduring, e.g. the written word.

[61] The principal distinction between slander and libel once lay in the necessity as regards the former to prove that the publication caused in an identifiable and particular way material, rather than simply reputation, damage.

[62] Of course, in New Zealand the distinction is now meaningless, as the old forms of action are now and undoubtedly fused into a single statutory cause of action for defamation – see ss 2 and 4 Defamation Act 1996 and its predecessor of 1954.

FIXING OF DEFAMATION DAMAGES QUANTUM

[63] In terms of the identification of the correct approach to the fixing of damages, I gratefully adopt the following from the judgment of Priestley J in *Reeves and Mountford v Mace* (CP 22/00, HC Tauranga, 15/06/01) where he said:

> [43] New Zealand case law provides little guide about appropriate levels of quantum. In the normal course of events the quantum of damages awards are left to civil juries subject only to the overriding discretion of the Court to set aside damages awards which are unreasonably high or excessive.

[44] Damages awards are relatively infrequent in New Zealand and despite a tentative request to the Court of Appeal by counsel in *Television New Zealand v Quinn* (supra) to set some guidelines, no attempt has been made to fix tariffs or scales. It would in my judgment, be unwise to attempt to limit the overriding discretion of juries or judges alone to fix appropriate compensatory damages in this area. The circumstances of each case are infinitely various.

[45] Two somewhat differing views were expressed on the issue of quantum in *Television New Zealand v Quinn* (supra) by McKay J and McGechan J respectively. McKay J considered that some guide to appropriate levels of damages could be found by looking at defamation verdicts generally:

> We have had many cases cited to us, and differing judicial views from many Judges in different countries. For my part, I do not believe any useful guidance could be obtained from comparing awards in personal injuries cases, even in the days before such claims were replaced by accident compensation. In England, where the Court in setting aside a verdict can itself fix the damages, it will use its own experience as a guide in order to achieve a degree of consistency. Comparisons with awards in other countries are of limited value. I believe the best guide is to apply the experience of other verdicts in other defamation cases to arrive at what appears to be the appropriate level in the particular case, and to recognise that a reasonable jury may properly go some distance above or below that figure. I do not suggest any detailed comparison of one award with another, as I believe that would be unhelpful. What is called for is rather a judgement of the particular case in the light of the overall experience. The relatively small number of cases that go to trial in New Zealand makes the task more difficult, but responsible counsel make a similar assessment when advising on the amount to be claimed, and in advising on settlement. Judges must do the same. [at 44-45]

[46] McGechan J, on the other hand, considered that precedent was of limited use other than as a yardstick to measure extremes:

> In my view, comparisons can have some value – not by any means determinative, but some value – at the extreme of determination whether an award is so irrational as to be set aside. It is a matter of common sense. If a figure is "completely unheard of" or "unparalleled", that may be some guide as to whether it is supportable. It is artificial to ignore that human reality. However, it is only at that extreme that the exercise is at all useful; and even then, given the very different circumstances of individual cases, applicable only with real caution. As I will develop infra in relation to submissions juries should be assisted with "ranges", there simply is not the data or consistency of awards in New Zealand to allow routine comparisons case by case [sic]. Comparisons are some guide to extreme limits; but within that, no guide to the appropriate.[at 53-54]

[47] The purpose of damages in defamation cases was examined by the Court of Appeal in *Television New Zealand v Keith* [1994] 2 NZLR 84, 86:

> Damages for defamation are intended to be compensation for the injury to reputation, and for the natural injury to feelings, and the grief and distress caused by the publication: see *Gatley on Libel and Slander* (8th ed, 1981) para 1453: *McCarey v Associated Newspapers Ltd (No 2)* [1965] 2 QB 86 at pp 104-105 per Pearson LJ. Damages can also be regarded as a

> vindication of the plaintiff and of his reputation. The Judge in this case referred to a comment by Windeyer J in *Uren v John Fairfax & Sons Pty Ltd* (1966) 117 CLR 118 at p 150, where he said:
>
> > It seems to me that, properly speaking, a man defamed does not get compensation for his damaged reputation. He gets damages because he was injured in his reputation, that is simply because he was publicly defamed. For this reason, compensation by damages operates in two ways – as a vindication of the plaintiff to the public and as consolation to him for a wrong done. Compensation is here a solatium rather than a monetary recompense for harm measurable in money.
> >
> > [per McKay J]
>
> [48] Some limits in respect of quantum were indicated by Cooke P in *Television New Zealand v Quinn* [1996] 3 NZLR 24, 37:
>
> > In relation to damages, liability for defamation having been established, the reasonable limit on the award is that it must not exceed what is sufficient or adequate to vindicate the plaintiff's reputation, assuage his or her injured feelings, and carry any punishment which is called for because the compensatory award is not sufficient or adequate for the purposes of punishment and deterrence: see for instance *Cassell & Co Ltd v Broome* (cit supra) at p 1089 per Lord Reid [at 37].
>
> [49] It was counsel's submission that I might derive some assistance from *Hawkins v Ayers* (High Court Auckland CP1246/92, 6 March 1996, Tompkins J) where the plaintiff sought damages of $200,000 against an unrepresented defendant who did not appear. The defamatory words in question took place against the background of Papakura local body elections in 1992 when the plaintiff was standing as a mayoral candidate. Defamatory words were allegedly used by the defendant during the course of a radio talkback interview and also in a pamphlet, 11,957 copies of which were distributed in the Papakura area. The defamatory words alleged misconduct in respect of a language school and also alleged political corruption on the part of the plaintiff's local body ticket.
>
> [50] The trial judge was satisfied that the defamatory statements had serious consequences on the election campaign which was then in progress and that the public reaction had a lasting effect during the campaign. In the view of Tompkins J the plaintiff was:
>
> > entitled … to an award of damages that would provide some solatium for the wrong that has been done to him, and the quantum of the award must be sufficient to signal to the plaintiff that his reputation has been vindicated.
> >
> > General damages in the sum of $130,000 was awarded.
>
> [51] I derive some assistance from *Hawkins v Ayers* (supra) as a guide to quantum. I approach the task of fixing quantum, however, having regard to the clear statements of principle relating to the policy and purposes of damages awards in defamation cases made by the Court of Appeal in the two cases I have mentioned.

[64] Priestley J also referred to *Quinn* on the issue of exemplary damages in New Zealand, noting the judgment of Lord Cooke where he said:

Exemplary or punitive damages are available in New Zealand where the defendant's conduct has been high-handed to an extent calling for punishment beyond that inflicted by any award of compensatory (including aggravated) damages. The Defamation Act 1992, s 28, preserves them by providing that in any proceedings for defamation punitive damages may be awarded against a defendant only where that defendant has acted in flagrant disregard of the rights of the plaintiff. There is little, if any, difference between that and the former law. Mr Miles was naturally not prepared to argue that the New Zealand Bill of Rights Act 1990, s 14, affirming freedom of expression, should lead to a modification of the common law so as to rule out this head of damages altogether. Section 28 of the Defamation Act alone would make any such argument very difficult, to say the least. Also the English Court of Appeal in *John* have not suggested that the European Convention excludes exemplary damages.

The latter case and *Riches v New Group Newspapers Ltd* [1986] QB 256 are examples of separate awards of compensatory and exemplary damages (a course perhaps reflecting contests as to whether the cases fell within the restricted categories wherein such awards are allowed in England). But the ordinary practice in both England and New Zealand is to direct a global award, even if the jury are satisfied that an added punitive element should be reflected in it. See for instance *Cassell & Co Ltd v Broome* [1972] AC 1027, 1072, per Lord Hailsham of St Marylebone LC, and *Taylor v Beere*, (cit. Supra). This has been thought to militate against an impermissible doubling up. One consequence of this practice is that it is not possible to conclude with certainty how often New Zealand jury awards have included something for punitive damages.

It may be convenient to insert a reminder at this point that the narrowing into three categories of the types of case in which exemplary damages may be awarded, which was carried out by the House of Lords per Lord Devlin in England in *Rookes v Barnard* [1964] AC 1129, has not been followed in New Zealand: see *Taylor v Beere* (cit. Supra); *Donselaar v Donselaar* [1982] 1 NZLR 97; *McKenzie v Attorney-General* [1992] 2 NZLR 14, 21 and the accident compensation cases there collected; *Aquaculture Corporation v New Zealand Green Mussel Co Ltd* [1990] 3 NZLR 299. A consequence in the field of defamation is that we are not troubled with the issue that has required attention in *John* and other English cases about whether a defendant news medium made the 'requisite calculation'. This will remain so after the present case. Whether the defendant calculated or presumed that the publication complained of would be profitable on balance, even allowing for possible liability in damages, will remain one factor relevant in considering exemplary damages. It will not be an essential condition of an award of such damages.

COURSE OF EVIDENCE

[65] In his evidence in chief (tendered per medium of his affidavit of 10 December last) Mr Wells noted steps taken by Mrs Haden during that year, such as the formation of a company "Animal Welfare Institute of New Zealand Limited" to which she sold or transferred the domain name www.awinz.co.nz; the changing of

the name of the third defendant "Animal Welfare Institute of New Zealand Incorporated" to "Animal Owners Supporters Trust"; and the obtaining of a trademark of the acronym "AWINZ".

[66] Mr Wells then spoke of his own background and circumstances.

MR WELLS

[67] Mr Wells has had a long involvement in animal welfare, extending over three decades. He was, at one point, Associate Head of the School of Natural Sciences at Unitec New Zealand, leading and lecturing in courses in animal welfare.

[68] He was a member, and later deputy chairman, of the Animal Welfare Advisory Committee for a period up until 1999. In that latter capacity and as a legal consultant (he is a barrister) to the Ministry of Agriculture and Forestry.

[69] He was involved in preparation of Cabinet papers for the bill which, in due course and final form, became the AWA. His work in this area received public commendation from a then Minister of Agriculture.

[70] He has been a member of the Animal Welfare Behaviour and Welfare Consultative Committee since its inception.

[71] This entity (ABWCC) includes representatives of AgResearch, Department of Conservation, Federated Farmers, Fund for Research and Technology, Waikato University, the Meat Board, Ministry of Agriculture and Forestry, Ministry of Foreign Affairs and Trade, Ministry of Research and Technology, New Zealand Veterinary Association, Poultry Industry, Royal New Zealand SPCA, Royal Society of New Zealand, the Animal Welfare Institute of New Zealand, Unitec New Zealand, Waikato University and the Wool Board.

[72] Mr Wells was contracted to write the first draft of what is now the AWA and it is obvious from his evidence that he had a close involvement with its progress thereafter. His contributions were acknowledged in speeches in the House from

government and opposition speakers during all three readings of the bill that finally became law.

[73] Mr Wells thus identifies a sizeable indeed catalogue of personal achievements in the sphere of animal welfare. Mr Wells no doubt mentions these matters for reasons including that both his name and work would be familiar to a considerable number of people with involvements, public and private, in that sphere.

[74] Mr Wells explained how AWINZ came to be.

AWINZ

[75] Its antecedents lay in a pilot programme by which Animal Control officers of Waitakere City were warranted as inspectors under the Animals Protection Act 1960. The programme ceased on the advent of the new Act.

[76] In 1998, Mr Wells and others (including the plaintiff Graeme John Coutts) had decided to form a trust under the name AWINZ, with the intent of qualifying as an approved organisation under the impending legislation. Mr Wells gave notice of that intent in a letter to MAF of 22 August 1999. By then the AWA was in its bill stages and thus not finally settled in its terms.

[77] Upon assent being given to the AWA on 14 October 1999, and by letter of 22 November that year, Mr Wells, calling himself ‘trustee’, wrote to the Minister of Food, Fibre, Biosecurity and Border Control seeking approved organisation status for the “Animal Welfare Institute of New Zealand”.

[78] As noted earlier (see para [20]), and at least in terms of a duly executed trust deed, the organisation in question did not formally come into being until that deed was signed on 1 March 2000. And here lies, as will soon become clear, the matter that has been at the heart of Mrs Haden’s conduct.

[79] On 19 December 2000 the Minister of Agriculture declared that, on the publication of his notice in the New Zealand Gazette, the Animal Welfare Institute of

New Zealand –in this judgment identified as AWINZ – would stand as an approved organisation under the AWA.

[80] Attached to that approval was a condition requiring the establishment of performance standards and technical standards for its inspectors and auxiliary officers, all of which were to be approved by the Minister.

[81] As has also been noted already (see para [20] above), that declaration was published in the Gazette on 18 January 2001 and in the following month corrected by deletion of the abbreviation "(Inc)".

CROSS-EXAMINATION OF MR WELLS

[82] The circumstances of the establishment of AWINZ comprised Mrs Haden's first, and primary, point of focus when she cross examined Mr Wells.

[83] At one point Mr Wells was asked:

> Q … If I was to say that I had formed a trust by trust deed, deed of trust, what connotation would you take, what would you expect to be in existence?
>
> A I would expect there to be a written deed of trust.

[84] Here Mrs Haden was referring to a copy of the application sent by Mr Wells to the Minister in question on 22 November 1999. The application, like its covering letter, was headed up "Animal Welfare Institute of New Zealand".

[85] Under the heading "Function of the Institute" it was stated that -

> A charitable trust has been formed by deed of trust as the "Animal Welfare Institute of New Zealand" (AWINZ). It is being registered under Part II of the Charitable Trusts Act 1957 … The deed of trust is set out at Appendix V.

[86] In light of that, and for the other reasons that now follow, I accept that anyone reading the application through would have been left with the impression that the trust was by then (21 November 1999) fully and formally established.

[87] There are references in the application to "the Institute's aims", and there is the statement that "as a basic axiom the trustees of AWINZ believe that animal welfare and animal control are inextricably linked".

[88] After reference to the requirements of the Act, there is "the Institute proposes to meet these criteria in the following manner …"; under the heading of "Accountability Arrangements" there is "the deed provides for the appointment of further trustees …; there is "Before appointing additional trustees the board will consult …" - and so on it goes.

[89] There is reference to what "the board" or "AWINZ" would do in the future, but not so as to detract from the impression clearly conveyed of a then existing organisation; especially as the application was signed off "For the Board of Trustees of the Animal Welfare Institute of New Zealand".

[90] As to the matter of incorporation as a charitable trust, and in response to further questioning by Mrs Haden, Mr Wells explained that:

> Yes, it was under consideration … MAF policy were indicating that they would require registration and a certificate of incorporation, but … as things finally progressed through the year 2000 MAF then determined it was not necessary for a trust deed to be registered and a certificate of incorporation produced in order for them to proceed with the application as an approved organisation.

[91] That answer did not serve to deter Mrs Haden from continuing to focus on the application's reference to AWINZ "being registered (in the obvious sense that such process was under way) under Part II of the Charitable Trusts Act…"

[92] In fact Mrs Haden took Mr Wells to 10.5 of the application where there was this sentence:

> - because the Institute will be registered under the Charitable Trusts Act 1957 and not the Incorporated Societies Act 1908 it will have no ordinary members. Thus the board of trustees will always be in control…

[93] From about this point, the application went on to set out what were described, in clearly current tense terms, as "the purposes" of the Institute.

[94] The point that Mrs Haden was setting out to make was one adequately captured when she said to me:

> What I'm trying to get at, Your Honour, is that a name in itself cannot apply for anything. An entity has to make the application.

[95] What Mrs Haden was aware of here was such as that, in a letter of 28 January 2000 to Mr Wells, a MAF senior policy analyst had said:

> Could you please provide documentary evidence confirming that the trust has been legally registered under the Charitable Trusts Act 1957.

[96] Mr Wells stated that, by the end of the first quarter in March, he was in fact still arguing with MAF as to whether incorporation was a necessity.

[97] Mr Wells (as part, obviously, of an ensuing dialogue) had emailed the author of that letter of 17 March 2000 asking for reconsideration of the registration requirement in terms including that:

> Unlike bodies corporate such as societies and companies, a trust becomes a legal person upon the signing of the trust deed, not from the date it is registered. Many trusts are never registered under the Charitable Trusts Act but are still legal persons….
>
> AWINZ can produce evidence that the trust is in being by providing a signed copy of the trust deed[3] and will give an undertaking that it will be registered with the Ministry of Commerce …

[98] Further cross examination of Mr Wells elicited that earlier (than the final 1 March 2000 form) drafts of the actual trust deed were in terms differing in some respects from the final version.

[99] The end point here is that the clear impression created by the correspondence and the associated application is of a trust having been formally set up by the time Mr Wells sent off the original application.

[100] That that was not the fact is not a finding that I see as in any way precluded by Mrs Haden's deemed admissions of the statement of claim and, indeed, it is, hopefully, a finding that might help to put Mrs Haden's contentions to rest.

[101] What that finding is not, however, is any kind of conclusion that there has ever been a rational basis for Mrs Haden's subsequent and much published pursuit of Mr Wells.

[102] I add for completeness, and with reference to that pursuit, that Mr Wells said in his affidavit:

> 36. Consideration was given to registering AWINZ 2000 under the Charitable Trusts Act 1957 but, as I was aware that new legislation was in the process of being introduced concerning charitable organisations which subsequently became the Charities Act 2005, I suggested that we hold off doing so until the new legislation was in place. This is a decision I now regret, as it left open for Mrs Haden to register her own charity using the same name as AWINZ 2000, and much of the grief that followed that is recorded in both this affidavit and the pleadings occurred as a consequence.

- That last is surely true.

[103] In his affidavit, Mr Wells went on to describe the involvement of AWINZ - an involvement, described as a significant part of its business - in the production of movies in the form of provision of independent animal welfare monitors. And he identified the movies that are mentioned earlier.

[104] It was here in fact that Mr Wells referred to paras 13 to 15 of the statement of claim and Mrs Haden's claims on the website www.awinz.co.nz that her then entity undertook movie monitoring work, which was not (on the evidence) the fact.

GENESIS OF MRS HADEN'S INTERVENTION

[105] Mr Wells' affidavit soon turned to how, in the first place and as he saw it, Mrs Haden had become involved in his affairs and the affairs of AWINZ.

[106] The following comprises paras 42-43 of his affidavit:

> 42. The Court has previously heard, in the context of the parties' respective strike out applications, the background to Mrs Haden becoming involved in my affairs and the affairs of AWINZ 2000. Briefly:

---

[3] As has been noted, that was signed on 1 March 2000.

(a) Both Mrs Haden and I were involved in a voluntary organisation known as the Auckland Air Cadet Trust (AACT).

(b) There was a falling out between the AACT and Mrs Haden, which resulted in her being removed as treasurer of that organisation.

(c) Mrs Haden was upset at her removal. Believing me to be the prime architect of that, she began the campaign of actions and defamatory communications which form the main body of the statement of claim. The Court has already concluded that her motivations for doing so were malicious and primarily aimed at seeking "revenge" against me.[4]

43. The primary forms which Mrs Haden's campaign have taken are:

(a) Publishing material on the internet designed to discredit AWINZ 2000, call into doubt its legitimacy and make unfounded assertions as to the morality and legality of its actions. One such example is pleaded at paragraph 12 of the statement of claim. Other examples have been collated and are annexed as Appendix J.

(b) Publishing material on the internet, and in the form of letters to various parties, designed to discredit and humiliate me, and to undermine my own reputation. Representative examples of such material have been pleaded in paragraphs 20 to 35 of the statement of claim. Many more examples exist, including a significant volume of material that post dates the statement of claim.

(c) Telephoning and emailing trustees of AWINZ 2000 in an apparent attempt to intimidate and upset them. In this respect, I refer to the affidavit of Mr Coutts, who provides relevant evidence of a recent example of such an exchange.[5] I am aware of several examples of such behaviour on the part of Mrs Haden, one of which led to the resignation of one of the original AWINZ 2000 trustees, Sarah Giltrap.

(d) Utilising the name of AWINZ Incorporated to interfere with the legitimate business activities of AWINZ 2000. This includes an attempt to access the financial records of AWINZ 2000, and a threat to procure funds held by AWINZ 2000. In that respect, Mrs Haden send to the plaintiffs in April 2007 an email which stated:

---

4 There has not, of course, been any substantive conclusion of this before now. It has only fallen for such consideration in this judgment.

5 This is a reference to Mr Coutts' affidavit which identified a recording of a telephone call made by Mrs Haden when obviously very upset. Inclusion of the detail of it in this judgment is unnecessary.

> "A strange thing happened at the bank yesterday.
>
> We went to the bank to open an account and found that we already had four in our name and we have well in excess of $100,000 in it in four accounts.
>
> Apparently only one signatory and one name associated with it. Very confusing. It was not a trading as account as you would expect but the name of the account is Animal Welfare Institute of New Zealand. That is our name. It was opened at Unitec and the accounts are kept at Mt Albert.
>
> The Bank is sorting this one out, they have their lawyers on to it.
>
> We also received a receipt as attached (blanked out though) and have made enquiries with the IRD.
>
> It appears that we are the only trust by the name of Animal welfare Institute of New Zealand that is listed as being able to offer donations tax free.
>
> The investigations unit was very keen to hear about the four accounts but warned us that if we were to give up the name at this point in time we could be aiding and abetting an offence by being an accessory after the fact.
>
> It puts us between a rock and a hard place but the good news is that we may be able to claim the money which is in our name so that we can cover the bills, unless legitimate ownership can be proved elsewhere."
>
> A copy of that email … was copied to Mayor Bob Harvey and Denis Sheard, Legal Counsel for Waitakere City…

[107] There can be no argument at all but that Mr Wells correctly identifies the genesis of Mrs Haden's unwanted by Mr Wells involvement in his activities, such as has led to this proceeding, for (see para [109] below) Mrs Haden admits as much.

MRS HADEN'S VIEWPOINT

[108] The following from Mrs Haden's evidence was instructive in that and associated respects.

[109] In response to my inquiry of Mrs Haden as to whether there was anything she wished to add to her affirmed affidavit, Ms Haden said this:

> A. Yes Your Honour. I believe that in any role in the public sector that the public have a right to know what is going on, especially when it comes to enforcement of the law and bodies that have a public role. I am very much old fashioned perhaps, and I believe that we have to have a society that is open and transparent, because only through open and transparence in Government bodies, local Government bodies and AWINZ is very, very closely connected to a local

Government, we should have the ability to question what is going on. I guess initially it happened because I had been severely aggrieved by Mr Wells telling lies about me and disposing of me from the Auckland Air Cadet Trust, where I have three children who are air cadets. I had been the treasurer and I had tried to save $8,000 by changing Banks and I was severely reprimanded for this. I attended a meeting and I can only call it being set upon, and for the next three months Mr Wells hounded me off the Trust and treated me like no other human being should treat someone who is willing to give their time. I have throughout my life been involved in scouting, girl guides and I have always supported my children, and of the very few people who are involved with Air Training Corp, I was there the longest because I've got three children and they're all in the air cadets, and of course over the years I'm the one who's seen projects from the beginning to the end, and I've heard the promises made at the beginning and I see how they've turned to nothing but dust in the end. I've seen these children who've put $50,000 in a project lose their investment, and all I was trying to do was to assist the Trust in remaining solvent. We were losing $1,500 a month. I expressed my concerns that the contract that was being given away to UNITEC, who was Neil Wells employer at the time, and for a project for which he received a citation was not a wise thing to do because we as the trustees of the Auckland Air Cadet Trust had a fiduciary duty to look after the children's wellbeing and the outcome. Now for expressing that and trying to invoice accurately I was kicked off the Trust. Now as a long serving ex police officer and a person who is community minded, I have to ask questions why this happens. I'm naturally suspicious and I can say that I did send an email to the trustees and say "hell have no fury like the wrath of a woman scorned". I was very, very angry, but that anger passed but from there on in I was already hauled before the Court and this whole thing just continued and I can only describe it to being held under in a swimming pool and every time you come for breath someone pushes you under again and there was another wave of attack. All I was doing when it came to AWINZ was to seek public accountability. I simply asked questions of the elected members of the Waitakere City Council as to what an Unincorporated Trust, who were the members, how did it come about and when we couldn't find an Incorporated Trust, myself and two others incorporated the name. We did that for no other reason than to prove that the assertions which were made at that time to it being a Body Corporate were false. The very first approach we have was at the beginning of June when Mr Wright's wife, calling herself Vivienne Parr phoned me late at night on a Friday night. She told me that I had to give up the name of the Trust and give up our website. Our website was there to advertise our Trust and we drew a distinction between what our Trust was and the one in Waitakere because we did not want the two to be confused. Now Vivienne Wright, Vivienne Parr, followed up her communications with me by saying that she would make a complaint against my private investigators licence. She then harassed our internet provider and Mr Wells and Mr Wright also tried to get out internet provider to take our website down. When all that failed we received the letter from Brookfields which said "you have to comply, you have to give up the name, you have to give up

> the website and you must give this undertaking and if you don't we'll sue you". We simply said "can we please met and discuss this and resolve it". By this stage we had paid for the website, we had paid for the name. It was a small amount and we were willing to discuss and resolve it because what we were seeking was accountability. Instead we were bombarded and bullied. I'm perhaps, having been an ex cop I've get this real thing about bullying. We've got too much bullying in our society. We look at children at school and we say you mustn't bully, yet they seem to get it from the adults out there, who don't give anyone an alternative, but do as I say, or else. So that's how the Court proceedings began…
>
> (Emphasis added)

[110] Later she said:

> Now I am a great believer that truth has got to be welcome in society, because if we conceal truth we allow corruption to grow. Corruption grows in secrecy and two women at the Waitakere Animal Welfare have lost their jobs because of me …
>
> (Emphasis added)

[111] Mrs Haden then spoke at some length about (alleged by her) interventions by Mr Wells in respect of employees of that kind, whereafter she added:

> This is just an example Your Honour of how the court is being used as an abusive process. I welcome openness and transparency and I welcome the ability for people to discuss and resolve, but when people have to use the court to beat people into submission I think its an abusive process. I have all the way through asked questions and probably my attack by putting things on the internet of late has been because my defence has been struck out. When I am speaking the truth I believe I've got a right to speak the truth and I've got a right for people to ask questions about what's happening and when we seek to silence people like myself I have to ask why, why couldn't we discuss it, why couldn't we sit down and resolve it. Why do we have a 2 year court case which gives so much stress to other people. It has crippled my business …. The police and Serious Fraud Office will not touch it because its before the court and they think that I'm trying to get out of court by getting them to take action.
>
> (Emphasis added)

[112] And later again-

> We do tend to pick on the person who starts asking questions because it is a great way of making them stay quiet. It's been done before, it's been done

> throughout history. It's using the law as a sword, it is by attacking the person who's asking questions because in normal circumstances the person would back off and go away…

[113] And later again she said:

> It is continual persistent vindictiveness and that's the plea I make to this court, Your Honour, that this malicious litigation is designed to conceal criminal offending. Criminal offending which will be conclusively proved once the authorities get into all the documents and be able to see the transparency.
>
> (Emphasis added)

[114] Giving evidence, Mrs Haden expressed her perspective this way:

> In my simple terms I think something has to exist and has to exist legally before they can take any action and if it doesn't exist and there is no foundation which is publicly available which shows that this is a body corporate of some sort under some legislation then you could just as well say it was these glasses prosecuting. We have to have these constraints in our society which gives something the ability to act and if the statement that Mr Wright wishes me to acknowledge as being correct, it would open the door to everyone going back and saying "we set up this trust 10 years ago because we agreed to it, we've got no documentation, but we're prosecuting you under the name of the reading glasses".

[115] And perhaps this should be included too:

> I *(which is Mrs Haden)* go with what is written in front of me. I am a very factual person, I deal with real evidence. Throughout my life as a police officer and a private investigator people tell me many things and people tell me what they want me to believe. In the end I always verify and that's why my company name is Verisure. I verify everything with documents and on the documents that I have verified your claims, I have not found that to be true. I have found documents which say the trust was formed by trust deed in 1999 and was being incorporated in 1999, but despite that still was not incorporated in 2000.
>
> (Emphasis added)

[116] But in none of this is there, nor ever was there, any warrant for Mrs Haden's embarkation on a 'righteous mission' (which is exactly what she seems to consider it to be) to heap calumny on Mr Wells.

BACK TO MR WELLS

[117] I return to Mr Wells' evidence. He said that AWINZ had been inhibited in engaging new animal monitors for film projects because of fear of harassment of them by Mrs Haden and that film production staff had raised queries referable to the sites she had up on the world wide web.

[118] He gave the example of a production manager who had initially thought www.awinz.co.nz to be the site of AWINZ and had become alarmed at its content before realising it was the wrong site.

[119] In terms of ongoing consequences, Mr Wells went on:

> 56. A more concrete example of damage to AWINZ 2000 came very recently. On 1 November 2007 the North Shore City Council and Waitakere City Council agreed that the animal control field officers covering North Shore would be taken in-house by the North Shore City Council. They had previously been employed by Waitakere City Council under a contract. This effectively severed the relationship between North Shore City Council and AWINZ.
>
> 57. I was directly advised by Council staff that North Shore City Council decided not to continue with the appointments of the field staff as animal welfare inspectors because of the continual harassment by Haden against the first and second plaintiffs which included emails being sent to elected North Shore City Councillors. They wanted to distance themselves from "the Haden affair". This terminated an 8 year arrangement.
>
> 58. The continued harassment by the first defendant of any person associated with the first plaintiffs has also greatly inhibited the ability of the first plaintiffs to grow its activities.
>
> 59. With the resignation of the two founding board members, Nuala Grove and Sarah Giltrap, the remaining Board members have been very reluctant to invite persons to become new members of the Board lest they too be subjected to harassment by Mrs Haden. The affidavit of Mr Coutts highlights the very unpleasant issues that trustees of AWINZ 2000 face from Mrs Haden.
>
> 60. As a charitable trust, AWINZ 2000 is entirely reliant on the energies and efforts of its trustees and members, who offer their time voluntarily for a cause that they passionately believe in. I regard the efforts of Mrs Haden to attack and intimidate these people as frankly disgraceful.
>
> 61. The first defendant's actions have severely restricted the ability of the first plaintiff to raise funds for its activities. In both 2006 and

> 2007 fundraising appeals have been sent to owners of dogs in Waitakere appealing for funds for veterinary equipment for a new charity veterinary clinic. On both occasions the first defendant reproduced the fundraising letters on her website extolling readers not to contribute.

[120] In terms of personal consequences, Mr Wells said this:

> 62. I have 2 children, Benjamin aged 23 and Amy aged 20. Both have been cadets in No. 3 (Auckland City) Squadron Air Training Corps and Ben is now a Pilot Officer. They are both mild mannered. Knowledge of the continuing persecution by the first defendant has had a lasting affect on them. My son has expressed the wish to face the first defendant about the grief she is causing me and I have on more than one occasion dissuaded him. Although my family has supported me unstintingly throughout this matter it has caused considerable distress within my household.[6]
>
> 63. By September 2006 the continuing effect of the proceedings and the continued harassment by the first defendant were having a profound effect on my health.
>
> 64. I consulted my GP, Dr Rob Stewart, on 25th September 2006 due to stress and increasing migraines, and he diagnosed significant ill health as a result of his work stress. He also found that I had lost over 6 kg in weight [Appendix M]. His conclusion was:
>
> > Neil had lost weight, he had a dull headache. He found difficulty making decisions and stumbled over his words. He was waking at 0500 hrs and reported tiredness throughout the day.
> >
> > Neil is usually a very capable, intelligent, articulate man. His presentation was completely out of character. Neil was not suicidal …
>
> 65. Dr Stewart put me on 2 weeks sick leave which took up my entire sick leave entitlement. I took a further 2 weeks leave in November 2006 so that my wife and I could go away and try to deal with the pressures of coping with the ongoing persecution by the first defendant.
>
> 66. I have been seeing a counsellor each month since this matter started and am still under the supervision of a counsellor.
>
> 67. The tangible impacts on my health and family life are just the "tip of the iceberg". It is perhaps difficult for the Court to fully comprehend the fundamental impact on one's life that a determined campaign such as Mrs Haden's can have. The knowledge that your name and reputation, which have taken a lifetime of passion and effort to build up, are being attacked from every conceivable angle, and pulled through the dirt in front of those that you respect most, is devastating.

---

[6] See *Nixon v Channel Four Television* 11/4/97 where (as noted in *Gatley on Libel & Slander* (10th Edn) at 32.48) a claimant was permitted to give evidence of the effect upon him of family distress.

68. Further, this is no isolated incident that can be contained, explained to those involved, and moved past. It is an ongoing orchestrated campaign of hatred that seems never ending. Every few months some new false claim is "added to the pile", requiring more effort on my part to try and counter, and bringing home afresh all of the anguish that I have already suffered. In a word, it is a nightmare.

[121] In dealing, at the end, with damages, I shall of course focus on injury to Mr Wells rather than to his kith and kin.[7] But in doing so I will be conscious that effects on his family will have rubbed off on him.[8]

[122] As an example of what (relevant to the unrelenting nature of the onslaught on Mr Wells) he sees as 'the nightmare', Mr Wells continued:

69. The following is one recent example. On 21 November 2007 I received an email as follows: [Appendix N]

FOR THE ATTENTION OF Mr NEIL WELLS

Dear Mr Wells

Greetings from across the years.

I have recently been investigating the whereabouts of the big cats formerly held at Waitakere City Council's failed fun park.

In 1991 it was agreed that they would be sent to the Performing Animals Welfare Society (PAWS) in California. PAWS however denies receiving the cats.

Given the substantial documentation earlier obtained under the Official Information At, and as you were directly involved whilst as a representative for WSPA, please confirm if these magnificent animals did leave New Zealand as the public was informed, or as it is rumoured, they surreptitiously euthanised.

The latter is of concern as you were promoting this solution at the time.

Sir, I look forward to your early reply.

Rgds/Paul Burke.

70. I replied as follows: [Appendix O]

Paul

Leisureland was not a "Waitakere City Council failed fun park." Leisureland was a failed private enterprise.

---

7 *Guy v Gregory* (1840) 9 C & P 584

8 See *Nixon* supra

In 1991 all the big cats from the former Leisureland were transported in two separate shipments to Los Angeles by United Airlines. Auckland Zoo veterinarians volunteered to administer the sedatives required and WSPA volunteers assisted the crating and transportation to Auckland International Airport.

All the cats (the lions and their cubs, and the tigers) were taken by Wildlife Waystation in Little Tujunga Canyon Road, Angeles National Forest, Los Angeles County.

PAWS did not take them as they had originally undertaken as they did not have adequate facilities to accommodate that number of animals. Congressman Lantos facilitated the contact with Wildlife Waystation. I visited them around 1992 and a MAF veterinarian also visited them a little later.

A few of the lions died a few years later from an outbreak of canine distemper, which up to that point had never been diagnosed in big cats anywhere in the world. The source of the virus was found to be feral raccoons.

I trust this information will dispel any rumours you may have heard.

Regards

Neil.

71. Within days, details of the Leisureland Project appeared on a website controlled by the first defendant under the headline:

NEW!!!!

Neil Wells the man from AWINZ rears his ugly head again!

Tiger Tiger burning bright did Neil Wells from WASP turn out your light?

72. Voluminous material from 1991 appeared under the webpage http.//publicwatchdogs.org.nz.neil%20wells%20WASP.htm

This page is headed:

Familiar name crops up again

Neil Wells .. Labour crony has had a finger in the pie before the **AWINZ** deception, this man who has taken others to court for defamation and trumped up charges is showing his true colours in the correspondence he produces Here he doesn't hesitate to call the associates of the Cohen slime balls .. very professional Mr Wells! So where are the tigers and lions Now?

73. Other references in this website contain further allegations and hyperlinks-

The animals vanished without a trace!

> This is a chronology of the correspondence note that it has been proved that Neil Wells, Wayne Ricketts MAF and Vaughan Seed MAF are all mates in the same old boy network and support each other.
>
> WELLS has since written the Animal welfare Act and has set up an organisation called **AWINZ** together with Wyn Hoadley and Graeme Coutts, read about this deception here **AWINZ**
>
> Read animals in the movies http://awinz.co.nz/movies1.htm
>
> 74. A long list of documents related to the Leisureland Project appear on the website but none of the hyperlinks work.

[123] And, earlier in the year, this -

QUESTIONS IN THE HOUSE

[124] The lengths to which Mrs Haden has pursued her cause are illustrated by the revelation to the Court of (an of course privileged) question in Parliament on 7 May 2007 from Mr Rodney Hide:

> Was any verification undertaken to determine whether the Animal Welfare Institute of New Zealand was a bona fide organisation with a proper legal structure and accountability before Barry O'Neill, group director, of the Biosecurity Authority signed a memorandum of understanding with Mr Neil Wells, signing as trustee of the Animal Welfare Institute of New Zealand, on 4 December 2003; if so what was the result; if not why not?

[125] Hon Jim Anderton (Minister of Agriculture) replied:

> The Animal Welfare Institute of New Zealand is an approved organisation under the Animal Welfare Act 1999. Before the Animal Institute of New Zealand was declared to be an approved organisation under the Act, its application was carefully considered in relation to the relevant statutory criteria. These include, inter alia, the accountability arrangements, financial arrangements and management of the organisation. There is no statutory requirement that these matters be reconsidered for the purposes of signature of the memorandum of understanding, which defines the requirements to be met by the Animal Welfare Institute of New Zealand in the selection and appointment and other matters relating to, inspectors and auxiliary officers appointment under the Animal Welfare Act 1999, the enforcement of the divisions of the Act…

[126] Later that month there were further questions and answers in the same vein. Since there is no sign of anyone except Mrs Haden having been interested in this issue, that she played an active part in setting this questioning in train could be counted a logical enough inference. See also para [131] below which, given the there disclosed alignment of particular questions in the House with the specifics of her crusade, identifies a more direct betrayal of Mrs Haden's involvement.

[127] It is demonstrative too of Mrs Haden aggravating matters by maintaining her campaign despite this proceeding. In fact this proceeding became in the hands, and according to the lights, of Mrs Haden a fresh platform for her campaign.

WORLD WIDE WEB MATERIALS

[128] Mr Wells' affidavit included an exhibit capturing pages that appeared on the www.awinz.co.nz site on 5 December last year. What was produced was obviously the product of a search beginning with the home page and pursued (by clicking on links) to further pages of the site.

[129] I observe in respect of this kind of material that it is as if Mr Wells had produced in evidence a book written and published by Mrs Haden which thus became available to the Court to leaf through.

[130] The home page begins with this:

> The AWINZ website has been purchased by the Animal Welfare Institute of New Zealand Limited from a trust which previously had the same name.
>
> That trust was forced to abandon the name due to court action taken against them by an unincorporated trust which operates in Waitakere under the name of The Animal Welfare Institute of New Zealand. The court action was taken by The Neil Edward Wells, Wyn Hoadley and Graeme John Coutts as trustees of the Animal Welfare Institute of New Zealand, an Unincorporated Charitable Trust which incidentally is their legal name.
>
> Other parties in the court action have now published their findings regarding the unincorporated trust which forced that action in court without any proof. They have published their findings at
>
> http:\\www.verisure.co.nz\awinz.htm …

It is unnecessary to deal with every page that can be revealed by clicking of links. However, one that I do note, under the heading "Trust 1", refers right back to Mr Wells' covering letter to the Minister of 22 November 1999.

[131] It includes a replication of the logo and heading on that letter and then says:

> In the accompanying application it states that a charitable trust has been formed by deed of trust.
>
> Neil Wells could not possibly have told a lie to the Minister, therefore the trust must have existed.
>
> However we are confused as to what is going on because the Minister in his reply to this question says that there was only a draft trust deed.
>
> 9240 (2007). Rodney Hide to the Minister of Agriculture (31 May 2007):
>
> Further to the answer to question for written answer 07723 (2007), was a copy of the Animal Welfare Institute of New Zealand's (AWINZ) trust deed received by the Minister, and was incorporation of the trust confirmed prior to the trust becoming an approved organisation under s 121 Animal Welfare Act; if not, why not?
>
> And Jim Anderton (Minister of Agriculture) replied:
>
> A draft deed of trust was submitted as part of the application by the Animal Welfare Institute of New Zealand (AWINZ) to become an approved organisation under the Animal Welfare Act 1999. Incorporation of a trust is not a requirement under the Act. Prior to declaring AWINZ to be an approved organisation for the purposes of the Act, the Minister received detailed advice on the application from the Ministry of Agriculture and Forestry and confirmed that the relevant statutory criteria were satisfied.

[132] That really is but an introduction to references (identified per medium of Mr Wells' evidence) found on this web page – one which provides linkage to another page where the application itself may be found - that pick up on trust creation matters, such as I have adverted to earlier in this judgment. The page then continuing:

> What would you think this meant?
>
> 1. That the trust deed will be signed next year
> 2. That a trust deed exists
> 3. That there is only a draft trust deed
> 4. That the trust is already registered under the Charitable Trust Act
> 5. That the trust has been registered.

Fact – a trust without a trust deed cannot be registered/incorporated.

If there is no trust deed in existence at the time of writing this has the writer

1. made a mistake
2. made a simple oversight
3. been negligent
4. oops, didn't mean to get caught out

Reference to registered office

1. the applicant thought the trust was registered
2. he has it registered somewhere but not with the Registrar of Charitable Trusts
3. he was mistaken

What do the words "A charitable trust has been formed by deed of trust" (mean)

1. that sometime in the future *(I have corrected spelling errors)* they will think of signing a deed
2. that a trust deed had been signed
3. that a draft trust deed without signatures is enough to form a trust

What does "charitable" mean

1. the money goes to the benefit of some person
2. the money goes to a charity
3. not really certain but it looks good

to read more about this trust visit http:\\www.verisure.co.nz\awinz.htm

- And so on the website pages, their "analysis" and commentary go - all in terms nothing short of the sarcastic, and plainly intended to be disparaging including of Mr Wells' honesty and integrity. And with no suggestion by Mrs Haden when cross examining Mr Wells that anyone but herself has been responsible for publishing these materials.

[133] A further, exposed by the evidence of Mr Wells, website sampling offers this:

> Why are the signatures on the pages more faded on one page than on another when the original sighted by us had all of them in the same pen?
>
> 1. There were many pens available and the trustees thought they would try them out.
>
> 2. It seemed like fun.
>
> 3. No pen was actually used to produce the cut and paste signatures.
>
> 4. The pen played up on the day.
>
> Why does the other original have consistent pen marks?
>
> 1. They got sick of changing pens
>
> 2. the ink was still wet
>
> 3. they all used the same pen
>
> To read more about this trust visit http:\\www.verisure.co.nz\awinz.htm

[134] As just above, and on other occasions through the material, there is the invitation to visit the site of Verisure Investigations Limited, Mrs Haden's company.

[135] The Verisure site itself includes an introduction plainly referring to AWINZ where, amongst other things, Mrs Haden says that:

> Because I investigated this "trust" and found that it did not have a trust deed or was incorporated as it had indicated to the Minister of Agriculture it was, I was taken to court for defamation…

That is an economy taken with the truth which is illustrative of Mrs Haden's persistent selection of what it suits her to focus upon in terms inevitably distorting overall realities.

[136] There shortly follow some not easily comprehended references to the movie *Lord of the Rings,* followed by this:

> Anna Wilding addresses this and as a result the grading was amended.
>
> Anna's reputation is such that she was believed over Wells because she presented facts. We have faith that in the end the facts always win.
>
> We ask you to read his documents especially the ones that relate to the registration of the trust and see what you think about his truthfulness and integrity.

> It may also be a good thing to read a site on white collar criminals, this sets it out so well. There are classic symptoms for white collar crime you can determine for yourself if the scenario fits.
>
> See AWINZ OUR FINDINGS and read the incorporation section be sure to click on the links so you can read the documents for yourself.
>
> (Each underlining represents a link in itself to other materials).

[137] The last, "our findings", link is to very extensive material. I do not intend to burden an already lengthy judgment with a detailed rehearsal, but this is a very brief sampling:

> These are our professional findings and opinions on our investigation so far into the Animal Welfare Institute of New Zealand unincorporated trust. As we are denied a defence by Judge Sharp we have chosen to put them to the court of public opinion …
>
> … I called Neil Wells trust a sham … See what you think.
>
> … Our findings on AWINZ are confusing but remember fraud relies on complexities to be successful. Police and SFO only deal with simple matters …
>
> …
>
> The comments here are our honest opinion presented with the evidential documents …

[138] Further links – or, as they are at this point called, "references" – scattered throughout what follows. Those links are to matters including pleadings from this case, a CV of Mr Wells, Mr Wells' affidavit in this proceeding, and so on.

[139] Mrs Haden's technique is to offer (just as was exemplified above) comment or observation on various of the contents of these documents in the form of various questions or propositions such as - in that last category - the following:

> This trust is not just any trust, this trust contracts to central and local government and enforces the law. Its structure does not give public accountability.
>
> If one considers the potential of bequests such as those left to the RNZSPCA, an organisation Wells sought to mimic, the potential for gain is huge.
>
> (Emphasis added)

[140] Later on – and with a cross reference link to a copy of the document itself – there is mention of the trust deed itself in terms inviting (if not showing Mrs Haden to be demanding) the inference that it is a dishonest sort of document.

[141] And so on it all goes, over many website pages, in terms really inviting the conclusion that Mr Wells thoroughly deserves retribution per medium of the criminal law.

[142] The website materials include Mrs Haden's own explanation as to how "we" (obvious meaning Mrs Haden and Verisure Investigations Limited) got involved. And so to that -

HOW IT ALL BEGAN

[143] I begin by referring to a web-based piece (identified and located by means of the evidence given) which is demonstrative of the need, now, to stop Mrs Haden in her ill-laid tracks. In its totality, it is quite long but it will suffice for the rehearsal of the genesis of this sorry saga purpose to quote the following:

> Grace Haden is the director of Verisure Investigations.
>
> She was the treasurer of Auckland air cadet trust, a trust of which her three children as cadets and NCO's in 19 Squadron are beneficiaries of the trust.
>
> 19 Squadron had put in $50,000 to the project which was to be the headquarters for 3 and 19 Squadron.
>
> Neil Wells a lecturer at Unitec and chairman of 3 Squadron quickly arranged for the building to be placed at Unitec. Although the cadets got part of the building the venture was financially beneficial to Unitec.
>
> When the promises did not come to fruition Grace became treasurer of the trust and found that the trust was losing $1500 per month. The basement of one of the buildings was developed not into the promised rifle range but a cricket coaching area of great benefit to Trustee Nicki Turner a top coach who is the head of the school of sports Unitec.
>
> Instead of charging Unitec for the use of the facilities to offset the deficit that the trust was facing, Neil Wells drew up a contract which ignored the financial obligations that the trustees are required to have to the trust.
>
> Instead the squadron were asked to pay more and parents on the support committee who had contributed unselfishly to the project were again asked to do more. Grace found an easy way to save $8,000 per year by switching

to Kiwi Bank from National Bank for this Neil Wells reprimanded her in a manner that no person should talk to another.

When Grace spoke up and questioned what was happening, Wells sought to remove her from the trust using what she considered defamation. (The court decided that it was not defamation as untruths told to a small audience doesn't matter .. the substance of the claim was never heard by the court and Judge Sharp threw this out at interlocutory stage).

Wells resorted to amending the trust deed to get rid of Grace who then started asking questions as to why this over the top reaction to a person who was actively working towards the stated objectives of the trust had occurred.

It was at this time that the connection of AWINZ to Unitec was discovered.

Those who act in secret and strive to keep things secret have something to hide.

Grace through her investigations found that AWINZ was Neil Wells and Neil Wells was AWINZ .. although now there is a real flurry of building a trust about him to make it appear as though things have always been kosher .. unfortunately there are contradictions many contradictions these have been set out on this site.

Whilst on the trust Grace used her work email address as did the other trustees.

Because Grace at the time of being deeply hurt by Wells' actions and words, Grace told Wells and the other trustees what she thought of things. This was grounds for defamation .. no this wasn't struck out by the judge somehow this is different and although Grace has been asked to apologise and has done so Wells is still perusing [sic] things through the court, his lawyer Nicks [sic] Wrights stated objective is to bankrupt Grace.

To that end they have already served a statutory demand on Verisure with intent liquidate it.

This is for a sum of $12,200 which was awarded in costs against Grace, Verisure and the AWINZ trust which Grace and Fellow trustees had incorporated to prove that Neil Wells' trust was not a legal person in its own right.

…

(Emphasis added)

[144] I add to this partial quotation the last sentence the whole of it, which is –

> What has AWINZ got to hide well have a look for yourself and check out if you would deal with them?

It is to be recalled here that Mrs Haden has already made plain that AWINZ is Mr Wells.

[145] I interpolate that exhibit K to Mr Wells' affidavit of 10 December 2007 comprised an email exchange which, at a point earlier than that upon which Mr Wells sought to focus, was marked by Mrs Haden as "without prejudice", and with that marking appearing to attach to endeavours to settle. I mention the point simply to make clear that, on that account, I have ignored that exhibit.

[146] Mr Wells proffers as an exhibit to his affidavit a medical certificate (see para [120] above) which, as such, I also ignore as the report simply says that Mr Wells has "suffered significant ill health as a result of his work-related stress" and thus does not clearly relate to the issues at hand. For this kind of evidence to be useful it should have been in the form of an affidavit from the doctor.[9]

[147] All in all, it is quite plain that Mrs Haden's initial differences with Mr Wells over the air training corps have (in the mind of Mrs Haden) taken on not merely a life of their own but one regularly fed by Mrs Haden's determination scarcely to let go opportunities (especially making use of the world wide web) to do Mr Wells down in easily accessible by search engine fashion.

[148] I find it sad that, so far as the Court can see, Mrs Haden has lost all balance in her life by focusing, as now she does, on this litigation (and her quite unrealistic expectations of vindication) to the inevitable detriment of the positive investment of her energies in her own life - energies that could (if otherwise engaged) surely accomplish much that was good.

[149] All that is to be particularly regretted given that it is clear from Mrs Haden's affidavit that she has much to be proud of, including for having served 15 years in the police before becoming a private investigator.

[150] Mrs Haden seems averse to acknowledging that, when it comes to potential for damage to the reputation of others, members of society need to separate the emotional from the rational.

---

[9] And whether damages can include an allowance for damage to physical is, *Gatley* suggests at 32.48 (footnote 99), an unsettled question.

[151] And that brings me to what is painfully explicit from -

MRS HADEN'S AFFIDAVIT

[152] Mrs Haden plainly holds important what she calls "due diligence". She explains that this means to her verifying information provided and comparing it to proven facts.

[153] Because this case is very much about how she has let that enthusiasm get away on her, because it is very much a matter at the centre of things, I make no apology for setting out in full this from her affidavit:

> **What is AWINZ (Animal Welfare Institute of New Zealand)**[10]
>
> 14) It is important for the court to understand what AWINZ is, or claims to be:
>
> a) this MAF publication available on the internet possibly best sets out the public role that this "organisation" plays. Attachment E
>
> b) Attachment F gives further clarification of the public role.
>
> c) The legislation which sets to the criteria for approved organisations is the Animal Welfare Act in particular sections 121, 122 and 124. Attachment G.
>
> d) Animal Welfare Institute of New Zealand (AWINZ) through Wells has entered into contracts with central and local government
>
> i) Attachment D Memorandum of understanding with MAF
>
> ii) Attachment C Memorandum of understanding Waitakere City
>
> e) AWINZ undertakes prosecutions on behalf of local government, lays informations and Wells as barrister offers diversion for a donation to AWINZ Attachment H.
>
> f) AWINZ solicits public donations. Attachment I this was sent out with dog registration forms sent out on behalf of Waitakere City Council.

[10] I do not find it necessary to include the content of the documents to which she refers, as the gist of her contentions emerges clearly from her narrative.

g) According to its own policy in the inspectors manual Attachment J **excerpts from inspectors manual** its customers are the PUBLIC.

h) Produces a policy manual for animal welfare inspectors and provides them with a warrant card. Attachment K.

15) AWINZ is an approved organisation under the Animal Welfare Act 1999, an Act which was co-written by Neil Wells (as admitted to in his affidavit).

16) Section 121, 122 and 124 Attachment G of the Act show the requirements and criteria for an approved organisation.

17) (there is no 17).

Wells and AWINZ background

18) In 1995 Wells as NE Wells and Associates, a trading name for himself at that time, consulted to Waitakere City. I have not been able to establish if he approached the city or the city approved him but the document I have is Attachment N.

a) On the final page of this document Wells states

b. Public support

Animal welfare is an issue which has great appeal for public funding. Animal welfare provides an opportunity for the Council to facilitate funding through donations, fund-raising campaigns and legacies.

b) I believe this to be the motive for setting up the "organisation" which if run by just one person could prove to be extremely lucrative.[11]

c) The reality is that, with the current set up, it is not the council who would be the recipient of these "rewards", but the person controlling the AWINZ bank account which I have proved to be Wells on his own.

d) As per his own affidavit Wells became involved in the writing of the new Bill and I have found that he was responsible for the section relating to approved organizations.

i) The date of assent of the Act was 14 October 1999.

e) On 22 November 1999 Wells applied for the Animal Welfare Institute of New Zealand to become an approved organisation under the Act. Attachment L. He gave assurances that the public accountability, the functions and

[11] This has been one of Mrs Haden's recurrent themes.

the ability to enter into contracts which as required by section 122 of the Act Attachment G were satisfied by incorporation under the Charitable Trusts Act.

i) He makes the application as a trustee of a trust which his own documentation proves was not established at that time by trust deed as claimed.

f) He signed contracts with MAF and Waitakere City without reference to any other trustees Attachment C Attachment D using the name Animal Welfare Institute of New Zealand without reference to any definition of its status or reference to the existence or identity of any of the other trustees.

i) In my working knowledge of the law, in the absence of incorporation, that would make the Animal Welfare Institute of New Zealand is at best a trading name for himself but cannot be presumed to be any more than that.

g) Wells produced an instructor's manual which bears his signature Attachment J and claims to have been issued by a board of trustees. (Only a few pages have been provided. Full copy available on request.)

h) We proved, by default, by incorporating our trust in the name of Animal Welfare Institute of New Zealand that no other trust was incorporated (No two entities can be registered under the same or similar names.)

i) I have provided Charitable Trust Act references on how boards of trustees are formed and the ability of incorporated trusts to enter into contracts as if they are a person Attachment G.

i) Because the name Animal Welfare Institute of New Zealand was not incorporated the provisions of the Charitable Trust Act do not apply.

19) In my work as a private investigator I am very aware of the names in which contracts can be entered into, i.e. registered under any Act which gives the organisation the right to enter into contracts as a legal person/entity.

a) If the name is not a legal name then there is no ability to sue or be sued.

b) In this instance those alleging to be the trustees of AWINZ sued me using their legal name, which is as shown on the court documents as Neil Wells, Wyn Hoadley as trustees of the Animal Welfare Institute of New Zealand.

20) These proceedings have been to force us to give up the name, the proceedings were never for anyone to acquire the name, the intention was to force us to pay for their lawyers intimidation and

> force us to vacate the name, I believe the purpose is so that Wells could cover up. Attachment X
>
> - deregistering the name as a charitable trust (at which point it will be registered by our client immediately, a step that you have repeatedly insisted is highly desirable); and
>
> - ceasing to use the website www.awinz.co.nz
>
> a) I believe that the defamation claims and the attack on my business have been thrown in as good measure to add incentive for me to comply with their demands and a result otherwise not attainable through this court.
>
> b) Not at any stage has there been any evidence that the plaintiffs are in fact the same group of people as are purportedly represented by the application made in 1999 by Wells, an application which was made before any trust deed was signed.

[154] This passage is replete with signs and signals of legal misconceptions and of erroneous assumptions or conclusions.

[155] I do not pretend a complete catalogue of these but among the more significant are:

- Mrs Haden presumes such as that the signature of one trustee simply cannot be authorised by, or binding on, another.

- This leads her to conclusions of self-interest on the part of Mr Wells for which there is no evidence.

- She confuses names by which (for simple identification or sheer convenience purposes) an unincorporated trust might be known with issues relating to the recognition of the existence of such a trust and its trustees.

- She appears not to appreciate that founding trustees may later resign, or otherwise cease to hold office, and be replaced.

[156] Mrs Haden continues:

> **Who is telling the truth and who is telling lies**
>
> 21) As this matter related to quantum, it is important for the court to decide who is believable and who is not. I hope that the court shares my view that lies and deceit should not be rewarded and that it is not for the court to condone corruption.
>
> a) I have compiled a list of contradictory statements made by Neil Wells. The question I ask is – how many deceptions/contradictions make outright lies.
>
> b) To me there are only two possible options
>
> i) He shows incompetence that would put his ability to practise as a barrister in doubt.
>
> ii) His intentions are fraudulent.
>
> 22) In what I have found and will expose in the affidavit is that there is a very strong element of deceit which in my mind puts this in the fraudulent category.
>
> 23) This matter is however in the civil jurisdiction and the proof I have is not intended to be criminal prosecution standards. I hope that I with the following proof that in all probability, the court finds that I have spoken the truth and that there should be no compensation payable…

(The emphasis is added and the last element of it is later particularly relevant to the fashion in which Mrs Haden has used this proceeding to make worse the damage to Mr Wells.)

[157] In any event, here Mrs Haden:

- does shrink from expressing what amounts to her idiosyncratic 'finding' that Mr Wells has been responsible for lies and deceit amounting to corruption;
- offers 'options' either of which is – albeit the second much more so than the first - damning of Mr Wells;

- leaves the reader (and, as the evidence shows, she (with Verisure) has published her affidavit on the world wide web)[12] in no doubt as to Mrs Haden's choice in that respect and, in doing so

- reveals once again her (by now to be counted obsessive) conviction that Mr Wells is a fraudster; in fact (and there is more of this to come);

- she uses her affidavit to repeat, one way and the other (when protected from the directly actionable by the privilege attaching to court pleadings) the defamatory statements that obviously caused Mr Wells to take her to court in the first place.

[158] Mrs Haden then proceeds to list in her affidavit what she calls an incomplete list of "deceptions" on the part of Mr Wells, some number of which are not easy to follow.

[159] What is clear is that each derives from – or been developed from – the course of events that led to the approval by the Minister in question of the AWINZ as an approved organisation under the AWA.

[160] Here a (seen by her as connected) catalogue of matters are identified, which she bluntly calls "deceptions".

[161] She says that these are 41 in number. She sets forth these matters under the heading "Deceptions using various entities to comply with statutory obligations".

[162] The point is reached where this is found in her web-published affidavit:

> **The Crime Which I believe I have identified**
>
> 29) The crime which I firmly believe Wells is concealing is a white collar crime, a fraud, one that he has spent many years setting up, one that was carefully contrived and was destined to provide a very lucrative retirement package for Wells.

---

12 http://ww.verisure.co.nz/awinzfindings.htm

30) I am uncertain of how much he has reaped from it so far, but I am certain that a large amount of covering up has occurred since I started asking questions. These are the questions which give rise to "defamation" charges.

a) The strain and ill effects on the plaintiff Wells is not caused by any defamation,

i) It is in my opinion caused by fear of being exposed.

ii) The strain is compounded by the fact that I won't roll over like others he has intimidated in the past.

(1) I doubt if he has ever come up against someone who won't roll over. But in experiencing what I have been through I can see why people give in. It is my unique background that allowed me to stand up against him but it has come at a huge personal cost.

iii) Had I been forced to use a lawyers [sic] I would have been bankrupt by now.

b) I believe that he knows the consequences all too well and attack at all times is his best form of defence.

i) I believe that Neil Wells is the central figure with Tom Didovich the major party to the crime.

ii) I suspect that Hoadley and Coutts have been dragged into it and do not see the full potential for fraud, however I have made them fully aware of what I believe is going on and they have stayed with the cause, they repeatedly refuse to discuss the matter and in lending their support I have no doubt that they are parties to the offence because it is their presence that gives the "trust an air of legitimacy".

31) I policed 18 years ago when truth and facts had relevance to our society.

a) New Zealand (along with Finland and Iceland) now has the lowest level of corruption in the OECD

i) I firmly believe that we maintain this level (which encourages business to come to New Zealand) by concealing crime. (It is certainly difficult to expose it.)

ii) In my role as investigator I have been astounded at the level of proof the police require before they take a complaint (notice I did not say act)

iii) Proof, due to the structure of our society, is not easily obtainable especially without the use of warrants, but even if conclusive proof is provided, it is extremely difficult to report fraud to the police.

iv) The Police are now performance rated and statistics need to be appeased.

(1) It is therefore easier not to take a complicated complaint than to create a statistic which will take time to clear or cannot be cleared conclusively.

b) I have no doubt that if the police were to investigate this AWINZ matter, then with their powers of search and the ability to interview people (without claims of harassment or breach of confidentiality threats), then this complaint will go to a successful prosecution.

32) I have personally discovered, more than once, that white collar criminals use the civil court for their own protection.

a) There is nothing new in this Conrad Black the Canadian who was sentenced last year used defamation claims to cover his offending, but time caught him out.

b) Even Lord Jeffrey Archer sued "The Daily Star", a London tabloid for defamation which turned out to be true and he had concealed the facts with fabrication.

c) Just because Wells is a barrister does not make him honest, it just provides him with better skills and knowledge to conceal crime, that is until someone with specific skills can weed him out.

d) I must say that the court proceedings have assisted in the collation of the data, had it not been for the threats that have been made against me with regards to bankruptcy and the winding up of my company I would never have invested so much time. But my life and my reputation is one thing I fight for fiercely.

33) These proceedings are malicious, vexatious, and an abuse of process. They serve no other purpose than to conceal criminal offending.

a) The defamation is purely there as leverage which was used with intent put pressure on me to ensure that the name and the web site were handed over, this is what I would call robbery in any other circumstance.

b) Because of my background and my intense distaste to bullying I have stood my ground.

c) I am confident of my facts and that what I am saying is the truth.

d) I have made myself available for resolution outside the court but I believe that the plaintiffs are confused as to what resolution is. I do not subscribe to submitting to compliance due to intense bullying and intimidation.

e) I believe that if they were to have beaten me up with a baseball bat to obtain what they want, they would have been behind bars but somehow in using a lawyer to inflict ongoing stress which leaves health problems is OK. To me it still is assault. Crimes Act definition being "**Assault** means the act of intentionally applying or attempting to apply force to the person of another, directly or indirectly, or threatening by any act or gesture to apply such force to the person of another, if the person making the threat has, or causes the other to believe on reasonable grounds that he has, present ability to effect his purpose; and to assault has a corresponding meaning"

f) I am not the type of person who sits still while being assaulted, I fight back.

g) My weapons of choice are truth and honesty.

(Emphasis added)

[163] In the above passage Mrs Haden (with Verisure) pulls not a punch – to the contrary, she makes unequivocal claims such as that Mr Wells is the 'central figure' in a crime that, if properly investigated by the authorities, would be successfully prosecuted.

[164] And she says (seeking to strike from, as it were, the front foot) that Mr Wells is using this proceeding for his own protection, that is, as a means of avoiding those consequences.

[165] Given her assertion that the proceedings 'serve no other purpose than to conceal criminal offending', one simply cannot reasonably read what she says any other way.

STRIKE OUT CONSEQUENCES?

[166] Seemingly never minding that she was the author of the supposed misfortune, Mrs Haden would claim that the striking out of her defence (and Verisure's) has prevented her from making their case.

[167] Even if their defences had not been struck out, I find it impossible to see how or where (save for the presumptive approach taken by Mr Wells in 1999 in commencing endeavours to obtain 'approved organisation' status) Mrs Haden could ever have succeeded in making more of a case than, in de facto terms, she has sought to make using, in the end, the damages hearing as a vehicle.

[168] The strikeout notwithstanding, she has undoubtedly taken free rein in her web-published affidavit (itself made under the cloak of absolute privilege conferred by s 14 of the Defamation Act) again to rehearse (and this time in what is obviously the best and most complete account that she can muster) her catalogue of contentions.

[169] And she has done this without identifying a skerrick of evidence to support claims of criminality which, bereft of any such evidence, self-identify as wicked.

[170] It is therefore deeply ironic that Mrs Haden should identify her weapons of choice as 'truth and honesty' and, in so doing, make plain (as variously she does) that Verisure's very name is a play on the importance of sheer factual accuracy.

[171] She speaks then of negotiations which I will pass over so as to arrive at the point where she says:

> **Attempts at resolution**
>
> 42) In an attempt to remove the matter from the court
>
> a) I offered the plaintiffs more than they were able to be acquired through the court process. I offered to
>
> (1) Sign over to them the name
>
> (2) Give them the fully functional web site

(3) Give them the trade mark AWINZ which was being registered (and now is)

(4) Give Neil Wells an apology (even though I did not believe I should)

b) I did this to attempt a trade off where they got what they originally claimed.

1. Stop the defendants from using the name Animal Welfare Institute of New Zealand.

2. Make the defendant give up the use of the web site.

3. Obtain an apology for defamation.

In return I requested that we could be released from the proceedings without costs.

c) The plaintiffs decided that they wanted all that we offered plus all the money which they demanded.

43) The defendants showed good faith and **voluntarily** complied with the desired outcome of the proceeding by

a) changing their name, to the animal owners support trust,

b) vacated the web site and disposing of it.[13]

c) I sent an apology in the words written by the plaintiffs to Neil Wells.

d) The trust has offered to pay the $12,200 but required a demand in their name for the bank.

i) The debts have now been settled in a trade off of the unincorporated trust continuing to use the trade mark.

e) I believe that this was in line with the outcome that was sought in the courts if they had won, which was

i) Stop the defendants from using the name Animal Welfare Institute of New Zealand

ii) Make the defendant give up the use of the web site.

iii) Obtain an apology for defamation.

f) Wells has had his apology and now wants money! I only agreed to get it out of court. Had it been made clear that action would follow for damages I would never have made given [sic] an apology, one which he has no doubt already put to good use.

---

13 To a company she apparently set up.

44) As a result of their action their lack of ability to negotiate and only demand I have suffered great stress, their action has been continued harassment, and bullying, it is the behaviour which we frown upon in school grounds, but appears to be acceptable if done by lawyers and throughout our courts…

…

50) I have always been a believer that honesty should be rewarded and hope that the court sees it the same way at least by not penalising honesty.

a) I have been through enough why should be punished for exposing what I believe to be a public fraud.

b) If we had policing based on providing a service and not running an "efficient business" this would never have happened.

[172] She also says, correctly, that defamation is only defamation if the statements are untrue and that she stands by everything she has said and published as being to the best of her knowledge the truth, the whole truth and nothing but the truth.

[173] And at the very end she says:

59) I hope that you can take the time to read this rather lengthy affidavit in full, it is what the plaintiffs have done that has made it lengthy, I have merely reported the facts.

(The facile nature of that last assertion will, by now, be altogether too obvious.)

MRS HADEN IN THE WITNESS BOX

[174] As had been recorded and when she gave evidence before me, Mrs Haden was offered the opportunity to add anything she wished to her affidavit, whereupon she took the opportunity to revisit, in already rehearsed (see para [109] above) narrative form, the kinds of things she had already said in her affidavit including a reiteration of her asserted to be sincere, but in fact hollow-sounding, personal views and beliefs.

[175] Under cross examination, little more emerged save of a kind making plain how strongly Mrs Haden holds her views, arising as they do from quite black and white conclusions reached in consequence of no better than her own, idiosyncratic,

preconceptions and misconceptions. Logic does not enter into it. Instead she allows her emotions unchecked rein.

[176] In replying to a number of counsel's questions, Mrs Haden took the opportunity simply to 'lay down the law' as she saw it to be, and there was much debate about what was or was not a trust and so on – a debate to which, in the end, I called halt.

[177] When it came back to matters factual, there was this in response to a question from counsel, which I first set out:

> Q Just briefly touching back upon this issue of how a trust is formed, do you accept that you've been told on a number of occasions of the plaintiff's view that the issues that you've raised about the formation of the trust are of little relevance because a trust can be formed orally and we've already given evidence that that's happened. Do you accept that this issue has been specifically identified for you, that a trust can be formed orally and that you've been asked to seek some legal advice on the issue to clarify your point of view?
>
> A I go with what is written in front of me. I am a very factual person, I deal with real evidence. Throughout my life as a police officer and a private investigator people tell me many things and people tell me what they want me to believe. In the end I always verify and that's why my company's name is Verisure. I verify everything with documents and on the documents that I have verified your claims, I have not found that to be true. I have found documents which say that the trust was formed by trust deed in 1999 and was being incorporated in 1999, but despite that still was not incorporated in 2000.

THE PARTIES' SUBMISSIONS

(Mrs Haden)

[178] Those of Mrs Haden substantially comprised yet another rehearsal of the history as Mrs Haden wishes to see it related; and of the questions she sees to arise from that.

[179] In amongst this she did, however, seek to make a reasoned (related to the evidence) argument as to when the trust that she has apparently chosen to have

bedeviled her existence these last number of years first came to exist, whether it had been properly operated if it did exist, and so on.

[180] She then proceeded under the heading "Evidence not produced at hearing for quantum or by way of affidavit".

[181] Here she began with the assertion "at no stage did the plaintiffs produce any documents or any copies of websites which contained the words complained of in the statement of claim".

[182] I do, of course, allow that the evidence went beyond the pleadings insofar as it traversed the post-statement of claim efforts of Mrs Haden to keep the case and her view of it (and, in turn, her denigration of Mr Wells) in the public domain. It was legitimate for it to do so given the pertinence of this evidence to the later discussed topic of aggravated damages.

[183] At no point has Mrs Haden disclaimed authorship of the world wide web materials which in fact self-identify as her work; in fact it is work she would have acclaimed, rather than seek to disclaim.

[184] As to the cause of action for passing-off, Mrs Haden again overlooked the consequences of the striking out of her defence. And when she reverted to the defamation claim, the same oversight was yet again evident.

[185] Misapprehensions about the purpose and place of the summary judgment procedure (there was no such application before me) and as to the consequences of the strike-out (which had occurred) permeated what followed.

[186] Consideration as to the scope of evidence on a hearing as to damages in defamation has already been the subject of reference to legal principles. Those will be revisited later on – also the issues as to punitive (or exemplary) damages.

[187] Mrs Haden referred to s 45 of the Defamation Act to the effect that the commencement of proceedings to recover damages for defamation is to be deemed

vexatious if, when those proceedings are commenced, the plaintiff has no intention of proceeding to trial.

[188] She went on to assert that the matter before the court had been "manipulated" by the plaintiffs so as to avoid a trial, saying (as if relevant in this respect) such as:

> In a memorandum to the court in [sic] 26th February Mr Wright (counsel for the plaintiffs) states that he is concerned that the defendant whose defence has been struck out may attempt to rerun her defence…

[189] And that:

> … The proof of the alleged claims was not produced in Mr Wells' affidavit or in court.
>
> …

She continued in like vein.

[190] That continuation simply and unfortunately illustrated that she continued to labour under miscomprehensions about the Court's processes. I am afraid in this respect that she only hears or reads that which she sees to suit her book.

[191] Fundamentally, she has not come to terms with the consequences of her decision not to see to payment of the costs award; a decision by which she deprived herself of the opportunity formally to defend the claims.

[192] In all of this there was a variously conveyed theme that somehow, by in the end being able to proceed by way of formal proof, the plaintiffs had avoided a trial. From that, Mrs Haden invited an inference which simply cannot be drawn, namely, that the plaintiffs never intended a trial.

[193] In line with her affidavit evidence, she went on to assert that the proceeding has not been about defamation, but about the plaintiff intimidating the defendants into releasing the name Animal Welfare Institute of New Zealand and securing the dismantling of websites; that her own evidence revealed what, in terms of any truly valid purpose, was a sham organisation of her own making, does not seem to have occurred to her.

[194] She next referred to s 27 of the New Zealand Bill of Rights Act. Here she asserted that the plaintiffs had sought to deny the defendants the right to justice embodied in that section.

[195] The section says:

> **27 Right to justice**
>
> (1) Every person has the right to the observance of the principles of natural justice by any tribunal or other public authority which has the power to make a determination in respect of that person's rights, obligations, or interests protected or recognised by law.
>
> (2) Every person whose rights, obligations, or interests protected or recognised by law have been affected by a determination of any tribunal or other public authority has the right to apply, in accordance with law, for judicial review of that determination.
>
> (3) Every person has the right to bring civil proceedings against, and to defend civil proceedings brought by, the Crown, and to have those proceedings heard, according to law, in the same way as civil proceedings between individuals.

[196] I am unable to identify from Mrs Haden's submissions any grounds for contending for a breach of this section.

[197] Mrs Haden next embarked upon what, with respect, was a rather diffuse submission about the course of the proceeding which, in the end, did not, I found, raise anything that was germane to the issues.

[198] It is convenient to note here that where her submissions could not be followed, or were absolutely off any relevant point, I have been obliged to ignore the parts in question altogether.

[199] What was yet again clear was that Mrs Haden had retreated not one inch from her entirely unsubstantiated and utterly irresponsible contentions that Mr Wells is a dishonest man and a serious fraudster.

[200] For example, she said:

> 30. After listening to the evidence of Mr Wells it became evident that he is either incompetent or is making excuses to cover up for what could be the vital components, which in a criminal court would establish mens rea.

This is, of course, was yet more aggravating conduct.

[201] That submission also vividly illustrates how Mrs Haden, with no warrant at all for so doing, has set herself up in perverse, and in the end no better than misguidedly vengeful, judgment of Mr Wells.

[202] It is a sad irony that, while claiming to have been deprived of her own rights and freedoms, Mrs Haden should have so assiduously but wrongfully sought to 'convict' Mr Wells.

[203] She later, and again unrelentingly, said:

> 32. We are asking the court to consider if there is criminal offending on the part of the plaintiffs… (as) … a decision from the court would be helpful to get the authorities to act against the damage that plaintiffs have done to the defendant's ability to have the matter independently investigated … (and) … a finding that the court has been used for this purpose … (and) … that such abuse of the court system will not be tolerated (would mean that) a strong message will be sent from the bench to those who seek to use the court in this manner …

[204] As will be abundantly clear by now, there is simply no evidence for any such message: but yet this from her:

> 34. This situation is somewhat unusual as it is the defendant who is alleging criminal offending on the part of the plaintiffs as being the reason for the vexatious and maliciousness with which they have attempted to use the court to buy silence to conceal the offending and for the furtherance of crime.
>
> a) We are confident that the plaintiffs' offending is attempted fraud (attempts) s 72 Crimes Act 1971 or fraud itself and that the police and serious fraud will, by virtue of warrants and their statutory powers, … be able to obtain the necessary documents to prove the offence to satisfy the criminal courts.
>
> b) The plaintiff is now in a position where he can commit the offence of corrupt use of official information – s 105A which carries a seven year term of imprisonment …

[205] There is no end to it even then, instead rather more; that such as extraordinary assertions of evidence of attempted robbery (using the courts) and the possibility of blackmail.

[206] At this point, and again with due respect, Mrs Haden's submissions have gone from, in themselves, being an abuse of the Court's process to being quite absurd.

[207] Moving on, she correctly identifies ss 29 and 31 of the Defamation Act as being relevant but with, in between, a reference to s 30 which I simply cannot follow.

DEFAMATION ACT

[208] It is convenient at this point to rehearse s 28 of the Act:

> **28 Punitive damages**
>
> In any proceedings for defamation, punitive damages may be awarded against a defendant only where that defendant has acted in flagrant disregard of the rights of the plaintiff.

[209] Here I would refer back to Lord Cooke's observations in this respect noted at para [64] above.

[210] Here I also contextually rehearse:

> **29 Matters to be taken into account in mitigation of damages**
>
> In assessing damages in any proceedings for defamation, the following matters shall be taken into account in mitigation of damages:
>
> (a) In respect of the publication of any correction, retraction, or apology published by the defendant, the nature, extent, form, manner, and time of that publication:
>
> (b) In respect of the publication, by the defendant, of any statement of explanation or rebuttal, or of both explanation and rebuttal, in relation to the matter that is the subject of the proceedings, the nature, extent, form, manner, and time of that publication:

(c) The terms of any injunction or declaration that the Court proposes to make or grant:

(d) Any delay between the publication of the matter in respect of which the proceedings are brought and the decision of the Court in those proceedings, being delay for which the plaintiff was responsible.

30 Misconduct of plaintiff in mitigation of damages

In any proceedings for defamation, the defendant may prove, in mitigation of damages, specific instances of misconduct by the plaintiff in order to establish that the plaintiff is a person whose reputation is generally bad in the aspect to which the proceedings relate.

31 Other evidence in mitigation of damages

In any proceedings for defamation, the defendant may prove, in mitigation of damages, that the plaintiff—

(a) Has already recovered damages; or

(b) Has brought proceedings to recover damages; or

(c) Has received or agreed to receive compensation—

in respect of any other publication by the defendant, or by any other person, of matter that is the same or substantially the same as the matter that is the subject of the proceedings.

32 Defendant's right to prove other matters in mitigation of damages not affected

Nothing in section 29 or section 30 or section 31 of this Act limits any other rule of law by virtue of which any matter is required or permitted to be taken into account, in assessing damages in any proceedings for defamation, in mitigation of damages.

[211] After reference to a couple of matters which do not require comment, Mrs Haden's submissions then proceeded to a "Part 2".

[212] Here, over many more pages, she generally revisited matters raised regularly and rehearsed by her in the course of the proceedings.

[213] These rehearsals were interspersed with references to the affidavit evidence of Mr Wells and Mr Coutts. By and large, they comprised no more than elements of her mixtures as before.

PLAINTIFFS' SUBMISSIONS

[214] In his submissions in reply, and as regards s 29(a) - and so the matter of any correction, retraction or apology - counsel acknowledged that a so-called apology was proffered by Mrs Haden last year following on from a round of interlocutory determinations.

[215] I accept the submission that it was very generalised and did not provide the kind of specific retraction of the complaints of defamatory misconduct that what had gone before inevitably demanded.

[216] Moreover, Mrs Haden, by her subsequent conduct discussed in this judgment, has shown that it was never intended to be anything better than an insincere sop, and that she herself has turned her back on it.

[217] Such very limited weight or worth as the asserted "apology" might ever have had has in fact been completely washed away by Mrs Haden's continuing campaign of vilification of Mr Wells.

[218] Indeed, she herself has said of the so-called apology – see her submissions (Part 1 para 42 (c), (a)) - that it was given "for no other reason that [sic] to be released from the proceedings". Thus I have not encumbered this judgment with its contents.

[219] The fact of the whole matter is that Mrs Haden declines to express any concern about the impact of her repeated behaviours. Instead, and as time has gone by, she has simply compounded the consequences of her original wrongdoings by making even more extreme and outlandish allegations.

[220] So whatever weight, worth or potential for materiality, the "apology" (which she herself does not appear ever to have sought to publicise in the fashion she has her catalogues of allegations) ever had, has, by the actions of Mrs Haden herself, been eliminated.

[221] Section 29(b) is of no utility to Mrs Haden either. Her ongoing conduct has not been in the direction or nature of explanation or rebuttal, merely repetition upon repetition of absurd and hurtful contentions deliberately designed (there is no other rational explanation for it) by Mrs Haden to completely destroy Mr Wells' reputation.

[222] Not to be overlooked here is how she has particularly worked to ensure that those with whom Mr Wells' reputation matters most were recipients of her essays into character assassination. And that brings me to her -

STATE OF MIND

[223] I note the opinion expressed in *Gatley* 8.14 that the fact that a defendant was unaware, because of his or her state of mind, that what was being uttered was defamatory is not, as such a defence.

[224] *Gatley* goes on to say that where some specific state of mind of a defendant is identified, e.g. where there is a mental disorder so notorious or apparent that those who read the words cannot reasonably attach to them any defamatory meaning, that would negate liability.

[225] Here I take *Gatley* to mean that if, say, it was well-known that a defendant was distinctly mentally disturbed, so that when he or she spoke, or wrote, ill of another what was spoken or written would immediately be discounted as of no account, then there would be no defamation; that because no-one (including a could-be-otherwise plaintiff) would, or could, take the words seriously.

[226] But that is not to say that an individual who is not so beset and quite unreasonably and illogically speaks or writes of another (simply because it suits his or her book to do so) could, or should, escape responsibility for such actions when, in the result, the law provides a remedy to that other.

[227] There is no evidence in this case (and I am entirely confident that Mrs Haden would unequivocally eschew any suggestion) that she suffers from any mental illness or like, clinical level, disorder.

[228] *Gatley* says (at 3.13) that it was clearly established at common law that meaning is an objective test, entirely independent of the defendant's state of mind or intention.

[229] Thus imputation involves something conveyed by the particular words, as determined on an objective basis – by the meaning, then, in which an ordinary reasonable person would understand them.

[230] And, in all of this, anyway, Mrs Haden herself plainly has meant, and means to say, things that are utterly disparaging of Mr Wells. That I might add (looking at the totality of her conduct and her own admissions) in terms such as would surely have denied her any efficacious defence, even, of honest opinion had the case remained entirely contestable. (Honest opinion issues are visited later.)

[231] With no concern for any rational form of the truth, Mrs Haden has patently wanted her readers to accept that she has been right in saying, in one way and numerous others, such as that Mr Wells is guilty of serious criminal offending.

[232] Her words have not been written in nothing more than foolishly judged jest. Her language makes it clear that she has been, and unrepentantly remains, in deadly earnest. There is no room for mitigation recognition here.

[233] Save to note that there will be injunctive relief in respect of both the passing off and the defamation causes of action, I make no comment at this point about s 29(c), and turn thus to its subs (d).

ANY ISSUE OF DELAY

[234] As the judge most recently dealing with this proceeding, I have become very familiar with the court file. From a perusal of that I can say that there has been no

significant delay for which Mr Wells is responsible between the publications complained of and Mr Wells' pursuit thereof.

MR WELLS' CHARACTER AND REPUTATION

[235] That brings me to s 30. As counsel for the plaintiffs has identified, Mrs Haden has made reference to the finding of an employment tribunal that, on a particular occasion, Mr Wells was found not to have met the requisite standard of a good employer in terms of communicating to the employee that which was said and complained of about her.

[236] That is not, however, for that tribunal to be taken to have held (nor ever did it, as I understand it) that Mr Wells' character or reputation should, or might, be regarded as diminished accordingly.

[237] There would be many an employer of impeccable character and reputation who, on account the strict processes demanded as between employer and employee, has been found to have fallen short. One might even be forgiven for saying that risks of being held so to have slipped go with every employer's territory.

[238] But I must not overlook dealing with the trust establishment issues that Mrs Haden has allowed to vex her.

TRUST ESTABLISHMENT REVISITED

[239] I do not propose to rehearse the already-made-obvious misapprehensions or misconceptions under which Mrs Haden has laboured as regards the requisites for the creation of a trust.

[240] I simply note – so as to illustrate one misapprehension – that although (and presumably because of her fixation about things being in writing) Mrs Haden does not think so, a trust can, of course, be created orally; unless that is (which is not identified to be the case here) there is some particular statutory obstruction to that informal course.

[241] That said, I acknowledge (and have in fact found) that the sequence of events between in or around October 1999 and in or around March 2000 were such as to indicate that, in unfortunate fashion, Mr Wells got ahead of himself in his correspondence with officials and ministers.

[242] As regards an accurate identification of how far matters were along the requisite road to the establishment of a formally established and documented trust, his communications were distinctly presumptive.

[243] But there is no evidence at all that, in the result, any harm was occasioned in terms of the due engagement and pursuit of the object of the Animal Welfare Act.

[244] It is particularly significant here that AWINZ did not achieve "approved organisation" status until the end of 2000 by which time its establishment as a trust had been a formally recognisable fact for nigh on 10 months.

[245] Nor is there any evidence that here there has been a problem for anyone, genuinely interested, as a watchdog or otherwise in the due implementation of the AWA.

[246] Nowhere is there any evidence even to suggest that what was an imprudent piece of presumption did any harm at all - save, that is, for the harm created out of it for Mr Wells by Mrs Haden who has turned it into a weapon for retribution for perceived air training corps wrongs - "wrongs" having no connection at all to the AWA and its administration.

[247] Fundamentally, so far as damages in the proceeding are concerned, Mrs Haden's activities have swamped out of any relevance the presumptive acts I have identified.

ESCALATION/DISTORTION/UNWARRANTED SUPPOSITION

[248] Mrs Haden, directly and through Verisure, has succeeded in escalating a modest, in the overall scheme of things, infraction or two into a cause célèbre of her

own manufacture which, sadly, offers neither benefit for her (rather distinctly the reverse) nor for anyone else, and may be taken to have done great harm to Mr Wells.

[249] Thus the immediate and short point, vis-à-vis s 30 and common law principles, is that in pursuing her crusade (including repetitively rehearsing it before the court in supposed mitigation of damages) Mrs Haden fails utterly to establish that Mr Wells is a person whose reputation is generally bad in the aspect to which the proceedings relate, and simply aggravates the already precarious nature of her position.

[250] To the contrary, the evidence is clear that Mr Wells is a man who has done much good and, one suspects, for very little by way of return beyond a sense of personal accomplishment at having contributed to matters of community benefit.

[251] He has certainly done nothing to deserve the calumny that Mrs Haden has rained down upon him, and will obviously continue so to rain, if left unrestrained.

OTHER MITIGATION EVIDENCE

[252] I turn then to s 31 – other evidence in mitigation of damages. All I need say of this is that there is no question of prior recovery of damages or other proceedings for damages, nor either receipt or agreement to receive compensation, in respect of any publication referable to this proceeding and its subject matter.

SECTION 32

[253] What about s 32? Here I will add something more I recall conveying on the hearing day.

[254] Section 32 makes plain that the statutory headings for consideration of mitigation do not comprise a code that excludes any rule of law.

[255] The categories of evidence generally identified by *Gatley* as admissible in mitigation of damages are these:

(i) claimant's bad reputation;

(ii) facts relevant to the contextual background in which the defamatory publication came to be made;

(iii) evidence properly before the court on some other issue;

(iv) (where relevant) facts which tend to disprove malice;

(v) claimant's own conduct;

(vi) apology or other amends;

(vii) damages already recovered for same libel

- see 33.28

[256] I have already, in the context of s 30 of the New Zealand statute, dealt with the matter of reputation.

[257] *Gatley's* expression of the common law position is at 33.31. The common law appears to remain settled in terms that only evidence of general bad reputation is admissible.

[258] As already identified, our statute specifically permits (at least in the context of a full-scale contest) proof of specific instances of misconduct in order to establish that a plaintiff is a person whose reputation is generally bad in the aspect to which the proceeding relates.

[259] So, in light of s 30 and, of course, my already expressed findings in this area, I make but this observation before moving on.

[260] Plainly, Mrs Haden's cross examination of Mr Wells was aimed at establishing the communication by him of misinformation in respect of the establishment of the trust; particularly in the sphere of the accuracy of his advice as

to its state of establishment, or otherwise, when communicating with officials or ministers.

[261] That noted, I do not find any common law (surviving our statute) rule, requiring me to add to what I have already said in disposing of this aspect of the case - which is that Mr Wells was unduly presumptive but not in terms doing any ultimate harm at all.

[262] As to facts otherwise relevant to the contextual background in which the defamatory publication was made, Gatley refers to *Burstein v Times Newspapers* [2001] 1 WLR 579. Gatley has this to say about that case:

> **33.42** **The *Burstein* case**. This is a new category of admissible evidence arising from the decision in *Burstein v Times Newspapers*. In this case the defamatory allegation complained of was that the claimant had organised bands of hecklers to go about wrecking performances of modern atonal music. There was no defence of justification and the plea of fair comment was struck out by the trial judge. The judge would not permit the defendant to seek to prove in mitigation of damages certain facts about the claimant which included the following, that the claimant had formed a group of campaigners against modernist atonal music which styled itself "The Hecklers", that they had issued a manifesto calling upon the public to join them in booing at the end of a performance of an opera of a modern composer, and that the claimant and The Hecklers had greeted the end of the performance of that opera with boos and hisses.
>
> This ruling was the principal subject of appeal. The leading judgment of the Court of Appeal was given by May LJ. He pointed out that the jury had been invited to assess damages in something of a void knowing little or nothing of the context in which the defendant came to publish the defamatory statement, a situation which he described as "quite artificial and unhelpful." He then reviewed the major authorities on mitigation in defamation actions, and in particular *Scott v Sampson* and *Spiedel v Plato Films*, in an analysis of the nature of the evidence that on the basis of these cases had to be excluded. His conclusions were that Cave J's third head (in *Scott v Sampson)*, namely facts and circumstances tending to show the disposition of the plaintiff, evidence of which was inadmissible, did not extend to exclude evidence of particular facts directly relevant to the context in which the defamatory publication came to be made; and that in *Spiedel v Plato Films* the main concern was to prevent libel trials from becoming roving inquiries into the plaintiff's reputation, character or disposition; that what was held to be inadmissible was evidence of particular facts said to be relevant to the plaintiff's general reputation and disposition, and that the House of Lords did not decide that particular facts directly relevant

> to the context in which a defamatory publication came to be made were inadmissible. Thus May LJ concluded that he was not constrained by authority in holding that "evidence of directly relevant background context" was admissible in mitigation. The evidence about the claimant's activities, outlined above, excluded by the judge, came within this description.

(Emphasis added)

[263] Apart from noting the reduction of such constraints achieved by s 30 of this country's Defamation Act, I need not dwell on this issue. The matter was before me as a judge sitting alone and, at the hearing on 13 March and so as to avoid any risk of injustice to a lay litigant, I deliberately placed no immediate restraint on the range of evidence as might count in mitigation.

[264] In the result the defendant got the loose reins she wanted. But, as will by now be obvious, she failed entirely to show that her single-minded derogation of Mr Wells' character and reputation was in any way justified. To the contrary, she exposed herself as being a person whose idiosyncratic determination to do Mr Wells down in those terms knew no discernible limits.

[265] Most certainly she did not let any of the obvious facts get in the way. Thus, even had her defences not been struck out, the end result would surely have been no different.

[266] I turn, then, to the heading "Evidence properly before the Court on some other issue".

[267] None is apparent to me in terms deserving or requiring of mention save that matters raised by the (deemed to be admitted) allegations as to passing off are connected with the defamation claim. But that is not so as to matter, in the end, as regards damages for defamation.

[268] Malice I can leave altogether because the relevant legal area in that respect seems to me to be that of punitive damages.

[269] As to the claimant's own conduct, *Gatley* notes (33.48) that this does not encompass the general behaviour of the plaintiff. Instead it relates principally to activities that can be causally connected to the publication of the libel of which the plaintiff complains, such as direct provocation.

[270] I find nonesuch, whatesoever, here. Mrs Haden has been naught but self-provoked.

[271] Matters of apology or amends have been canvassed and dealt with previously; and again no question of other damages recovery arises.

[272] *Gatley* also has a separate heading "Other Conduct of the Claimant" at 33.51. Against this heading, the authors say:

> The conduct of the claimant during the course of, and in relation to, the litigation, may be of relevance in assessing damages. It is suggested that the type of conduct which might lead a jury to reduce the damages would be acting in an oppressive manner calculated to cause the defendant harassment and expense beyond that ordinarily encountered in the course of proceedings...

[273] As must be apparent by now, this is exactly the sort of complaint that Mrs Haden (with Verisure) makes of Mr Wells. As must be equally apparent by now, her complaints are without a scintilla of justification.

[274] It has been Mrs Haden's (and thus Verisure's) decision to take and pursue an inflexible view of the whole matter that has been the trouble rather than anything that Mr Wells has done in the course of the proceeding.

[275] Far from Mr Wells having some illegitimate, collateral, purpose in pursuing the proceeding, it is Mrs Haden who (with her alter ego Verisure) has sought to make it a vehicle to serve their own destructive of Mr Wells' reputation and standing ends.

[276] To be clear about it, and in light of both the evidence put before me on the hearing day and my review of the court file, there is no sign of any action on the part of Mr Wells except of a kind directed at identifying the true issues in the proceeding

and seeing to their due and timeous disposition. This case is in no way identifiable as of the 'gagging writ' variety.

[277] The point is reached where Mrs Haden (in her submissions) comes back to the passing-off claim. Here, and in fact solely to the point of the defamation claim, she says that "It would be a sad day when the court issues an injunction against anyone for telling the truth or for asking questions".

[278] She then adds that "The material on the website is not material which the plaintiffs have raised in their statement of claim and is material which was posted by the defence in desperation after being beaten up by the plaintiffs through the use of the courts". (A plainer admission of responsibility for the aggravating materials might be hard to find.)

[279] It is correct to say that the website material most recently focused on has not been the subject of an amended statement of claim seeking (with leave) to include causes of action arising subsequent to the issue of the proceeding. But it is potent evidence of aggravation and the need for injunctive restraint of Mrs Haden (and Verisure), given her (and thus its) still vengeful state of mind.

[280] There is then a reversion to the issue of quantum of defamation damages – to Mr Wells' quantification of his claim. This includes a misdirected (as already explained) reiteration of the assertion that there are matters which Mr Wells has not proved and the submission that he "confirmed with his evidence the mistakes and contradiction which he had made".

[281] I took that to refer to the trust establishment issue, the proper place and significance of which I will in due course return to once more.

[282] Of damages as such Mrs Haden says:

> 36. I do not believe that the discussion regarding damages is appropriate at this point in the proceedings in view of s 45 Defamation Act and their lack of proof of defamation…

(The statutory reference constitutes an apparent harking back to Mrs Haden's idea that the proceeding has been vexatious.)

[283] Here, and yet again, Mrs Haden elides the long before known by her reality that the 13 March hearing was one about damages.

[284] On 13 March, she in fact got every reasonable chance to offer all that she had by way of possibility pertinent evidence but, and in the overall result, she simply did herself and Verisure more damage.

[285] I pass over for the moment, but will return to, the matter of a loss of income claim of Mr Wells to which Mrs Haden referred.

[286] The last matter Mrs Haden dealt with (despite her earlier disavowal of the relevance of damages at this point) was that of punitive damages. Under this heading she revisited the misguided assertion of failure to provide requisite evidence and, in any event, denied that s 28 could hold sway because:

> 41. …
>
> a) The defence has not acted in flagrant disregard of the rights of the plaintiff; the plaintiff cannot claim a right to immunity from accountability in his very public role.
>
> b) Those employed in public roles need to be accountable and answerable to the public.

[287] The core of her and misconceived whole case is surely captured by her own observation that:

> I show no remorse for telling the truth …

[288] The question begging approach that has beset her attitude to this proceeding is as starkly identifiable here as anywhere.

[289] She later contends, and I will come back to this, that:

> It is not defamation to point out mistakes. When mistakes of this magnitude are made there are only two possibilities, the person making the mistakes is extremely incompetent or the "mistakes" have been made intentionally.

DAMAGES

[290] The statement of claim, and in particular reference to what Mrs Haden had published in respect of Mr Wells and AWINZ, accurately asserted that such publications meant or were meant to imply that Mr Wells:

- Had created an illegitimate "sham trust";
- Was not properly accounting for monies received by AWINZ or not using such monies for the charitable purposes of AWINZ;
- Was dishonest and had taken money intended for charitable purposes for himself;
- Had acted fraudulently and/or illegitimately and/or was involved in a "cover up".

[291] When the pleading turned to a particular communication of 13 June 2006 to the mayor and councillors of Waitakere City Council - one likewise concerned with the legitimacy of AWINZ - this was quoted from the email in question:

> Neil Wells is unable to prove any legitimacy of his trust other than referring to the Gazette entry of AWINZ which came about when he pulled the wool over ministers [sic] eyes by pretending that AWINZ existed as a trust and was being registered …
>
> This has to be of concern to the Council as your animal welfare officers are founded on what appears to be a fraud. Waitakere has paid AWINZ a lot of money, if it does not exist … [sic] where has it gone. It certainly is not a charitable trust as Wells claims it to be, because if it was we would not have been able to establish a legal charitable trust in the same name. That in itself has to be proof that he cannot be taken on his word.

[292] Of this it was said that such statements meant, or were intended to imply, that Mr Wells:

- Deliberately misled a Minister of the Crown in seeking to have AWINZ accepted as an approved organisation;
- Had created an illegitimate trust;

- Had committed “fraud”;
- Had misappropriated a lot of money paid to AWINZ 2000 by Waitakere City Council; and
- Was untruthful and untrustworthy.

- And that is what the email conveyed.

[293] The next reference was to an email to the mayor, councillors and community board members of Waitakere and North Shore City Councils of 23 May 2006, which included the statement that:

> Neil Wells made false representations when he applied for AWINZ to become an approved organisation.

[294] It was said of this statement that it meant, or was meant to imply, that Mr Wells:

- Made false representations when he applied to have AWINZ accepted as an approved organisation; and
- He was untruthful and untrustworthy.

[295] Earlier in this judgment (see e.g., paras [241] to [247]) I have identified my findings in respect of Mr Wells’ dealings with a Minister of the Crown and officials leading up to the approval of AWINZ under the relevant legislation and I will not rehearse those afresh.

[296] Suffice it to say that the pleaded acts of defamation exemplify how Mrs Haden has made mountains out of a molehill, the characteristics of which she has persistently (including after the statement of claim was filed and served) distorted in publications by her and Verisure that are remarkable for their plain vindictiveness.

[297] The statement of claim goes on to identify a clear example of her approach throughout where reference is made to another email, sent just short of 10 days before to the same addressees, which included the statement:

> Neil Wells is trying to cover up a scam trust. You have the right to know that your animal welfare officers have been working for a non existent trust …

[298] Here Mr Wells rightly asserts that this statement meant, or at least implied, that:

- AWINZ was a "scam" or non-existent trust which fact Mr Wells was trying to cover up;
- He was (in that respect) seeking to mislead the mayors, councillors and community board members of Waitakere and North Shore City Councils; and
- He was untruthful and untrustworthy.

[299] The following day, 15 May 2006, Mrs Haden had sent an email to the committee members of the Kaimanawa Wild Horse Preservation Trust Inc which included this:

> (Neil Wells) … treats animals better than his fellow humans, He [sic] did the dirty on me and as a result I discovered that he was hiding behind a sham trust … AWINZ.

Here again Mrs Haden unmistakably exposes the flank of her vendetta and the original reason for it.

[300] The unsurprising assertion is that this meant, or implied, that:

- Mr Wells did not treat humans well;
- He dealt with Mrs Haden in a dishonest or dishonourable manner;
- He was hiding behind a "sham trust";
- He was untruthful and untrustworthy.

[301] Well before all this, as the statement of claim also pleads, there had been an email communication with the board members of the Auckland Air Cadet Trust which included the statement that:

> Neil some more advertising that seems to sum you up.

[302] This meaningless in itself statement was followed by an illustration of a "wheel of physical abuse" which included reference to:

- Emotional abuse;
- Economic abuse;
- Intimidation;
- Using children or pets;
- Using privilege;
- Sexual abuse;
- Threats; and
- Isolation.

[303] In the round, this obvious meant implied that Mr Wells abused people in the manner set out in the "wheel".

[304] And in the same month, in fact five days before, Mrs Haden had faxed the entire staff of the animal welfare section of the Waitakere City Council in terms including these:

> Have you been bullied by Neil Wells? I have been and I want to support anyone who is being subjected to his cruel and unscrupulous practices…
>
> I have decided to … take a stand against the greatest bully I have ever known. Neil Wells …
>
> Neil has spent months … assassinating my good name and spreading malicious gossip …

> All I ask you to do is to contact me if you have been the subject of bullying or corrupt practices at the hand [sic] of Neil.
>
> … His ethics should be far higher than those of the average person, not gutter ethics.

[305] The assertion, logical in the circumstances, here was that such statements meant, or implied, that:

- Mr Wells was a "bully" and treated people in a "cruel and unscrupulous manner";
- He spread malicious gossip and indulged in "character assassination";
- He was corrupt; and
- He had "gutter ethics".

[306] Those, then, are the specific defamatory instances pleaded by Mr Wells against Mrs Haden and Verisure (as the case sometimes is) but, as will readily be seen from such of this judgment as precedes this point in it, they could well be said to be but particular examples of a much greater and ongoing whole.

[307] The consequential, and in pleading terms now uncontested, assertion is that in the result Mr Wells' reputation has been seriously damaged and he has suffered considerable distress and embarrassment.

[308] Earlier (see para [63]) I identified the correct approach to the award of damages for defamation and, again, I will not rehearse again what I there set out.

[309] What I would make plain is that, in arriving at the award shortly to be mentioned, and in relation to the instances identified in the statement of claim, I have sought to pay due attention to the relevant principles, particularly recognising that damages for defamation are intended:

- To be compensation for the injury to reputation; and

- For the natural injury to feelings and the grief and distress caused by the publication; and

- Can also be regarded as a vindication of the plaintiff and of his reputation.

[310] In that last respect I respectfully adopt (as did our Court of Appeal in *Television New Zealand v Keith* [1994] 2 NZLR 84, 86), the comment of Windeyer J in *Uren v John Fairfax & Sons Pty Limited* (1966) 117 CLR 118, 150 where he said:

> It seems to me that, properly speaking, a man defamed does not get compensation for his damaged reputation. He gets damages because he was injured in his reputation, that is simply because he was publicly defamed. For this reason, compensation by damages operates in two ways – as a vindication of the plaintiff to the public and as consolation to him for a wrong done. Compensation is here a solatium rather than a monetary recompense for harm measurable in money.

[311] I also have regard to the caution that an award must not exceed what is sufficient or adequate to vindicate the plaintiff's reputation and assuage his injured feelings. Though, of course, it may bring into account matters of aggravation.

AGGRAVATION

[312] Mrs Haden (with Verisure) has made use of this proceeding itself and of the world wide web repeatedly to make her self-perceived case that Mr Wells is a fraudster.

[313] Mrs Haden has persisted in that endeavour throughout this proceeding. In doing so, she has (with Verisure) freely and frequently repeated the kinds of accusations that are identified in the statement of claim.

[314] A simple google search with the keyword 'AWINZ" discloses no change in this respect as at the end of June, but instead some 5 or so links to her and Verisure's materials.

[315] Far from this proceeding being Mr Wells' instrument to oppress and suppress (Mrs Haden's position) she has unhesitatingly used it in an endeavour further to beat Mr Wells about.

[316] I am entitled, when considering matters of aggravation in the context of compensatory entitlement, to look at Mrs Haden's conduct from the time she began defaming Mr Wells down to the time of this judgment;[14] and this is a case where I consider I have a real obligation to do so.

[317] As variously identified above, Mrs Haden and Verisure have (in terms distinctly aggravating matters) used the power of the web to attract untold publicity to their irrational yet determined accusations.[15]

[318] Moreover, not only on 13 March but also before me again on 3 July Mrs Haden unhesitatingly repeated her defamatory allegations in terms continuing to demonstrate (at best for her) a wilful blindness to the flaws in her case.

[319] On the 3 July occasion, in a crowded courtroom and with Mr Wells present, she said things like:

> … what I feel I have proved in this case is (that it has been) brought to conceal corruption and the corruption that it's concealing is fraud…
>
> … The whole Court process has enabled the plaintiffs to be able to back track and cover up that which should have been a nice little secret and a lucrative retirement…
>
> … People who seek to expose corruption or whom, who discover it, should not be penalised for it…
>
> … and the cost of questioning corruption is too high unless people who question corruption can have the support of your Court…

[320] Her most recent pleadings (including those filed for, and produced at, the 3 July 2008 hearing) are still full of it all. And, in the past, she and Verisure have been wont to publish their pleadings on the world wide web.

---

14 *Praed v Graham* (1889) 24 QBD 53 at 55

15 cf *Sutcliffe v Pressdram* [1991] 1 QB 153

[321] I choose to deal with the issue of exemplary damages quite separately, so that the award I am about to identify is not intended to take into account any necessary element of punishment and deterrence and above recognition of personally affecting Mr Wells' aggravation.

[322] Focusing now on the compensatory elements, what would provide some real solatium for the wrongs that have been done to Mr Wells by Mrs Haden and Verisure?

[323] And what would signal both to Mr Wells and the public at large (in particular those many individuals and their organisations in and amongst that public with whom Mr Wells has worked, and continues to work) that his reputation has been vindicated?

[324] It will have been recognised from my references to the specific pleadings of defamation that in some instances the defamatory act, as pleaded, was directly that of Mrs Haden and in others, on the face of it, of Verisure.

[325] But when it comes to the abuse of the legal process by its illegitimate use further (and without any grounds for doing so) to vilify Mr Wells, the underlying responsibility lies with Mrs Haden.

[326] She has put Verisure in harm's way as and when it has suited her. And I will revisit that point when I deal with exemplary damages.

[327] Of course, in law each is a separate person and some of the originally complained of acts of defamation were Mrs Haden's personally and some Verisure's.

[328] In some sets of proceedings there might be nice questions about whether liability was joint (on account concurrence in the acts) or concurrent (because of the conjoined effect of a coincidence of separate acts).

[329] But what we very plainly have here is a concurrence of activity between Mrs Haden and Verisure with, throughout, a joint intention not to let up.

[330] Not forgetting that I shall next and separately look at exemplary damages, it is my view that, all matters (including the reprehensible onslaught to which Mr Wells has continued to be subjected) considered, the amount that was sought at the outset for compensatory damages of $50,000 now turns out to be, if anything, distinctly modest.

[331] Thus, in all the circumstances I have described, I grant Mr Wells by way of compensatory (including aggravated) damages against Mrs Haden and Verisure a joint and several recovery of $50,000.

EXEMPLARY DAMAGES

[332] I turn then to the matter of exemplary damages. Mr Wells' s 28 pleading in this respect was that:

> (a) The defendants did not confirm the correctness of the various assertions made, either adequately or at all, before publishing the allegations. This constituted reckless disregard for the truth.
>
> (b) The defendants disseminated their statements as widely as possible, not only publishing the defamatory material on the internet, but also sending correspondence to effectively every organisation (and often every member of those organisations) that they knew the second plaintiff had connections with.
>
> (c) The first defendant was motivated by malice, and has stated to the second plaintiff that she was "enjoying herself" with respect to the suffering and embarrassment she was causing him personally and to Mr Warwick Robertson, Team Leader, Environmental, North Shore City Council, words to the effect that she wanted to destroy Neil Wells.
>
> (d) The primary target to suffer as a result of the defendants' allegations was the second plaintiff who was a founder and trustee of a charitable trust, attacks upon whom ought to be regarded by the law as particularly reprehensible.

[333] I reiterate here that, although Mrs Haden has ended up unable formally to deny any of the above, she has, on her own evidence, shown that she never had a case to make anyway. Thus, and I have already spoken of this, the result would surely have been no different had her defences not been struck out.

[334] Had her defence pleading survived, not even 'honest opinion' could, on her case, have ever saved her. Necessarily putting aside matters of malice,[16] and (as such) her repeated assertions of corruption,[17] she has shown by her conduct and evidence that, reckless of the consequences and ignoring the true facts, she has persistently published but counterfeit opinions dressed up in fashion designed to seek their acceptance as fact.

[335] Dealing then with exemplary damages, I identified the principles relevant here at para [64] above, so I will not go over those again.

[336] Central is the point that exemplary, or punitive, damages are available where the defendant's conduct has been high-handed to an extent calling for punishment beyond the consequences inflicted by any compensatory (including aggravated) damages award.

[337] They may be awarded only where the defendant has acted in flagrant disregard of the rights of the plaintiff.

[338] Given what has gone before, all that surely need be added here is that, for a case of its kind, a clearer example of high-handedness (and of flagrant, and persistently so, disregard of the rights of a plaintiff) would be difficult to find.

[339] For no good reason at all Mrs Haden – using all the resources at her command – embarked upon and has persisted with a relentless and vindictive campaign to destroy Mr Wells' good reputation.

[340] I thus have no hesitation in concluding that there should be an award of exemplary damages against Mrs Haden as the architect and originator of it all.

[341] Such an award is not, of course, designed to increase the level of compensation for Mr Wells, but rather to punish and, in so punishing, to discourage and deter Mrs Haden.

---

16 Because of s 10(3) Defamation Act 1992

17 Because of s 12 ibid

[342] By way of exemplary damages I will award $7,500 against Mrs Haden. I note that I have remembered here that deterrence will also come in the form of injunctive relief.

[343] There will be no exemplary award against Verisure.

LOSS OF INCOME

[344] Mr Wells claimed a sum in excess of $18,000 for loss of income.

[345] However:

- On the face of it, any such loss was suffered only by a company he presumably owns or controls rather than by him personally; and in any event

- The evidence fell short of demonstrating that any such loss could be laid at the feet of Mrs Haden or Verisure; and even if it could be

- There was insufficient evidence to show either an end loss to Mr Wells, or that he had an obligation to recoup a company loss for which either Mrs Haden or Verisure might be held accountable through him.

INJUNCTIVE RELIEF

[346] I turn to injunctive relief which may be granted in this Court pursuant to s 34 of the District Courts Act 1947. Here Mr Wells had prayed:

> An injunction restraining the first and second defendants, whether by themselves, their servants or agents, from publishing or causing to be published the statements particularised in paras 20 to 35 (of the statement of claim) or words to similar effect.

[347] The Court will grant an injunction if it is satisfied not only of the injurious nature of the words in question but also that there is reason to apprehend further publication by the defendants.[18]

[348] In this case there is a wealth of incontrovertible evidence that there is every good reason for just that apprehension.

[349] Nothing that has occurred or been required of her so far has deflected Mrs Haden (and thus Verisure) from reviling and denigrating Mr Wells, so I will have no hesitation in granting an injunction in precisely those terms[19] in order to bring that to an end.

[350] Mr Wells will have leave to apply further in case a need should arise, or later arising circumstances should so justify.

[351] To that reservation I add this one: Mr Wells will have the ability to apply for a mandatory injunction for the publication of a correction of the defamation which he has suffered.[20]

PUBLICATION OF THIS JUDGMENT

[352] Given Mrs Haden's predilection for publishing what suits her (often quite out of context or bereft of reference to a relevant whole) I further, and in the extraordinary circumstances of this case, direct that any publication by her or Verisure, or through the instrumentality of either or both of them, of this judgment in any form or forum (including the world wide web) must be of the whole of it, not simply selected parts.

PASSING OFF

[353] The relief finally sought against Mrs Haden here was an injunction:

---

18 See *Gatley* at 9.27 and its footnote 28.

19 That is, as set out in para [346] above.

20 See *TV3 Network Ltd v Eveready New Zealand Ltd* [1993] 3 NZLR 435 per Gault J.

(a) restraining Mrs Haden or her servants or agents from using the name "Animal Welfare Institute of New Zealand" or "AWINZ"; and

(b) requiring her to close the website www.awinz.co.nz and deactivate the domain name.

[354] The point was made here that Mrs Haden's company, Animal Welfare Institute of New Zealand Limited, purported now to own the domain name and had acquired as a trademark AWINZ.

[355] The submission was that the practical (and desirable, indeed necessary) effect of an injunction as sought would be to require Mrs Haden, in her capacity as sole director and shareholder of that company, to change the company's name, abandon (or at least cease to use) the trademark, close the website and deactivate the domain name.

[356] This Court has no jurisdiction in terms of the enforcement of the Trademarks Act 2002 but I do not see that to inhibit imposition of a prohibition on a trademark's use when, in the hands of its present owner, it is no more than a vehicle to do unlawful damage.

[357] I consider that approach to be both practical and principled, and there will be injunctive relief as sought.

RESULT

[358] Mr Wells recovers $50,000 by way of general (including aggravated) damages against Mrs Haden and Verisure, jointly and severally.

[359] Mr Wells recovers $7,500 exemplary (or punitive) damages against Mrs Haden.

[360] Mr Wells is granted the injunction identified in para [349] above.

[361] The first plaintiffs are granted the injunction identified in para [353] above.

[362] There are reservations of leave to apply as identified in paras [350] and [351] above.

[363] There is a direction as identified in para [352] above.

COSTS

[364] These must follow the event. Counsel for the plaintiffs should file and serve a memorandum to which Mrs Haden and Verisure will have 10 working days from, but exclusive of, the date of its service likewise to respond.

Dated at Auckland this 30th day of July 2008 at 10.00 am

Roderick Joyce QC
District Court Judge