

**IN THE DISTRICT COURT
AT AUCKLAND**

CIV No. 2006-

BETWEEN NEIL EDWARD WELLS of Huia, Auckland, Council Officer and Lecturer, **WYN HOADLEY** of Castor Bay, Auckland, Barrister and **GRAEME JOHN COUTTS** of Avondale, Auckland, Recruitment Consultant as trustees of the **ANIMAL WELFARE INSTITUTE OF NEW ZEALAND, AN UNINCORPORATED CHARITABLE TRUST**

First Plaintiffs

AND NEIL EDWARD WELLS of Huia, Auckland, Council Officer and Lecturer

Second Plaintiff

AND GRACE HADEN of 23 Wapiti Aye, Epsom, Auckland, Private Investigator

First Defendant

AND VERISURE INVESTIGATIONS LIMITED a duly incorporated company having its registered office at 23 Wapiti Aye, Epsom, Auckland, providing private investigation services

Second Defendant

AND ANIMAL WELFARE INSTITUTE OF NEW ZEALAND, AN INCORPORATED CHARITABLE TRUST having its registered office at 23 Wapiti Ave, Epsom, Auckland

Third Defendant

**STATEMENT OF CLAIM
DATED THE 18th DAY OF JULY 2006
DATE OF NEXT HEARING: THE DAY OF 2006**

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Introduction

1. The first plaintiffs are the current trustees of The Animal Welfare Institute of New Zealand, ('AWINZ 2000), an unincorporated charitable trust which was formed pursuant to a trust deed executed on 1 March 2000.
2. The second plaintiff, is a trustee of AWINZ 2000. He is also employed by Waitakere City Council as its Manager, Animal Welfare, and as a part-time lecturer at Unitec.
3. In November 1999, the second plaintiff wrote to the Minister of Agriculture advising that he was seeking approval for AWINZ 2000, which was at that time not yet formally constituted by way of trust deed, to become an approved organisation under section 121 of the Animal Welfare Act 1999. That letter was accompanied by an unexecuted trust deed. The Minister was aware at that time that AWINZ 2000 was not yet constituted. Ministry staff were in fact actively involved in assisting Mr Wells to set up AWINZ 2000 with the express purpose of applying for it to become an approved organisation.
4. AWINZ 2000 was Gazetted as an "approved organisation" under section 121 of the Animal Welfare Act 1999 on 18 January 2001. An amended notice deleting the word "Inc" (which the first plaintiff advised the Minister had been incorrectly included) was Gazetted on 8 March 2001. It now carries out various functions, including providing animal welfare services to various local authorities and exercising an animal welfare monitoring role on films made in New Zealand, such as the "Lord of the Rings' trilogy, The Lion the Witch and the Wardrobe", Bridge to Terabithia (yet to be released by Disney) and "Waterhorse" (currently being filmed in Wellington). AWINZ 2000 also administers the New Zealand Fund for Humane Research which funds universities in researching alternatives to the use of animals in research, testing and teaching.
5. The first defendant, Grace Haden, is the director of the second defendant, and a trustee of the third defendant. The first defendant is not, and has never been a trustee of AWINZ 2000, nor has she ever had any association whatsoever with AWINZ 2000.

6. The second defendant is a duly incorporated company, having its registered office at 23 Wapiti Avenue, Epsom. It carries on business providing private investigator services to the public.
7. The third defendant is a trust formed pursuant to a trust deed executed in 2006 and incorporated pursuant to the Charitable Trusts Act 1957 on 27 April 2006. It is hereinafter referred to as “AWINZ 2006”. It has its registered office at 23 Wapiti Avenue, Epsom.
8. Between March and July of 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 the second plaintiff is the 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 the second plaintiff and cast doubt on the legitimacy of AWINZ 2000.
9. In March 2006, the first defendant set up a website with a domain name almost identical to that used by AWINZ 2000.

FIRST CAUSE OF ACTION BY FIRST PLAINTIFFS AGAINST THE FIRST AND THIRD DEFENDANTS: PASSING OFF

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.ora.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.aorg.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](#)"

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 (sic) 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.

THE first plaintiffs claim, on behalf of AWINZ 2000;

- (a) An injunction to:
 - (i) restrain the first and third defendants, whether by themselves, their servants or agents, from using the names “Animal Welfare Institute of New Zealand”, “AWINZ”, or any other name substantially similar thereto; and
 - (ii) require the first defendant to close the website and deactivate the domain name in use, and prevent her from registering a new domain name, or causing any new website with an address resembling that used by AWINZ 2000 to be established;
 - (iii) restrain the first and third defendants from publishing the representations set out in paragraphs 12 and 14 above and from making representations of that kind.
- (b) An inquiry as to damages, or at the first plaintiffs’ option, an account of all donations received by the third defendant and an order for payment of all such sums found.
- (c) Interest at such rate and for such period as the Court thinks fit.
- (d) Costs on a solicitor and client basis, or on such basis as the Court thinks fit.

**SECOND CAUSE OF ACTION BY FIRST PLAINTIFFS AGAINST THE
FIRST AND THIRD DEFENDANTS: BREACH OF SECTION 9 OF THE FAIR
TRADING ACT 1986**

- 17. In publishing the statements particularised at paragraphs 12 and 14 above, seeking donations from the public and offering services for remuneration, the third defendant was “in trade” in terms of the Fair Trading Act 1986.
- 18. The conduct and statements particularised at paragraphs 10 to 15 above are misleading or deceptive, or are likely to mislead or deceive and constitute a breach of section 9 of the Fair Trading Act 1986.

19. As a result of the statements and conduct particularised at paragraphs 10 to 15 above, AWINZ 2000 has suffered or is likely to suffer loss or damage.

THE first plaintiffs claim on behalf of AWINZ 2000:

- (a) An injunction pursuant to section 41 of the Fair Trading Act to:
- (i) restrain the first and third defendants, whether by themselves, their servants or agents, from using the names “Animal Welfare Institute of New Zealand”, “AWINZ”, or any other name substantially similar thereto; and
 - (ii) require the first defendant to close the website and deactivate the domain name in use, and prevent her from registering a new domain name, or causing any new website with an address resembling that used by AWINZ 2000 to be established;
 - (iii) restrain the first and third defendants from publishing the representations set out in paragraphs 12 and 14 above and from making representations of that kind.
- (b) An inquiry as to damages suffered by AWINZ 2000, pursuant to section 43 of the Fair Trading Act 1986.
- (c) Interest at such rate and for such period as the Court thinks fit.
- (d) Costs on a solicitor and client basis, or on such basis as the Court thinks fit.

THIRD CAUSE OF ACTION BY SECOND PLAINTIFF AGAINST THE FIRST, SECOND AND THIRD DEFENDANTS: PUBLICATION OF MATERIAL DEFAMING THE FIRST PLAINTIFF

20. Between March and July 2006, the first and third defendants 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 tot 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.’

- (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.”

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. On 13 June 2006 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. 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.”

24. The statements set out at paragraph 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 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.
27. On 14 May 2006, 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:
- (a) AWINZ is a “scam” or non-existent trust, which fact the second plaintiff is trying to cover up;
 - (b) the second plaintiff is seeking to mislead the Mayors and Councillors and Community Board Members of Waitakere and North Shore City Councils;
 - (c) 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 hiding behind a sham trust... AWINZ”.
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;
 - (c) Intimidation;
 - (d) Using Children or Pets;
 - (e) Using Privilege;
 - (f) Sexual Abuse; Threats; and,
 - (g) Isolation.
33. The statements set out at 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...”

"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

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".
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 s28 of the Defamation Act 1992:
 - (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 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.

WHEREFORE THE second plaintiff claims:

- (a) Damages:
 - (i) of a compensatory nature against each of the first, second and/or third defendants in the sum of \$50,000.
 - (ii) of a punitive nature in accordance with section 28 of the Defamation Act 1992 of \$20,000 against each of the first, second and/or third defendants.
- (b) An injunction restraining the first, second and/or third defendants, whether by themselves, their servants or agents, from publishing or causing to be published the statements particularised in paragraphs 20 to 35 above or words to similar effect.
- (c) Interest at such rate and for such period as the Court thinks fit.
- (d) Costs on a solicitor and client basis, or on such basis as the Court thinks fit.

THIS STATEMENT OF CLAIM is filed by **DAVID JOHN NEUTZE**, solicitor for the first and second plaintiffs. The address for service of the first and second plaintiffs is at the offices of Brookfields, Lawyers, 11th Floor, 19 Victoria Street West, Auckland 1.

Documents for service on the first and second plaintiffs may be left at the address for service or may be:

1. Posted to the solicitor at P O Box 240, Auckland 1.
2. Left for the solicitor at Document Exchange for direction to DX CP241 34.
3. Transmitted to the solicitor by facsimile to 09 379 3224.