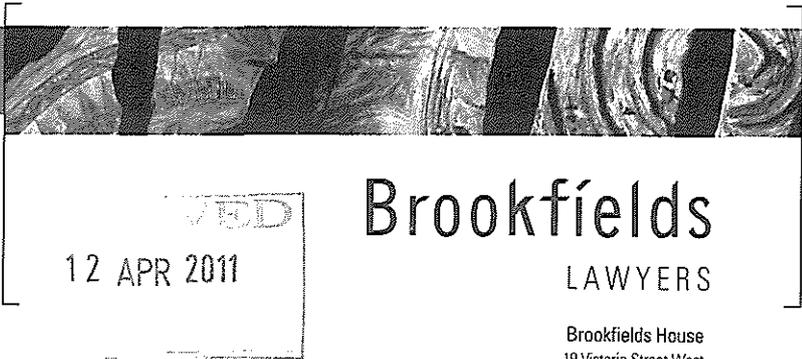


12 April 2011

BY COURIER

New Zealand Law Society
Lawyers Complaints Service
Level 5
WHK Tower
51 Shortland Street
AUCKLAND



Brookfields

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COMPLAINT BY MRS GRACE HADEN – FILE NO. 3861

I refer to the above complaint. I apologise for the delay in responding but have been waiting for Messrs Wells and Wright to complete their responses, as they are far more familiar with the extensive background and facts relating to this matter, than the writer.

I refer in particular to the letter dated 11 April 2011, the attachments and decisions bundle, provided to you by Mr Wright (which is **enclosed** with this letter). He has prepared that response in consultation with me and on pages 2 – 4 we respond specifically to the complaint against me.

As is clear from the decisions' bundle, **I was not directly involved in any of the court appearances and these were handled by Mr Wright, albeit after consultation with me.** The statement of claim was prepared in consultation with me as the senior litigation partner of the firm and I was satisfied with its contents.

The allegations against me can be simply dealt with, in my view, by inviting a review of the decisions' bundle. **What is clear from that bundle is that the allegations made in the statement of claim have been accepted by the Courts as proven, after having been subjected to close, judicial scrutiny.**

The suggestion by Mrs Haden that my name was used to give the proceeding "credibility", which without evidence it had to rely on, is absurd. I was involved in the proceedings as the senior litigation partner. It was originally intended that I would have a more active role in the proceeding, but workloads and Mr Wright's increasing familiarity with the file, meant that he attended the court hearings. However, as Mr Wright's letter to you records, I retained a consultative and peer review role in relation to key court documents.

For all the reasons set out in Mr Wright's letter of 11 April 2011 and in this letter, Mrs Haden's complaints are refuted on all grounds. They simply appear to be a continuation of her totally unjustified (and illegal) threat made in December 2010 to make unjustified complaints about Mr Wells, Mr Wright, myself and others to various authorities, if we all did not bow to her demands to cease all legal action (refer to Attached "A" of Mr Wells' letter to you).

If you have any further queries, please do not hesitate to contact me.

Yours faithfully
BROOKFIELDS



David Neutze
Partner

Direct dial: +64 9 979 2169
email: neutze@brookfields.co.nz



11 April 2011

BY COURIER

New Zealand Law Society
Lawyers Complaints Service
Level 5
WHK Tower
51 Shortland Street
AUCKLAND

Attention: Kristin Percy

COMPLAINTS BY MRS GRACE HADEN- FILE NUMBERS 3861 AND 3864

We refer to your letters to Mr Neutze and to the writer dated 28 February 2011

As the writer was the partner and solicitor responsible for the conduct of this file, and has taken all files since moving from Brookfields into sole practice, Mr Neutze has asked that I draft a joint response to the two complaints.

1. As nearly all of the complaint is very context specific, the committee may find it useful to review a detailed summary of the narrative of facts relating to this matter. A summary narrative has been prepared and is **attached** as Annexure 1 to this letter, together with copies of all of the relevant Court decisions which comprise the now completed proceedings which underlay the complaints.
2. As a broad overview, it is noted that much of the substance of complaint appears to be a further attempt by Mrs Haden to relitigate matters that have been before the Courts exhaustively over the past four and half years. A brief look through the narrative of facts and the relevant decisions will quickly serve to highlight that the allegations and assertions that Mrs Haden is making have been thoroughly canvassed in the Courts and have been found to be entirely without merit.
3. Given this, and given also the fact that Mrs Haden has an idiosyncratic view of the way the proceedings unfolded, we have not regarded it as necessary or practical to provide a "point by point" response to Mrs Haden's complaint.
4. Rather, we have sought to distil the key issues raised by Mrs Haden and to respond to those in turn.
5. We bear in mind also that Mr Wells, who was the primary litigant in the proceedings, has also been required to respond to a complaint by Mrs Haden. We will endeavour to ensure, as far as possible, any duplication in that respect is avoided, and as far as matters pertaining to the formation and constitution of AWINZ, we leave comment on those matters with him.



File 3861 – Complaint against Mr Neutze

6. This complaint is duplicated in several respects in complaints made on the file 3864, and hence is a useful starting point for response. On our reading, the complaint can be distilled down to the following points:

(a) **Failing to obtain facts before acting**

The essence of this complaint is Mrs Haden's ongoing view that the original plaintiffs, the trustees of the Animal Welfare Institute of New Zealand ("AWINZ") were not in fact the current trustees of the AWINZ Trust, and that AWINZ was not a validly existent trust when the proceedings commenced. The substantive response to this complaint is provided by Mr Wells. The information that he has provided provides an answer to the issues raised by Mrs Haden regarding the validity of AWINZ, and no further comment needs to be made in this respect.

It is noted in addition that Mr Wells in person was in any case the primary plaintiff in this matter, as it was he who had been the subject of the relevant defamatory statements. **The trustees of AWINZ were only litigants at District Court level**, for the purposes of bringing the successful passing off proceedings. That aspect of the District Court's formal proof decision was not subsequently appealed by Mrs Haden.

(b) **Unprofessional Conduct**

The essence of this complaint appears to be that Brookfields showed an unwillingness to negotiate with Mr Haden over the settlement of the proceedings, and adopted an aggressive litigation strategy. This complaint is answered by the narrative of facts. The proceedings were brought after a real attempt was made to **communicate the weakness of her position to Mrs Haden** and to convince her to back down from her position. The original letter is dated 26 June 2006 and is **attached** as Annexure 2. **Mrs Haden refused the offer**, and refused also to seek legal advice. The proceedings were filed and were ultimately successful.

During the course of the proceedings, two settlement conferences were convened at which agreements were reached and subsequently reneged upon by Mrs Haden. The latter agreement was formally constituted as a Calderbank style offer, a copy of which is **attached** as Annexure 3. Essentially, the offer was to withdraw proceedings if Mrs Haden paid the costs awards already made against her by that time and cease her campaign against Mr Wells and AWINZ. The proceedings were subsequently concluded on terms significantly less favourable to Mrs Haden than those offered in settlement at that time, and Mrs Haden is now subject to injunctions and debts totalling around \$160,000.

Any suggestion the proceedings were conducted in an unduly "aggressive" and "or unreasonable manner" is refuted.

(c) **"Sending Threatening Letter"**

The somewhat idiosyncratic nature of Mrs Haden's viewpoint is highlighted in this aspect of the complaint. The letter to which she refers is **attached** as annexure 2. As can be seen it is robust and straightforwardly points out to Mrs Haden the dangerous legal position into which she had manoeuvred herself. Her decision to refuse the opportunity provided by the letter, and to not seek legal advice, led directly to the proceedings being filed and successfully prosecuted against her.

(d) **Filing a Statement of Claim without ensuring the accuracy of it**

The accuracy of the statement of claim was sworn to in evidence by Mr Wells before the District Court, and the Court has made findings accepting that evidence. As far as we are concerned, that is the end of the matter. The complaints raised by Mrs Haden under this head are nothing more than an attempt to relitigate the proceedings which have now ended and in which she was wholly unsuccessful.

(e) **Misleading the Court**

Similarly, the matters under this head are simply an attempt to relitigate the same issues that have been determined against Mrs Haden repeatedly. Mrs Haden is vehement in her views that **"no evidence was ever produced"** to support the statement of claim. To the contrary, three affidavits were filed by Mr Wells in the context of the District Court proceedings, and one by Mr Coutts (another trustee). Further, Mr Wells gave viva voce evidence during the course of the hearing, and was cross examined during the course of the hearing. The Court's acceptance of Mr Wells' evidence as a proper evidential basis for the claim, is self evident on the face of the formal proof Decision (Tab 1 of the bundle).

(f) **Serving an Inaccurate Statutory Demand**

We have checked our records, which show that the statutory demand was lodged on behalf of AWINZ as an unincorporated charitable trust, which is entirely accurate and remains entirely accurate to this day. There is nothing further in this point that requires response.

(g) **Attacking the Character of a Lay Litigant**

Mrs Haden's behaviour, in launching a vitriolic campaign against Mr Wells without any evidential substance, and continuing to pursue that campaign over the course of four years is, in our view, and in the view of a number of the judicial officers who have issued decisions in relation to this matter, unjustifiable. There is an extent to which our correspondence with Mrs Haden reflects that view of her. However, it is denied that any of our dealings with Mrs Haden ever constituted a breach of the relevant code of ethics for dealing with a lay litigant.

By way of final clarification, the role Mr Neutze undertook as supervising partner on the file was effectively a consultative one and as a peer reviewer in relation to key Court documents. In accordance with standard firm protocols, Mr Neutze retained an oversight on

the current state of the file at all times and spoke on a regular basis with Mr Wright to ensure that the matter was being conducted properly. He was at all times satisfied that this is the case, and has fully reviewed this response on his behalf and concurs with it entirely.

File 3864 – Part 1 Complaint regarding Appeal and Judicial Review Proceedings

7. The key points of this part of the complaint can be summarised as follows:

(a) Misleading the Court

Again, the substance of this complaint appears to be Mrs Haden's ongoing and unsubstantiated view that AWINZ is not a valid trust and that the trustees were not valid trustees of AWINZ at the relevant times. Mr Wells has provided a response to this aspect of the complaint.

Other aspects of the complaint in this regard are barely cogent. For example, Mrs Haden's view that opposing an interlocutory application to file further evidence constitutes in some way inappropriate behaviour, or the assertion that the High Court and Court of Appeal were "misled" into thinking that the District Court's decision on the formal proof was in fact a decision on formal proof are difficult to follow. It is not intended to respond to them any further, except to say that the hearing did self evidently proceed as a formal proof, and that the various interlocutory decisions in this matter speak for themselves.

(b) Being a party to an attempt to pervert/defeat justice

It is difficult to discern from this section the nature of Mrs Haden's complaint. Her assertions of fraud appear to simply echo the defamatory statements that she has made regarding Mr Wells from 2006 onwards, which have never been substantiated by any evidence. The "evidence" that Mr Haden refers to her being prevented from filing with the Court was in fact fully reviewed and considered by the Court and rejected as being irrelevant to the proceedings. Specific reference in that regard can be made to the decision of Asher J (Tab 5 of the bundle).

(c) Using proceedings for an improper purpose

The objective behind the proceedings, as should be clear from the narrative of facts, was to force Mrs Haden to remove herself from the affairs of the trustees of AWINZ so that they could go back to pursuing the charitable purposes of the trust. The manner and strategy chosen as a means for treating that aim was to seek injunctions and damages, which is an entirely proper purpose and proved to be successful.

(d) Failing to make disclosure of the anticipated commission of a crime of fraud

There has never been a crime or fraud which has been in any way apparent upon the face of these proceedings. Mrs Haden's views to the contrary have found no support in the courts whatsoever.

(e) Failing to treat a self represented person with integrity, respect and courtesy

We have endeavoured throughout the course of all of our dealings with Mrs Haden to remain civil and calm, despite extremely provocative actions by Mrs Haden, including:

- (i) discovering the writer's residential address and visiting the writer's home uninvited;
- (ii) complaining about him loudly and abusively in the reception of Brookfields in the presence of clients and then refusing to leave when asked to do so; and
- (iii) sending numerous threatening and inappropriate emails both to the writer and to his other partners and partners in firms that are affiliated Australasia wide with Brookfields.

Despite all of this behaviour, we do not believe that we have ever acted or spoken inappropriately to Mrs Haden. Certainly in the context of conduct within Court, the writer never had occasion to be in any way censured or cautioned by the Court in relation to his language or treatment of Mrs Haden.

File 3864 – Part 2 District Court and High Court Appeal Proceedings

8. To a large extent, this part of the complaint mirrors the complaint made against Mr Neutze, and only the following additional key points are noted as requiring a response:

(a) **Misuse of the Court/abuse of the processes of the Court**

The conduct of the case is set out in the narrative of facts. It is denied that the process was ever used abusively or in any untoward manner. If there was anything inappropriate in the manner that proceedings were being conducted, one would expect that it would have been brought to the attention of the writer by the Court itself.

(b) **Withholding information from a Lay Litigant**

Mrs Haden refers to one of the interlocutory hearings in which a copy of the case bundle wasn't made available to her until after the submissions were presented. This was simply an oversight and was remedied at the earliest opportunity.

(c) **Failing to supply a new Statement of Claim as directed by the Court**

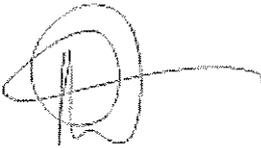
This point is simply answered. The Court never ordered a new statement of claim to be filed. The Court in a minute recorded the intention of the plaintiffs to file a new statement of claim and made timetable orders to enable that to happen. This was at the specific request of the plaintiffs. Before the date for the filing of the new statement of claim arrived, Mrs Haden's statement of defence to the previous statement of claim was struck out. **A strategic decision was made at that point to not file a new statement of claim, a decision that was obviously open to the plaintiffs in the circumstances.** There is nothing inappropriate about this whatsoever.

(d) **Attempting to pervert the course of justice**

Quite simply, the evidence that Mrs Haden refers to bears little or no relationship to the conclusions that she asserts. The evidence was opposed as it was not reliable, probative or relevant. The decision of the High Court refusing to admit the further evidence reflects those points.

9. In summary, Mrs Haden's complaints are refuted on all grounds. It is hoped that this broad overview approach will assist the Committee in considering and determining the complaints. If there are any specific aspects of the complaint which has not been properly answered in the view of the Committee, and which require some answer, then the writer is more than willing to provide a more detailed response to any aspect of the complaint that is required, or to appear in person to assist the Committee in any manner needed.

Yours faithfully

A handwritten signature in black ink, appearing to read 'Nicholas Wright', with a long horizontal flourish extending to the right.

Nicholas Wright
Principal
Wright Solutions Law



"ANNEXURE 1"**HADEN LAW SOCIETY COMPLAINT- NARRATIVE OF FACTS**

1. The Committee will be assisted in this case by a detailed narrative of the facts.
2. In late 2005/early 2006 Mrs Haden and Mr Wells had a dispute while they were both serving on the board of the Auckland Air Cadet Trust. As a consequence of that dispute, Mrs Haden was voted off the AACT board in somewhat acrimonious circumstances.
3. Shortly after, Mrs Haden began what was to become a longstanding campaign against Mr Wells, and the Animal Welfare Institute of New Zealand ("AWINZ"), a charitable trust of which Mr Wells is a trustee. The clear purpose of the campaign was to expose Mr Wells to public discredit and disgrace and AWINZ to severe economic disruption.
4. The campaign at first involved sending emails and faxes to colleagues and business associates of Mr Wells and of AWINZ. In those communications, Mrs Haden accused Mr Wells of unethical and fraudulent practices, including assertions that Mr Wells was embezzling public charitable funds for his private financial gain. They also asserted that AWINZ was a "sham" trust that was nothing more than a front for Mr Wells' "corrupt" practices.
5. Mrs Haden then elevated the campaign further, by creating a website with a nearly identical domain name as AWINZ's site, and using that website to publish the letters and faxes she had written, and to publish significant further defamatory material concerning Mr Wells.
6. As a parallel strategy, having noted that AWINZ had never been registered under Charitable Trusts Act, Mrs Haden registered a trust called the "Animal Welfare Institute of New Zealand" (referred to herein as "the Haden AWINZ"). She then used her website to advertise the Haden AWINZ as the "real" one, urging readers to donate to and engage the (competing) services of the Haden AWINZ, in preference to AWINZ, which she described essentially as a sham trust designed to funnel donations into Mr Wells' private pockets.

7. Mrs Haden's strong opinions were not supported by any evidence except suppositious references to selective documents relating to the formation of AWINZ, and various related correspondence. None of this evidence provided any tangible or logical support for her opinions, which were coloured by her obvious anger at Mr Wells over their earlier dispute.
8. After some months, as Mr Wells realised that Mrs Haden's campaign was not going to abate with time, he, together with the other trustees of AWINZ at the time, sought legal counsel. Initial contact was made by Mr Wells to Ms Vivienne Parre (who was at that time married to Mr Wright). Ms Parre was employed at Brookfields at the time, and the instruction in turn came to Brookfields.
9. Mr Wright consulted Mr Neutze, the senior litigation partner at Brookfields. Their joint assessment of Mr Wells' position and that of AWINZ was that proceedings in defamation and passing off were the best course of action. However, prudence dictated that some attempt be made to avoid the cost of proceedings.
10. In June 2006, counsel sent a letter to Mrs Haden, and to the other trustees of the Haden AWINZ. A copy of that letter has been attached as **Annexure 3** to the main letter. As can be seen, it provided a succinct and straightforward overview of the legal context of Mr Haden's actions, including observations on the law of passing off and of defamation. It analysed the likely consequences of Mrs Haden continuing her campaign and invited her to cease it immediately, or face those consequences. It provided an indication that a small measure of time would be given to allow Mrs Haden to seek legal counsel.
11. Mrs Haden chose to continue her campaign, and to not take advice from counsel, and proceedings were filed by Mr Wells and the trustees of AWINZ some three weeks later, in July 2006. The original claim asserted defamation against Mrs Haden and her company Verisure Investigations Ltd, and passing off and misleading conduct in trade against Mrs Haden and the other trustees of the Haden AWINZ.
12. Mrs Haden responded by filing counter proceedings against Mr Wells, the trustees of AWINZ as well as the trustees of the Auckland Air Cadet Trust (Mrs Haden sought to bring the earlier dispute into the fray). The counterclaim was drafted by Mrs Haden,

and the plaintiffs sought to strike it out. Mrs Haden in turn applied to strike out the claim.

13. Mrs Haden acknowledged, at the end of a defended strikeout hearing, that her counterclaim was misconceived and largely conceded that it should be struck out. At the same hearing, Mrs Haden's strike out application was soundly rejected. Above scale costs, amounting to \$20,000, were awarded in relation to the strike out applications.
14. Failed settlement efforts led to Mrs Haden intensifying her campaign. She registered the trademark "AWINZ". She formed a company, AWINZ Ltd, to which she transferred the ownership of the domain name www.awinz.co.nz, in a transparent attempt to frustrate one of the prayers for relief in the claim. She published further defamatory material concerning Mr Wells, of an even more graphic and unbalanced nature. She also refused demands to pay the costs awarded against her.
15. Mrs Haden's actions were brought to the attention of the Court via various memoranda. The Court, acting of its own motion at a judicial telephone conference in July 2007, issued an unless order to Mrs Haden, advising that the costs award had to be paid within 14 days, or the statement of defence would be struck out. The award was not paid, and the statement of defence was struck out accordingly.
16. Once it became apparent that Mrs Haden was not going to appeal or judicially challenge the strike out in any way (three months was allowed at this point for Mrs Haden to consider such action), the plaintiffs sought to have the matter brought to hearing on a formal proof basis. A hearing was allocated for the following year.
17. Some four months later, Mrs Haden filed separate, belated applications to have the strike out decision reviewed and stayed. The applications were heard prior to the formal proof hearing, but the decisions on both were delivered together by His Honour Judge Joyce QC (**Decisions, Tab 1**), with a separate reasons judgment issued on the review/stay applications (**Decisions, Tab 2**). The review and stay applications failed. The claim was judged to be well founded and damages were awarded and injunctions issued.

18. Mrs Haden, now represented for the first time by counsel (Mr Finnigan) appealed against the award of damages, but chose not to appeal the decision to reject her application for review and stay.
19. Some 5 weeks later, Mrs Haden filed a belated application to appeal out of time the decision on her review and stay applications. That application was opposed and refused following a hearing before John Hansen J (**Decisions, Tab 3**). Venning J then ordered an uplift in costs against Mrs Haden and Verisure Investigations Limited on the basis that the application for leave was doomed to fail and was hopelessly out of time (**Decisions, Tab 4**)
20. Subsequent to that decision, a further interlocutory application was made by Mrs Haden to admit further evidence in relation to her appeal. The application was opposed and ultimately refused following a hearing before Asher J (**Decisions, Tab 5**).
21. The substantive appeal was heard in due course before Rodney Hansen J and was rejected on all counts (**Decisions, Tab 6**). Leave to appeal was sought and refused (**Decisions, Tab 7**), and special leave was sought from the Court of Appeal and refused also (**Decisions, Tab 8**).
22. Shortly after applying for leave to appeal the High Court's decision, Mrs Haden filed judicial review proceedings, seeking to quash both the decision to strike out her statement of defence and the quantum decision of Judge Joyce QC. Mr Wells was named as one of the defendants and moved to strike out the proceedings. The strike out application was heard before Allan J, who granted the orders sought (**Decisions, Tab 9**). No appeal was lodged, bringing the two sets of proceedings to a complete close, subject only to determination of costs and enforcement of the original quantum judgment.

" ANNEXURE 2 "

26 June 2006

The Trustees of
Animal Welfare Institute of New Zealand
PO Box 17463
Greenlane
AUCKLAND

ATTENTION: Helen Wenley, Robert Frittmann and Grace Haden

Partner: David Neutze
Direct dial: +64 9 979 2169
email: neutze@brookfields.co.nz

ANIMAL WELFARE INSTITUTE OF NEW ZEALAND

We act for Animal Welfare Institute of New Zealand and Neil Wells. For convenience, we shall refer to our clients in this letter as "AWINZ" and Mr Wells.

As we believe you are aware, AWINZ is a charitable trust created pursuant to a trust deed dated 1 March 2000 and declared by the Minister of Agriculture to be an "approved organisation" under the Animal Welfare Act 1999 on 19th December 2000. In case you have not received a copy of the executed trust deed previously, we **enclose** this for your reference.

You are, we understand, the Trustees of an entity also bearing the name "Animal Welfare Institute of New Zealand". For convenience and to avoid confusion, we shall refer to that entity as the "Institute".

We understand that you have arranged for the Institute to be registered as a charity under the Charitable Trusts Act. We also understand that you have created a web site in the name of the Institute and have published certain material on that website concerning our clients AWINZ and Mr Wells.

We are of the view that certain material published on the Institute's website breaches the law of passing off, while certain other material published by Mrs Haden and Verisure Investigations Limited on the website and by other means is defamatory of AWINZ and Mr Wells.

AWINZ has asked us to explain our view to you in the hope that we can achieve an amicable resolution to the situation. AWINZ views litigation in this matter as a last resort since the costs involved will be a poor use of resources for all concerned.

Below we have set out a fuller explanation of the law relating to passing off and defamation. We have also included an explanation of relevant provisions of the Fair Trading Act, as we also consider that the Institute's actions constitute a breach of that legislation. We invite you to consider carefully the issues we raise in this letter and discuss them with your legal advisors.

The Legal Existence of AWINZ

As a point preliminary to the discussion to follow, we understand that you dispute that AWINZ was or is a "legal entity". You point in that regard to the fact that AWINZ is not registered under the Charitable Trusts Act.

Your view in this respect is not well conceived. No charity is obliged to register under the Charitable Trusts Act. An organisation is entirely capable of legal existence, and of carrying on business as a charitable trust, without any form of registration. All that is required at law to create a trust (whether it be a charitable one or otherwise), is the execution of an appropriate trust deed. This, we believe, was clearly set out in a letter to you dated 29th March 2006 from the Denis Sheard, Solicitor of Waitakere City Council, a copy of which we **attach**, for your ease of reference.

Of course, as you are aware, AWINZ has been carrying on various activities of a charitable nature since its inception, and has secured, to facilitate the undertaking of those activities, approval from the Minister of Agriculture pursuant to the Animal Welfare Act 1999. It has also established a website to raise the public profile of AWINZ, advertise the services that it offers, and seek contributions from the public.

In combination, all of these actions have served to generate what is legally referred to as "goodwill", a tangible asset which is subject to stringent legal protection, specifically under the law relating to "passing off" and defamation.

Passing Off

The law relating to passing off is targeted directly at protecting the goodwill owned by individuals or entities.

In our view your following actions amount to passing off:

- Your registration of the name "Animal Welfare Institute of New Zealand" under the Charitable Trusts Act, and ongoing use of the name.

In this regard, it is well-established that an action may lie in cases where a defendant imitates the plaintiff's name in a manner which may cause confusion in the market or amongst the public. Indeed, a number of cases have dealt with fact situations in which the name of an existing charity has been copied by another entity (see, for example, **British Diabetic Association v Diabetic Society Ltd** [1995] 4 All ER 812).

- Your use of a web address which closely resembles that used by AWINZ (which again provides AWINZ with an established cause of action – see, for example, **New Zealand Post Ltd v Long** [1999] 3 NZLR 219).

- Your efforts to secure work monitoring movies produced in New Zealand, including the statement on your website that :

"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."

This remark is calculated to suggest that your organisation has already performed the function of monitoring movie productions. In that respect you are seeking to "take the credit" for work performed by AWINZ, and reap the benefits of the experience and reputation it has gained in the industry.

A successful action in passing off can be used as the basis for injunctive relief, that is, Court orders requiring you to:

- deregister the Institute and remove your website (such orders can also extend to your ISP provider); and
- prohibiting you from re-establishing either the website or the Institute itself in circumstances where the names thereof are liable to cause confusion within the market or amongst the public.

Such an action could also render you liable to an award of damages, or a requirement to account to AWINZ for any funds improperly obtained by the Institute as a consequence of its actions, together with legal costs and interest.

Defamation

You have also published on your website comments calculated to discredit Neil Wells, a member of the Board of AWINZ, and AWINZ itself. These comments are clearly calculated to defame Mr Wells by asserting that he is dishonest and lacking in integrity. You also claim that he has indulged in misleading, if not fraudulent, conduct in establishing a bogus Trust for personal profit. Those comments are, in our view, defamatory.

The clearest example of this is the recent posting in which you included an email sent to the Mayor and Councillors of Waitakere City on 13th June 2006 by Mrs Haden, 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 eyes by pretending that AWINZ existed as a trust and was being registered (as we have done)..."

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."

The statement is false, and in our view defamatory. Not only is your understanding of the legal requirements for the formation of a trust incorrect, but in the period 1999 to the present Waitakere City has only paid \$60 to AWINZ for the purchase of two training videos which AWINZ imported in bulk from the US in 2004. No other assets or funds have passed from Waitakere City to AWINZ.

Further examples from your website, which serve to add weight to our concerns include the following statements:

- "What emerged was that AWINZ appeared no more than a name that Wells had given himself."
- "I have previously alerted you to the antics of Neil Wells and his sham trust AWINZ".
- "It also prevents a Cover up by Wells. We wonder what has happened to all 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."
- "This page is dedicated to him so that his cover up can be exposed."
- "[D]og control ... was not legitimately done for many years and is being actively covered up by Wells and Waitakere."

We note that the many of the statements you continue to make in respect of Mr Wells and AWINZ have already been refuted by Waitakere City Council and the Ministry of Agriculture and Forestry. In such circumstances any defence of honest opinion is most unlikely to be successful in court.

As is the case in respect of the law of passing off, it is well-established that an action will lie in cases where the internet is used to publish defamatory statements (see e.g. **O'Brien v Brown** (2001) 1 NZECC (digest) 70-018). Likewise, it is clear that an action in defamation could lie in respect of the defamatory statements sent by Mrs Haden and Verisure Investigations Limited to various people, including many work colleagues of Mr Wells, by email.

If successful, an action in defamation could again result not only in an injunction and an award of damages against you, but also an award for costs.

We note that you have recently added a statement to the site to the effect that you will consider removing material if requested politely to do so. You should be aware that this statement does not reduce your exposure to an action in defamation. An act of defamation occurs upon publication of the defamatory material, such as posting on a website. Subsequent removal does not alter that. Further, you are also not legally entitled to impose a burden on Mr Wells or anyone else to monitor your actions.

ISP Liability

Before we turn to deal with the Fair Trading Act we also remind you that any defamatory material published on your website exposes not only yourselves, but your ISP Aotea Web Hosting Limited, to legal action. Overseas, actions against ISPs have been successful in circumstances where they were aware, or should have been aware, that defamatory material was being published on a site over which they had control.

Fair Trading Act

We also consider that your statement that:

"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"

breaches either or both of sections 11 and 13 of the Fair Trading Act.

Section 11 of the Fair Trading Act provides:

"No person shall, in trade, engage in conduct that is liable to mislead the public as to the nature, characteristics, suitability for a purpose, or quality of services".

Section 13 provides:

"No person shall, in trade, in connection with the supply of possible supply of goods or services...

(b) make a false or misleading representation that services are of a particular kind, standard, quality, or quantity, or that they are supplied by any particular person or by any person of a particular trade, qualification, or skill..."

The concept of being "in trade" is a very broad one. It does not require you to have any actual intention to carry on the services you advertise. All that it requires is for a reasonable person, reading your website, to reach the understanding that you are in the business of providing the services you refer to.

Breaches of Fair Trading Act can form the basis for an action in damages, as well as an injunction to cause the breaches to cease.

Finally, for completeness, we note that, pursuant to section 40 any breach of either of the above provisions is an offence. Upon conviction the offender is liable:

- “(a) in the case of a person other than a body corporate, to a fine not exceeding \$60,000; and
- (b) in the case of a body corporate, to a fine not exceeding \$200,000”.

As you will be aware, the Institute is a body corporate by virtue of section 13 of the Charitable Trust Act.

Undertakings

Against this background AWINZ requires the following written undertakings from you, both in your capacities as trustees of the Institute and in your personal capacities.

AWINZ also requires additional written undertakings from Verisure investigations Limited in the terms set out at the last two bullet points below:

- You will change the name of your charity to a name not resembling that of AWINZ; or remove it from the register altogether;
- You will close the website “awinz.co.nz” and deactivate the domain name;
- You will not open a new website by the same or a similar name;
- You will cease all defamatory communications in relation to AWINZ and Neil Wells;
- You will not publish any further material concerning Neil Wells and AWINZ which goes to reputation.

Obviously, if these undertakings are given and adhered to, you will still be free to pursue the charitable objectives of your organisation.

Please confirm in writing that you provide the above undertakings by 5.00pm on Friday 30 June. This timeframe should allow you the opportunity to consider our requirements and to seek legal advice on the matters we have raised.

If you decide against providing the requested undertakings, you will leave our clients with no alternative but to commence proceedings against you. Our clients undertake in turn to you that they will not commence such proceedings if the undertakings sought from you are provided and adhered to.

As a final point, we note your apparent view that any attempt to provide advice to you that you are not complying with the law, and that repercussions may accordingly follow, constitutes "intimidation" or "bullying". We disagree. Our clients have rights recognised by the law, which we are instructed by them to protect. You have chosen to flout the law, by engaging in deliberately misleading and defamatory conduct. It is not intimidatory to point this out to you, and to invite you to rectify the situation. To the contrary, we consider that it is a courteous

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approach, and a genuine attempt to avoid the unnecessary stresses and expenditure of legal costs associated with legal proceedings.

We look forward to hearing from you.

Yours faithfully
BROOKFIELDS

David Neutze
Partner

Direct dial: +64 9 979 2169
email: neutze@brookfields.co.nz

Encl

Copies to:

1. Helen Wenley
2 Ngaroma Road
Epsom
2. Robert Frittman
40/790 New North Road
Mt Albert
3. Grace Haden
23 Wapiti Ave
Epsom
4. Aotea Web Hosting Limited
59 Blackwell Drive
Great Barrier Island
Hauraki Gulf
Auckland
5. Verisure Investigations Limited
PO Box 17463
Greenlane
Auckland

" ANNEXURE 3 "

24 May 2007

Ms Grace Haden
P O Box 17 463
Greenlane
AUCKLAND

Partner: Nick Wright
Direct dial: +64 9 985 6905
email: wright@brookfields.co.nz

WITHOUT PREJUDICE SAVE AS TO COSTS

Dear Ms Haden

WELLS & ORS v HADEN & ORS – CIV-06-004-1784

Please find attached a proposed settlement agreement in relation to this matter. We confirm that our clients are prepared to settle on the basis of the attached document. We draw your attention specifically in that regard to clause 4, which requires payment of the settlement sum (by way of charitable donation should that be your choice) on or before 15 June 2007.

We are aware that immediate payment is a point of contention for you. Accordingly, our clients would be willing to allow payment over a three year period, with a minimum \$4,000 per year payment (noting in that respect that the real payment that you would be making, net of tax rate rebates, would be in the order of \$2,700 per year).

Any longer period would require the introduction of some interest component to prevent the value of the settlement sum diminishing significantly over the payment period. Applying a nominal 8% rate per annum, and not compounding interest payable, we consider that a reasonable settlement sum inclusive of interest would be \$15,000 over a five year period. This would require a minimum \$3,000 per year payment which (again) correlates to a \$2,000 per year payment in real terms net of tax rebate.

Please note that if you reject all of these proposed arrangements, the default position, recorded for Calderbank purposes, is that set out in the attached settlement agreement. It is important that you understand precisely what is meant by a "Calderbank offer". Where a Calderbank offer has been made and rejected, and the rejecting party secures less in the proceedings than the offer, or the judgment obtained is less beneficial to that offered to that party, the rejecting party must pay all of the costs incurred from the time of the making of the offer. This approach is codified in Rules 47G and 47H of the District Court Rules.

The Calderbank offer constituted by this letter and the attached settlement agreement is in effect an offer that the plaintiff's proceedings against you be withdrawn with payment by you only of the costs order that has already been made against you. What this means, in practical terms, is that if the matter proceeds to hearing and:

1. an injunction is made against you requiring you to change the name of your trust; and
2. so much as 1 cent is awarded against you by way of damages, -

then you will be liable to pay every cent of legal costs incurred by the plaintiff from this date onwards.

It has now been pointed out to you by two District Court judges that have closely reviewed the file that the plaintiff's case is strong. We regard it as a virtual certainty that some award of damages will be made against you with respect of the defamation proceedings, and that an injunction will be made against you with respect to the passing off proceedings. We doubt whether you would be able to find any legal advisor who would not concur with this assessment of your risk.

What this means for the plaintiffs is that, if they proceed to hearing, having made this Calderbank offer, they are pretty much assured of recovering from you every cent of their costs from this point. You will be, in effect, funding the litigation against you. As I have done so before, I again emphasise that this is not intimidation or a threat. It is a black and white statement of the law as it applies to your situation. I urge you to seek independent legal advice to confirm your position.

The terms upon which settlement has been offered in this letter, whether or not you regard them as being fair, are in our view generous, and have been described that way by two judges. If you reject those terms, not only will you face paying every cent of the plaintiff's costs from this point on, you also face the very real prospect of a significant damages award, exceeding \$70,000, at the end of the process. Further, as emphasised to you by the Judge, you risk immediate bankruptcy proceedings with respect to the \$18,000 you presently owe, with the very real prospect of bankruptcy and the forced sale of your family home and/or your other joint matrimonial assets within a matter of months as a consequence if you are unable to pay.

Whatever you think of the manner in which this case has been conducted, the fact remains that you are now at the point when you can either swallow your pride and take the terms of settlement that are being offered, or face the very real prospect that in 12 months time your

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situation will be ten times worse than it presently is now. Reflecting all of the goodwill that I have left in relation to this matter, I urge you to take up the offer while it is still available.

As a final point, I am sure that you already appreciate that the costs award owed by you to AACT are quite separate from this agreement. I have instructions to pursue that amount from you by way of statutory demand. I very much doubt whether AACT are in a position to agree to an extended payment period, but as discussed, I imagine that they would be open to converting the payment into a charitable donation so as to allow you (or whoever can use the tax credit) the opportunity to claim a rebate. I would appreciate your thoughts in that respect. In the absence of agreeing appropriate terms for payment, a notice of statutory demand is likely to be issued next week, and pursued vigorously from that point.

Yours faithfully
BROOKFIELDS

Nick Wright
Partner

Direct dial: +64 9 985 6905
email: wright@brookfields.co.nz

Encl

SETTLEMENT PROPOSAL
WELLS and ORS v HADEN and ORS
CIV-06-004-1784

Brookfields
LAWYERS

- (i) is dishonest or engages in fraudulent or corrupt practices;
 - (ii) treats people badly;
 - (iii) is abusive;
 - (iv) engages in cruel, unscrupulous or bullying behaviour;
 - (v) engages in improper conduct of any kind, -
or any other statement that goes to Mr Wells' reputation.
- (b) That they will not publish any statement asserting that AWINZ (and/or its constituent trustees):
- (i) is not a lawful and legitimate trust;
 - (ii) was certified as an approved organisation on the basis of falsehood or misrepresentation;
 - (iii) engages in improper conduct of any kind.
- (c) That they will not register any domain name, company name, incorporated society, charitable trust, charity or trademark using the words "AWINZ", "Animal Welfare Institute of New Zealand" or any substantially similar name.
4. The first defendant shall pay to the plaintiffs, on or before 15 June 2007, the sum of \$12,000. At the option of the first defendant, that payment may take the form of a charitable donation of \$12,000 to AWINZ.
5. The plaintiffs agree to:
- (a) withdraw all proceedings against the defendants;
 - (b) not enforce against the defendants the Court's costs order dated 19 March 2007 and sealed on 10 May 2007, -
- provided that the undertaking provided in (b) above shall only apply so long as the defendants observe the terms of this agreement.
6. Both parties agree that:
- (a) except as expressly provided in this agreement, costs should lie where they fall;
 - (b) no party in these proceedings shall commence any future proceedings against any other party in the proceedings with respect to the same, or related subject matter in the proceedings, -
- provided that the mutual undertaking provide for in (b) above shall be null and void in the event that either party breaches the terms of this agreement.