

IN THE DISTRICT COURT CIV- 2006-004-001784

AT AUCKLAND

BETWEEN NEIL WELLS

Plaintiff

AND GRACE HADEN

Defendant

Hearing Commenced: 13 March 2008

Appearances: N Wright for the Plaintiff

Defendant in person

NOTES OF EVIDENCE TAKEN BEFORE JUDGE RODERICK JOYCE

QC

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MR WRIGHT OPENS AND CALLS

NEIL EDWARD WELLS (SWORN)

Q. Mr Wells you've sworn two affidavits that have been filed in relation to these

proceedings, is that correct?

10 A. That's correct.

Q. Can you confirm for the Court-

THE COURT:

Well first of all to get it on the record Mr Wright, could we do the usual and get Mr

Wells full name and occupation and so on.

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MR WRIGHT:

Yes Sir. I didn't think that was necessary as the full name's on the affidavits themselves.

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THE COURT:

It is always necessary.

EXAMINATION CONTINUES: MR WRIGHT

Q. Do you confirm your full name is Neil Edward Wells.

5 A. I do.

Q. You've sworn two affidavits that have been filed in relation to these proceedings?

A. That's correct.

Q. You affirm the contents of those affidavits?

10 THE COURT:

Give us the dates please, so we know which of the affidavits it is we're talking about.

EXAMINATION CONTINUES: MR WRIGHT

Q. Mr Wells?

15 A. It's the 10th of December. I don't have the other one in front of me
Your

Honour, if I may refresh my memory. That's the supplementary one?

THE COURT:

The 24th of January is that the one Mr Wells.

20 THE WITNESS:

Yes that would be the one Your Honour.

EXAMINATION CONTINUES: MR WRIGHT

Q. Are you also familiar with the Statement of Claim that was filed in
relation to
this matter?

25 A. Yes I am.

Q. Can you confirm the correctness of the matters stated in the statement of
claim

and to the extent that they were within your knowledge?

A. Yes I do.

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Q. Just a few preliminary questions Mrs Wells. I note from the deed of trust
that's

been produced in the affidavit, Mrs Haden for your Trust that provision is
made

for professional trustees to be paid by the Trust for their professional
services?

A. Yes that's correct.

5 Q. How much have you been paid by the Trust during your period acting
with it?

A. I've received no payments for professional services.

Q. Could you describe for the Court the Trust's bank accounts and what is in
them?

A. Yes, there are three accounts. One is a term deposit which has \$90,000 in
it,

10 which is specifically the Lord Dowding Fund. The Lord Dowding Fund
was a

sum that was passed over to AWINZ by the New Zealand Fund for Humane
Research, and when that Trust wound itself up it handed the funds over

to AWINZ to administer under the terms of the Lord Dowding Fund. That's
\$90,000 and that's in a fixed deposit. The current account has \$12,000

15 currently in it, and there is a third account, which is the Waitakere Animal
Welfare Fund, which has approximately \$3,000 in it.

Q. Now obviously I don't want specifics in relation to this point, but can you
broadly describe over the life of the Trust what's gone in and out of the
accounts?

20 A. If I can take the Waitakere Animal Welfare Fund account first. That is made up of small donations that have been made by Waitakere residents specifically for animal welfare activities in Waitakere city. The only other activity in the main account has been income from movie companies for providing monitors on movies. That's been quite spasmodic because it's not a continuing source of 25 income.

Q. And outgoings?

A. The outgoings mainly would be to pay the movie monitors who are employed to go onto the movie sets to independently monitor animal action.

Q. Have there been any grants made by AWINZ?

30 A. Yes there have. From the Lord Dowding fund \$10,000 was granted to UNITEC to carry out a research project, that was about two years ago and recently approximately \$5,000 was paid to UNITEC for a further project in research and teaching.

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Q. Some issue is raised by Mrs Haden in her affidavit regarding the decision made by the Trust to not register under the Charitable Trust Act. Can you just briefly explain to the Court why that decision was made?

A. Yes Your Honour over a period 1998 to the end of 1999 there were two Bills

5 before Parliament, the Animal Welfare Bill Number One, which I was largely

responsible for drafting and the Animal Welfare Bill Number Two, which was a

Government measure. When it came before the Select Committee, the committee merged those two Bills together and took submissions from the public on the two Bills as though they were one. Part of that process was to establish a regime for approved organisations. Up until that time the Waitakere Animal Welfare Project had been run on an informal basis by an agreement between the Ministry of Agriculture and Forestry and Waitakere City, but the clauses in the Bill that were being considered by the Select Committee in '98 and '99 made a new provision for an approved organisation 15 and criteria for approved organisations were laid down in the Bill. One of the

criteria was that an approved organisation must have animal welfare as its principal purpose. It was plainly obvious at that point that territorial authorities

would not qualify to be approved organisations, because although they may

have animal welfare as part of their operation, animal welfare is not the principal purpose for setting up a territorial authority. So in discussions with MAF officials, particularly in the Bio-security authority, we proposed to form an intermediary organisation, namely the Animal Welfare Institute of New Zealand, which would become an approved organisation and then would link territorial authorities into that to enable them to continue to operate as animal welfare inspectors. Now the wording of the Bill, as all Bills, they take a course of action with submissions and counter submissions and it was a very fluid process, and it wasn't until the final Bill was before the Select Committee, and incidentally I was an independent specialist advisor of the Select Committee, so I was privy to the discussions that were going on inside the Select Committee. It wasn't until the final stages that the criteria for approved organisations were determined, and the term organisation was the final word used, but even then, even when the Bill was passed at the end of 1999 and came into effect on the 1st of January the year 2000, AWINZ then had to go through a robust application process before the Minister would approve it as an

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approved organisation. There was vigorous communication between me and MAF Policy Analysts, one of whom took the view that organisation meant Body

Corporate, so there was a process where there was discussion as to whether the Animal Welfare Institute of new Zealand would be registered as a Body Corporate under the Charitable Trusts Act. The process got quite bogged down in the year 2000 because we seemed to be at log heads with MAF Policy Analysts on the one hand, but there was some anxiety in the MAF Bio-security that the whole business be dealt with and the approvals go through. And finally, to sort of break the deadlock, I arranged a meeting with the Director General of Agriculture, Professor Ross, the Associate Director General, who was their Legal Counsel, Larry Fergusson, Barry O'Neil who was

another Assistant Director General the Group Director of Bio-security Authority.

At that meeting it was resolved that the questions be raised about Body Corporate or organisations was put to one side and the Director General told the other two Assistant Director Generals to get on with it. There is no need

"

for evidence of incorporation, the Act used the word organisation, and from that point on we proceeded to negotiate memorandum of understanding and technical and performance criteria which were required under the Act, and at the end of that year, after that robust protest, the Minister of Agriculture approved AWINZ as an approved organisation. Now all the way through this,

of course was the need for documentation, and during that process I had indicated to MAF that AWINZ would be registered under the Charitable Trusts

Act. That was at the stage where MAF Policy was saying that was a requirement, but finally when it was decided that was not a criteria, then the process of registering a voluntary registration of the Charitable Trusts Act was

put to one side and all the focus then was placed on getting the organisation operational, and more particularly to get the Waitakere City Council officers warranted under the new Act. While that process was going on for the year of 2000 their appointments were null and void.

O. After that point you would have had the option as trustees of registering under

the Charitable Trusts Act, after AWINZ had been approved as an approved organisation. Why didn't you do that?

A. As time moved on the Government indicated new policy concerning charities,

which was the Charities Bill at that stage and it appeared that even that Bill 6

was not going to require a charity to be a Body Corporate registered under the

Charitable Trusts Act. There was nothing to be gained by registering it under the Charitable Trusts Act, other than perhaps protecting the name, but at that stage it never entered anyones mind that we would have to protect the name, 5 the Animal Welfare Institute of New Zealand from other people who wanted to

assume that identity.

O. You say in your evidence that another reason was that AWINZ wasn't undertaking any commercial activities at that stage, and in her affidavit Mrs Haden points to the fact that AWINZ, I think in 2002 or 2003 assisting in 10 relation to filming of the Lord of the Rings films. Can you explain your affidavit

in the light of that observation?

A. Yes, the Lord of the Rings trilogy really changed the nature of the movie Industry in New Zealand, and we, that is AWINZ provided monitors to supervise Lord of the Rings, but they were operating as contractors not as

15 employees. Now as the movie industry started to expand Inland Revenue took a closer look at how payments were being made to people who were engaged on a temporary basis on movie sets and determined that they in fact should be treated as employees with withholding tax. That being the case, when the next movie came along, which was the Chronicles of Narnia, that was the point 20 where it was determined that we needed Inland Revenue approval to be an employer. We got registration and from that point on any movie supervision has been done on the basis of payments to the monitors which withholding tax paid to Inland Revenue, and that was the same time that we then needed a bank account. Up until that stage we were not doing anything in terms of 25 monetary transactions.

O. Mrs Haden in her affidavit refers to the application that the Animal Welfare Institute of New Zealand made to MAF to be approved as an organisation in December 1999. In that application you attached the draft Trust Deed that was later signed in March 2000 and stated "A Charitable Trust has been formed 30 with my Deed of Trust as the Animal Welfare Institute of New Zealand". Obviously the Trust Deed wasn't actually signed until some three months later?

A. That's correct

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Q. Are you able to explain on the basis of your understandings as to whether a Trust had been formed orally between the named trustees. Was there a common intention on the part of the named trustees in your view to form this Trust at that point?

5 A. Yes, yes. The four original trustees came together late in 1998 and early in 1999 once the wording of the Bill was becoming quite apparent, and that to progress the project there was going to be a need to establish an intermediary organisation which will ultimately become an approved organisation. The Bills were not passed until October 1999 and the Act itself did not come into force 10 until the 151 of January 2000, so MAF could not receive an application as an approved organisation until such time as the Act itself had commenced. So there was a lot of paper work and preparation done in 1999 but none of it could

have any affect until we could lodge a formal application. Any correspondence

with MAF in 1999 was simply on the basis of intention, there could not be a formal application at that time.

Q. But given the common intention stated the fact that the Deed of Trust had not

been at that stage signed, does not derogate in any way from your statements in the application "A Charitable Trust has been formed";

A. That's correct. We had formed a common intention to create a Trust and 20 various drafts of that Trust were considered in 1999. When the Act was passed and we submitted a formal application, that was at the point that it was

required by the trustees that we sign that Trust Deed in a I believe March of 2000.

Q. Two more minor points. Can you explain for the Court the role of AWINZ in

terms of prosecutions under the Animal Welfare Act and why its name appears

on informations?

A. Yes. Under the Animal Welfare Act approved organisations are recognised as

a prosecuting authority in that District Courts may at their discretion award the

fine, or part of any fine awarded on a prosecution to the approved organisation.

30 There is another provision which enables a District Court to forfeit animals to

an approved organisation. The memorandum of understanding with MAF clearly set out that any prosecutions undertaken under this arrangement would

be the responsibility of AWINZ, not a territorial authority. For a number of reasons MAF had the direct relationship with the approved organisation, but 8

further any prosecution taken directly by a territorial authority would not then

enable the Court to make orders to approved organisations, so hence any prosecutions that were taken would be laid in the name of the investigating inspector and the prosecution itself was taken by AWINZ itself.

5 Q. Just finally Mrs Wells, I ask you to have a look at these documents.

WITNESS REFERRED TO DEEDS

A. These are the two Deeds that were signed simultaneously. The one with the

pink cover was used for photocopying and it has no staple in it, although it will be noted that there is evidence of a staple that had been in it. And the second 10 one. Sorry the other way round Your Honour. The yellow one is the one that has had the staple removed for photocopying and scanning purposes, the other one in the pink folder still has the original staple in and has not ever been taken apart, that has been held in a safe.

EXHIBIT 1 PRODUCED -DEED IN YELLOW FOLDER

15 EXHIBIT 2 PRODUCED -DEED IN PINK FOLDER

LEGAL DISCUSSION (11.16.37)

EXAMINATION CONTINUES: MR WRIGHT

COURT ADJOURNS: 11.17 AM

20 COURT RESUMES: 11.41 AM .

LEGAL DISCUSSION (11.41.54)

CROSS-EXAMINATION: MRS HADEN

Q. Mr Wells, you're a Barrister?

A. That's correct.

25 Q. How many Trusts have you incorporated?

A. Probably in the vicinity of six or seven.

Q. So prior to the Animal Institute of New Zealand being set up and signed in

2000, how many Trusts had you set up before that date?

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A. Probably three.

Q. So you're familiar with the process?

A. Oh yes, yes, but every Trust has different imperatives.

Q. But the process of registration through the Charitable Trusts Act 1957, you've

5 used that procedure before and you're familiar with that procedure?

A. Yes. Albeit a voluntary process.

Q. I'd just like to step through the origins and the beginnings, and I refer to my

affidavit and I've attached appendix L which is your letter to John Luxton dated

2nd of November 1999. You have signed this document as Neil Wells, trustee.

10 A. What's the reference number?

Q. L.

A. I don't have your -

Q. You're aware of that letter. Would you tell me what the state of the Trust was

at the time that you wrote that letter? What was the status of the Trust at that 15 time?

A. The status of the Trust as at the 22nd of November 1999. The status of the Trust was we had agreed to form the Trust, we had formulated the final version

of the Trust Deed, the Trust Deed itself had not been signed.

Q. If we go to the first page of your application, could you explain to the Court why

20 under two, functions of the Institute, it reads "A Charitable Trust has been formed by Deed of Trust";

A. Yes. The Trust Deed was in the final format, it had not been signed at that stage and obviously then it was indicating to the Minister that a Deed of Trust

was the basis for the formation of the Animal Welfare Institute.

25 Q. So in other words, the word formed meant that it hadn't been legally formed?

A. Weill can't comment on the legal aspects. The intention had been formed, the

Trust Deed had been drafted to the final version, it had not been signed because the Act itself hadn't come into force at that point.

Q. In legal terms, if I was to say that a Trust had been formed by Deed of Trust,

30 as a lawyer what interpretation would you place upon that?

A. Weill think it's a hypothetical question?

Q. I don't think so.

10

THE COURT: ~

I'll ask you to answer it nevertheless Mr Wells.

CROSS-EXAMINATION CONTINUES: MRS HADEN

A. In the formation of any Body Corporate or non Body Corporate there is a series

5 of processes which ultimately create the existence of an organisation, and in

the case of the Animal Welfare Institute, the various drafts of the Deed of Trust

which were formulated in 1999 led up to the final Deed, but it was not necessary in our view to actually have the signed copy until we were ready to proceed in the year 2000 because we couldn't formalise our application until 10 then.

O. That was not my question. My question was, that as a Barrister, if I was to say

that I had formed a Trust by Trust Deed, a 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.

15 O. Now reading onto that next part, it says it is being registered under Part II of

the Charitable Trust Act THE COURT:

I'm sorry I've lost my place. Which Exhibit again is it that we are looking at?

20 MRS HADEN:

Exhibit L Your Honour and it's under point two, and it's that top three line paragraph

and it's the bottom part of it. That's L, very first page and we're at the bottom under

number two.

CROSS-EXAMINATION CONTINUES: MRS HADEN

25 O. It says it is being registered under Part II of the Charitable Trusts Act 1957.

Can you tell me what that statement means?

A. Yes, it was under consideration and you need to put that in the context that

MAF policy were indicating that they would require registration and a Certificate of Incorporation, but as I said earlier in my evidence, as things 30 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

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produced in order for them to proceed with the application as an approved organisation.

Q. Thank you, but that was not my question. My question was, what does it mean

when it says it is being registered?

5 A. That's indicating that there is something in process.

Q. And does it there's something in process currently or in the future?

A. Don't think I understand the question.

Q. If I say to you "this is being registered, it is being registered", does that give

you a connotation of the present, or does it give you a connotation of intent in

10 future?

Q. It would give an indication of an intention to be carried out in the future.

It was

a continuous process, there was no date specified it would be done by a certain date and that statement was made against the background of MAF saying that you will need to follow this process. c

15 Q. Where is that background? Whose evidence that this background is as you

alleged, rather than this document I have in front of me?

A. There was correspondence with MAF policy analysts all the way through the

year 1999 and 2000, including exhaustive legal opinions both from Kensington

Swann and the Crown Law Office, it finally got to the point later in the year 20 2000 where MAF was satisfied that AWINZ was appropriate to be appointed as

an approved organisation and had in fact met all of the criteria set down in the

Act, and registration under the Charitable Trusts Act in the end was determined not to be a requirement. ,

Q. So in going back to it is being registered, when you wrote that, you didn't mean

25 it was actually being done at that time?

A. It was a process that was under -

Q. No, no, I'm just getting down to the words, the word say "it is being registered".

To me those words have meant current. Can you please explain why a current

term was used for something which had not happened?

30 A. As I said earlier, I regard that as a series of actions in process.

Q. Going to-

A. May I add, it does not say that application has been made for registration under the Charitable Trusts Act.

THE COURT:

Q. Just to be quite clear about it Mr Wells, are these propositions correct? If Y they're not, or they require qualification, don't hesitate to correct me. The propositions being first, that as at the 2151 of November 1999 a Deed of Trust

j 5 had not been signed off?

0 A. Correct.

n\ Q. And secondly, as at that same date, no formal steps had been taken to seek

I ~ registration of any such Trust under the Charitable Trusts Act?

A. That's correct Your Honour.

10 CROSS-EXAMINATION CONTINUES: MRS HADEN

Q. Going to section 10 in that same document. Section 10 commences on page

6, and that's the Institute's compliance with section 122 of the Act. Can you tell

me what significance section 122 of the Animal Welfare Act has?

A. Yes. I don't have the Act in front of me but my recollection is that an approved
15 organisation must satisfy the Minister that it has robust organisation,
financially
accountability -

Q. Can I help you out, it's at the top of the page there 122. Is that the section;

A. Yes that is section 122.

Q. Under 122(b) the accountability arrangements, financial arrangements, the
20 management organisation as such, having regard to the interest of the
public,
the organisation is suitable to be declared an approved organisation?

A. Yes.

Q. Can I then take you through to point 10.5, which is on page Your Honour.
In

the third paragraph down it states "because the Institute will be registered
25 under the Charitable Trusts Act 1957 and not the Incorporated Societies
Act

1908, it will have no ordinary members, thus a Board of Trustees will always
be in control". What was the intent of that paragraph?

A. The intent was to indicate that AWINZ would not seek registration under
the

Incorporated Societies Act, but it preferred the option of operating as a
30 Charitable Trust.

Q. What do the words "will be registered." What impression does that
convey?

A. That something of that nature will occur in the future
13

Q. Taken in connection with the words on page two, which said "it is being
registered". Reading it is being registered and will be, what impression does
it

convey as to the process that's been undertaken?

A. Well the intention of this was to convey an impression to the Minister that
5 certain processes were going through a robust consideration. At that stage,
as

I pointed out, the Ministry of Agriculture erroneously were taking the view
that

that required incorporation, subsequently they retreated from that view and
agreed that no incorporation was ultimately necessary. Taking that as a
snapshot at that time, that was the intention.

10 Q. But anyone reading that would that convey to a person reading this
document

that there is both a Trust Deed, that the Trust Deed is presently in the process
of being sent of for incorporation and that the incorporation hasn't been

completed?

A. Well it's not a question of what somebody else might take from it. This was an

15 application addressed to the Minister, and it was under consideration by his

officials, who were fully informed as to the process, and as I said there were robust discussions between me and the Ministry officials and officials in the Minister's office as to the process, so they were fully understandable as to what was going on and at no stage were they saying "well before we go any 20 further, you've got to produce a Certificate of Incorporation." They had indicated that, but we convinced them ultimately that was not a necessity and that was confirmed by the Director General of Agriculture.

Q. So there was obviously this document, what it says in this document of any

relevance because the correspondence and the words surrounding this 25 document contradict what's in here?

A. It was statement of intent.

Q. Where on this document does it say that it's a statement of intent?

A. I think there are some references to "it is proposed that" Yes, at the head of

section 10 it says "the Institute proposes to meet these criteria in the following

30 manner". So that was obviously being put to MAF as something for their consideration to come back to us and take it through further discussion. This was at the end of November and the Act had not quite come into force. The Act had been passed, and as I mentioned further, that discussion continued for 14

a whole year before MAF finally got to the point where they could recommend

to the Minister the approval of the Institute as an approved organisation.

Q. But when it says "Institute proposes to meet the criteria", it means all of the

criteria of section 122, not just specifically of the one applies to the 5 accountability to the public?

A. It is the Minister who must be satisfied that all that criteria is met and the material that was submitted to the Minister via MAF was the intention of satisfying the Minister that at that point the Animal Welfare Institute did meet

that criteria. At that point though, MAF were not satisfied that all the criteria 10 were being met and it took, as I say, many months of negotiation before we

finally got to the point where the Minister's office was satisfied.

Q. You'd be aware of entities being a lawyer and how incorporation makes an

Unincorporated Trust a Body Corporate and an entity in its own right?

A. What was the question?

Q. As a Barrister, are you aware of the structure of entities?

A. What do you mean by the word entity?

Q. Well I see here the name of the applicant, the name of the applicant is the Animal Welfare Institute of New Zealand. The applicant is not a group of trustees, and at that point in time, we've established that the Animal Welfare 20 Institute of New Zealand, is actually just a name?

A. It is a Trust.

Q. If it's a Trust, it cannot make an application in that name because it's not incorporated, and where are the names of the other applicants who would be the entities who can make such an application?

A. The Act uses the term organisation, the Act does not define the term organisation and MAF itself finally determined that organisation can be any group, entity, Body Corporate, Body Unincorporated Trust. Because Parliament did not define the term organisation, MAF were quite happy to accept an application from a body called the Animal Welfare Institute of New

30 Zealand as an organisation.

Q. The Animal Welfare Act is unfortunately not the only legislation in this country.

As a Barrister how would the legality of any contract with a name animal Welfare Institute of New Zealand, which is not incorporated, what legal status

would it have?

15

A. I'm not aware that the Animal Welfare Institute has entered into any contracts.

It has entered into Memoranda of Understanding.

Q. 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

5 THE COURT:

I'm just wondering how far you can usefully further take this with the witness, and

whether this may be a matter for us to consider in the course of submissions.

As a

matter of law there is no entity separate from trustees of a simple Trust in the way

that there is if there has been a Body Corporate of some kind established under

10 particular legislation or otherwise. Often times in the Court we find parties to litigation suing or being sued in the name by which the trustees undertaking is commonly known and I've had to point out to counsel on several occasions that the correct way to identify the parties in the heading of Court papers is to identify the trustees rather than simply to state the name under which if you like they operate.

15 Very commonly now trustees seem to assume something akin to a trading name if you were, just as an individual. You might be a plumber or a drainlayer or an IT person and might choose a name under which he or she trades. It is just a name.

The questions that you have put to Mr Wells have I think, I'm not stopping you but probably conveyed to me the matters that you wanted brought to light or clarified if

20 you will and I just whether having got this far we're left with matters to be debated

with the Court, by you and Mr Wright at the end when we make submissions because although Mr Wells is a Barrister and Solicitor and certainly can be asked

about his appreciation and understanding and so on, if it becomes a crucial issue for

determination I'm the one who is going to have to rule on that and with great respect

25 to him, his opinion won't be able to count. He is not here to give evidence in the

ordinary course as an independent expert, he's a plaintiff of the proceeding.

CROSS-EXAMINATION CONTINUES: MRS HADEN

WITNESS REFERRED TO EXHIBIT 0 -LETTERS

Q. In Exhibit 0, these are letters which have been released to me under the 30 Official Information Act. Do you recall the email, unfortunately most of it's been

blacked out, from Mr Mark Neeson to yourself regarding the legal status of the

Trust?

16

A. This is an email from me to Mark Neeson.

Q. Sorry. My one says "legal status of the Trust. Could you please provide

documentary evidence confirming that the Trust has been -

A. Sorry, I was on the next page.

5 Q. Under the Charitable Trusts Act 1957 -

A. Yes that just reaffirms, I don't recall the date, but my reply to him was the 1th

of March, so I would assume it was early in, right there's a letter dated the 28th

of January. Yes, at that point MAF policy was still of the view that they would

not progress an application until such time as a Certificate of Incorporation 10 under the Charitable Trusts Act had been produced. Hence Mark Neeson's letter to me and my reply to him on the 17th of March, and in that I note that I

say that "I would like to revisit one other issue from our meeting and recommendation for approval cannot be considered without evidence of registration" and I said "I ask you to reconsider that requirement that would add

15 to the process". I also pointed out that an applicant can be any organisation,

but there is no requirement the organisation be a Body Corporate, an organisation can be incorporated or unincorporated. At that point MAF did not

accept that view, but ultimately they did.

Q. In paragraph two you said "that will add months to the application being 20 finalised". How long had your previous registration process taken from the

time that you sent your application in to the time it was registered?

A. It was probably a matter of a couple of weeks.

Q. Would you accept that if you had, as you had said in your document dated November, when you said the Trust had been formed and was being 25 incorporated, that by the 17th of March that process would have been completed?

A. Yes, but we hadn't conceded to MAF that that was necessary process because

MAF, as they raise, and bear in mind that the letter to the Minister went at the

end of November, Government virtually closes down for December and the 30 most of January, so when we came back to discuss it in early January they were still of the view that incorporation was a necessity. I was arguing that it was not, and I reaffirmed that in my email of the 17th of March. The issue was

not so much the time it would take, but the requirement of MAF for incorporation when it was not a requirement of the Act.

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Q. Do you think that by Mr Neeson sending the letter on the 28th of January, that

his interpretation from the application papers might have expected him to have

been delivered a Charitable Trust registration?

A. I can't say what was in Mark Neeson's mind. The discussion with Mark Neeson in January 2000 was whether or not the Act required such registration.

Q. His email, what does his email convey to you? That he was seeking a document as to the registration?

A. That's what his letter states yes, and then it finishes off "MAF would appreciate

your comments on the above points, so he was asking me to make a counter comment on what they were requiring, hence my email of the 1th of March.

Q. Now going onto page two of your email. You write, "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."

15 No you said while AWINZ will be a registered Charitable Trust, that is part of

the process that leads up the approval by IRD for exemption for filing tax returns. Now this is in 2000 and in 1999 you had, as you pointed out before been a contractor to Lord of the Rings?

A. No I did not say that we had been a contractor in 1999. I said that the movie

20 was commenced in 1999. AWINZ did not intervene in that movie until well into

the year 2000.

Q. So if even in 2000 you still weren't registered for IRD and you were not incorporated. You say you worked with Lord of the Rings, so how did this come about with neither registration or IRD number?

25 A. There were no financial transactions at all with AWINZ until Bank accounts

were opened, I think it was early 2005. As I said earlier, the monitors were treated as contractors and as such there was no deduction of any payment to them by the movie company. They were just contractors and subsequent to that the Inland Revenue reviewed their whole requirements for registration for

30 tax exempt status, and ultimately came to the conclusion that there was no need for the production of an Incorporated Society or a Charitable Trust Act

Certificate of Incorporation. When IRD status was finally granted they conceded that and granted the Animal Welfare Institute exemption from filing tax returns and also qualification for donations in the hands of the donor.
18

Q. So how would these independent contractors have worked under the auspices of AWINZ, when AWINZ was not contracted themselves, how did AWINZ then become involved in this transaction?

A. AWINZ trained and supplied the independent monitors.

5 Q. I believed that the independent monitors were from the SPCA and were UNITEC staff. I put it to you that they were UNITEC staff and that they were SPCA members?

A. Yes one of the monitors was a lecturer at UNITEC and two of the other monitors, actually there were three, had positions with the SPCA.

10 Q. Now while we're onto the SPCA, it might need to clarify for the Court just the significance of AWINZ. How many organisations are there, which are approved organisations?

A. There are two.

Q. And which are they?

15 A. The SPCA and the Animal Welfare Institute.

Q. And can you tell the Court what the structure is of the SPCA?

A. The national body is the Royal New Zealand Society for the Prevention of Cruelty to Animals. There are 54 local SPCA's. I'm not up to date with the status of those SPCA's, but when I was associated directly with the Royal New

20 Zealand SPCA there were something like 16 of the 54 that were still Incorporated Societies, the remainder were Incorporated Branches.

Q. But they were all part of that entity called the SPCA?

A. They are all either Branches or member Societies of the RNSPCA.

Q. And AWINZ does not come under the umbrella of the SPCA?

25 A. No it does not.

Q. Now on the bottom of the page, the second to last paragraph, AWINZ can produce evidence that the Trust is in being by providing a signed copy of the Trust Deed and given undertaking that it will be registered by the Ministry of Commerce. What steps were taken subsequent to that paragraph being
30 written?

A. Well none. Again that was in the light of the Ministry requiring registration, us saying it wasn't, but for discussion I said that AWINZ can produce evidence

that the Trust is in being by providing a signed copy of the Trust Deed, and at that point, 1yth of March 2000, that Trust Deed had indeed been signed. My 19

other point was that if MAF insisted, then we would have to provide an undertaking that would be registered with the Ministry of Commerce. As I said

earlier it subsequently was determined that MAF's opinion was wrong and they conceded to that.

5 Q. What was your capacity with MAF at the time? Were you not a legal advisor at the same time?

A. No I was not.

Q. Have you at any time been a legal advisor to MAF?

A. I have never been a legal advisor to MAF, I have been a consultant on law 10 reform matters. I have not given legal advice to MAF.

Q. Now going to the last page in that little bundle. This is an extract from a letter

dated 25th of March, Neil Wells and the Honary Jim Sutton who was at that time the Minister of Agriculture. It says a signed copy of the Deed of Trust will

follow, the original is being submitted to the Minister of Commerce for 15 registration as a Charitable Trust in accordance with clause 20(a) of the Deed.

Did you ever send a copy of the Deed of Trust?

WITNESS REFERRED TO TRUST DOCUMENTATION BUNDLE 0

A. To whom?

Q. To the Minister?

20 A. Yes.

Q. When did you send it?

A. It was not for sometime later when the Ministry advised me that while they had

an unsigned copy, they didn't actually have the signed copy.

Q. Would it be true to say that that copy was sent in 2006?

25 A. That's quite likely.

Q. Now reading the words "the original is being submitted to the Ministry of Commerce". Does that convey that there is one or two documents?

A. There was one original copy and a signed counterpart. There were two signed copies.

30 Q. So why was it impossible to send him a copy at that time?

A. I put it down to no more than oversight. As I said it was not for some time that

the Ministry discovered that in fact their files did not have a signed copy and that's when a signed copy was forwarded to them.

20

Q. Now I note that the other Trusts you've incorporated. What procedure did you go through with the Trust Deed? Did you send the original Trust Deed, or did you send a verified copy?

A. It was a certified copy.

5 Q. So why in this case could you not have sent a certified copy through to be registered in the Charitable Trust? Why did you claim that the original was not available because it was being sent to be registered?

A. I have not made the statement the original was not available.

Q. Well the original is being submitted to the Minister of Commerce. What does

10 that mean to imply?

A. That a copy of the Trust Deed would be sent to the Ministry of Commerce?

Q. Is being? Is that future or -

A. Again, that was a future intention.

Q. Can we have a look at the Trust Deed?

15 WITNESS REFERRED TO TRUST DEED

Q. Can you read to me what section 20(a) of your Trust Deed says?

A. What was the question?

Q. In this letter, it's to the Minister, it says that "it's been sent for registration as a Charitable Trust in accordance with clause 20(a) of the Deed".

20 A. There is no 20(a) of the final signed copy.

Q. Was there a 20(a) on the document which was attached to the application to the Minister in November 1999?

A. I can't answer that, I don't know.

Q. I can give you the documentation if you like, if you bear with me for a minute.

25 No I haven't got it here, but in any case, the letter being dated 25th of March

2000, does this letter pre-date or is it after the Deed was signed?

A. The Deed was signed on the 1 st of March 2000.

Q. So between the 1 st of March 2000 and the 25th of March 2000, what amendments took place to the Trust Deed?

30 A. Could you repeat the question?

Q. Between the 1 st of March 2000 and the 25th of March 2000, what amendments

took place to the Trust Deed?

A. None, it was signed on the 1 st of March.

Q. Then how did this letter to the Minister rely on clause 20(a) of the Deed?
21

A. Weill can't answer that directly, but a possibility is that I inadvertently referred to an earlier draft.

Q. I'm going to the administrative operating procedures for Animal Welfare officers. Now this was produced on the 1 sl of September 2004 and on page 5 two under the policy statement it has your signature. How many trustees were involved in the production of this document?

A. I was the author of the document.

Q. In the definitions it says AWINZ. Can you read what that definition says please?

10 A. AWINZ means the Animal Welfare Institute of New Zealand.

Q. And what indication is there that Animal Welfare Institute of New Zealand is

anything but an Incorporated Society, or and Incorporated Trust or entity rather than a Body Corporate?

A. There's no indication in here, in that definition claiming that the Animal Welfare

15 Institute was registered either as an Incorporated Society or a Charitable Trust.

However, in one of the, I don't know whether the full guidelines are here, a mistake was made by me in referring to AWINZ as a Body Corporate when it

came to a reference to the Solicitor General's guidelines on prosecutions.

Q. Do you not concede that that's a pretty serious mistake to make?

20 A. No I wouldn't consider it a serious mistake.

Q. Now, going to appendix H, which is the prosecution of Sara Meke.

A. Yes.

Q. Now Sara Meke, how did she come to your notice?

A. Officers of Animal Welfare Waitakere investigated a complaint of neglect and

25 they submitted the prosecution file to me for consideration for prosecution.

Q. When you say they submitted it to you, was that in your capacity as their manager of Animal Welfare, or was it as Neil Wells Barrister, or Neil Wells as

Trustee of AWINZ?

A. It came to AWINZ. I was not the manager of Animal Welfare Waitakere in 30 2004.

Q. Now on the second page, you approved that for prosecution?

A. That's correct.

Q. Now on the final page, we have a letter, which has your letterhead N E Wells,

Barrister. So you prosecuted that in your capacity as Barrister?

22

A. Correct.

Q. And you offered diversion to Sara on the payment of some money into a Bank account?

A. To put it into its context. Her counsel asked if diversion would be considered.

5 Q. Do you have a provision for diversion under the Animal Welfare Act?

A. My understanding is that diversion is a matter of practice, which is not actually

derived from any statute. I may be wrong on that, but very clearly her solicitor

was anxious that this not proceed to trial and made an offer, call it diversion if

you like, but he made an offer on the basis of diversion, and then on the basis 10 of that we agreed and sought leave to withdraw the charges.

Q. At the time, from my enquiries with the Bank, there was only one person who

had control over the Bank account into which this money was paid. Could you

tell me who that person was?

A. We'll can't comment on what your enquiries with the Bank are, but yes I was a

15 signing authority of the Bank account at that stage, yes.

Q. Would it be correct to say that you were the only person who had control over

that Bank account?

A. At that point I was the signatory of the Bank account yes.

Q. Going to the donations which are solicited from the public. You put out a letter

20 which is appendix I.

WITNESS REFERRED TO APPENDIX I

Q. At the time in June 2006, when this letter was sent out, what was your occupation?

A. In June 2006 I was the manager of Animal Welfare Waitakere City.

25 Q. Just for clarification, we have a Memorandum of Understanding with Waitakere.

WITNESS REFERRED TO EXHIBIT C MEMORANDUM OF UNDERSTANDING

Q. Did you sign that document on 20th March 2004?

A. That's correct.

30 Q. And the person you signed that document with?

A. It was Tom Didovich, who at that time was the manager Animal Welfare Waitakere City.

Q. So you took his place in that position?

A. Yes, in effect.

23

Q. Now, could you also tell us while we're on Tom Didovich, who witnessed and

collected the signature for the Trust Deed?

A. In the year 2000?

Q. Well so I believe?

5 A. Yes. It was Tom Didovich.

Q. Going first to the logo on the document Exhibit I.

WITNESS REFERRED TO EXHIBIT I

Q. You had changed while you were at Waitakere Animal Welfare, the logo for

AWINZ. Could you identify the logo here and comment on the similarities 10 between that and the logo which Animal Welfare Waitakere uses?

A. Yes, they are using the same format. Both logos are in their coloured version,

light green and dark green.

Q. Would you say that the Animal Welfare part is identical to the signage which is

outside the premises?

15 A. Yes it is.

Q. And that the only difference is, is perhaps the colour, because of replication

and the words underneath Institute of New Zealand?

A. That's correct.

Q. Do you accept that this could cause confusion as to what people AWINZ and

20 Waitakere City to be?

A. No.

Q. So you're not concerned that AWINZ is causing confusion with Waitakere City

Council?

A. I don't believe there is any confusion. They are two bodies operating conjointly

25 to achieve a common end.

Q. How would a member of the public walking up to the Animal Welfare in Waitakere, seeing the sign, which is substantially identical to yours, differentiate two bodies?

Q. I don't understand why they would need to. At 48 The Concourse, that is 30 where the animal shelter is, that is an operation of Waitakere City Council.

There is no suggestion that Animal Welfare Institute of New Zealand operates

from those premises. However, Animal Welfare Institute of New Zealand from

the donations made has provided substantial equipment in the form of donations to the veterinary clinic there.

Q. When I called at the Animal Welfare Centre at The Concourse, there was a collection box on the counter.

THE COURT:

You cannot give evidence when you are cross examining Mrs Haden.

5 CROSS-EXAMINATION CONTINUES: MRS HADEN

Q. With regard to the administration of the New Zealand Fund for Humane Research and the Lord Dowding Fund, which you claim to have 590,000 in your Bank account for. Can you please expand on how you got to have that money?

10 A. Yes. One of the trustees, or actually the secretary of the Trust, Lucille Heather contacted me and said that, and I had been an original trustee of the New Zealand Fund for Humane Research. She said that there had been little activity of that Trust for many years, in fact I think it might have gone on for about 10 or 15 years, they were getting elderly, they wished to wind up the 15 fund and would I consider transferring the fund from the Fund for Humane Research to AWINZ on the basis that it would still be administered under the original criteria of the Lord Dowding Fund and we agreed that we would do that.

Q. So the New Zealand Fund for Humane Research continues to exist as 20 registered under the Charitable Trust Act?

A. I don't know. My understanding was that the secretary had wound it up.

Q. But you say here, you administer the New Zealand Fund for Humane Research?

A. Yes, the fund not the entity.

25 Q. The entity is called New Zealand Fund for Humane Research. Can you please clarify how someone is to differentiate by the fact that you only administer the fund but you don't administer the entity;

THE COURT: Well can I perhaps try and help here. The impression I've got from what you've said 30 so far Mr Wells, which again may be erroneous and your correction of qualification would be gratefully received , is that you've been indicting that funds held by the Lord

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Dowding entity, if I can simply call it that were because that entity had not been as it were in action of recent times, transferred to what I'll loosely call AWI, so that responsibility for the funds application was assumed by AWL

5 THE WITNESS : That's correct Your Honour.

CROSS-EXAMINATION CONTINUES: MRS HADEN

Q. When did you get that money?

A. I can't answer that, I don't precisely know. 10 Q. Have you ever accounted to the secretary for that money?

A. There was no need for us to account to the secretary because the New Zealand Fund for Humane Research, my understanding was it was wound up and is now not a Corporate Body.

Q I'm having a little bit of trouble with the fact that if it's not a Corporate Body and 15 there doesn't exist, how you can say you administer this fund and the Lord Dowding Fund which is what they had?

A. Yes, AWINZ is not administering the Charitable Trust known as the New Zealand Fund for Humane Research, it is administering applications from the fund itself.

20 Q. What does it mean? A I'm sorry, what does what mean?

Q. Well what you just said?

A. It means that if an organisation wishes to make application for research funds from that fund, AWINZ will administer the process of that application and if it

25 meets the criteria of the Lord Dowding Fund, we'll make a decision as to whether or not that grant will be made, and in two instances has decided yes it will.

Q And who are the two instances?

A. Both were research projects at UNITEC. Research of teaching projects at 30 UNITEC.

Q. Can we go through your connection with UNITEC and your role at UNITEC. Can you tell us how you were involved in UNITEC?

26

A. When the animal Welfare Act was leading to its final consideration in 1998

1999, I spoke to MAF Bio-security Authority and discussed with them criteria for establishing a training programme that would meet the requirements of the Act, because under the Act any approved organisation must meet performance 5 and technical standards. I was a consultant to MAF at that point and had negotiations ultimately with the Public Sector Training Organisation and the New Zealand Qualification Authority and in conjunction with their people wrote a series of unit standards which ultimately got registered as the Certificate of Animal Welfare Investigations. Registration of a certificate does not mean anybody's going to deliver it, so MAF decided to call for tenders as to who was going to deliver the training programme and there were three tertiary institutions that submitted, UNITEC being one of them and ultimately the contract, sorry it wasn't a contract. UNITEC was then named by MAF as the preferred supplying.

15 Q. Was that through a tender process?

A. Yes it was.

Q. And UNITEC tendered and won the process?

A. That's right. Correct.

Q. And who lectured to the animal welfare officers?

A. Quite a number of lecturers. Once UNITEC had been awarded the contract

they then approached me and asked if I would join UNITEC staff as a part time

consultant, which ultimately led to an appointment as a full time lecturer.

Q. It's correct to say that you lectured and gave the animal welfare trainees their qualifications?

25 A. No I did not give them their qualifications. I lectured in Animal Law and Animal

Investigations, but there are other lecturers, lecturing in a wide range of issues

like euthanasia, veterinary procedures, animal care and handling. There are probably up to six or seven different lecturers delivering that programme.

Q. Did you take part in marking the papers for the people who sat their exams for the subjects you taught?

A. Any subjects that I taught, I marked those papers.

Q. Can you explain to the Court the process from the time that a person, any person decides to become an animal welfare officer, can you explain the process that they go through at UNITEC and then becoming approved?

A. Under the animal Welfare Act the Director General has recognised the Certificate of Animal Welfare Investigations as meeting the performance and technical standards required by the Act and under a Memorandum of Understanding, the Director General, or through him, it's delegated to the

5 Director of the Animal Welfare Group of MAF. Officers cannot be appointed an inspector until they have partially completed the Certificate of Animal Welfare Investigations. **Once they have passed the Animal Law paper they are eligible to be appointed for a short term period of 12 months in the expectation that they will complete that training in that next 12 month period. If they are**

10 successful they will then be appointed for the full three year period and thereafter their appointments are rolled over provided they still meet the criteria.

Q. And to receive the delegated authority from the Crown under the Animal Welfare Act, how do they get appointed?

15 A. They're appointed by the Director of the Animal Welfare Group of Bio-security New Zealand, who has a written delegation from the Minister of Agriculture.

Q. Is it not true that you've got through AWINZ, which again you signed with the Minister, an MOU which allows you to recommend for appointment these people who wish to become animal welfare officers?

20 A. Yes. Any appointment that comes through an approved organisation, must be recommended by that approved organisation, whether it's the SPCA or the Animal Welfare Institute.

WITNESSREFERRED TO ITEM D-MEMORANDUM OF UNDERSTANDING

Q. While we're on this Memorandum of Understanding, bearing in mind this is a

25 contract with a Government Department, what indication is there on this document that the Animal Welfare Institute of New Zealand is not a Body Corporate?

A. I don't believe there's any reference in here as to what its status is, and incidentally this is not a contract, it is a Memorandum of Understanding. 30

Q. It is an agreement is it not?

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Q. It is an agreement is it not?

A. It's a Memorandum of Understanding.

Q. Does it not say on the last page "duration of agreement"?

A. Yes it does.

Q. And is it by virtue of this legal agreement that MAF and AWINZ have come to

an agreement that AWINZ can recommend persons it deems suitable for

appointment as inspectors under the Animal Welfare Act?

A. Yes that's correct.

5 Q. Who does that recommendation ?

A. I do.

Q. Part of the process is that these people have to be employed by territorial

authorities?

A. No. That is certainly the case with the Animal Welfare Institute but not the case for SPCA's, they have an entirely different arrangement.

10 Q. Just confining ourselves with the structure of the Animal Welfare Institute of New Zealand. The requirement is what for a person to become an Animal Welfare Institute appointed?

A. They would normally be officers who are employed by Waitakere City as animal welfare officers.

15 Q. Can you tell the Court what your relationship is to the animal welfare officers in Waitakere?

A. I am the manager of that section, but there is a team leader who actually manages the field services team.

20 Q. But you are actually, you are their employer, the person that they respond to?

A. I am their manager yes.

Q. So going back to the previous prosecution matter, if that was to occur now, you would have the role of animal welfare manager, you would have the role of

approving the prosecution, you would have the role of Barrister and you would

25 have the role of banking the money. Am I wrong?

A. Not sure what your last point is, banking which money.

Q. If they offer diversion, the diversion money comes to you as trustee of AW INZ and you put it into the Bank?

A. No I don't do the banking for AWINZ.

30 Q. But you were the only person who had signing right at the time when I located the Bank account?

A. I'm not sure when you located the Bank account.

Q. Getting back to the Memorandum of Understanding with the Minister of

Agriculture, there is no other reference to any other trustees on this document.

THE COURT:

I'll try and help here Mrs Haden. I've looked through this document and unless I missed something, you're perfectly correct. It describes terms of

understanding apparently between what style the Animal Welfare Institute of New Zealand and the Ministry of Agriculture and Forestry. I think we all know by now that the name Animal Welfare Institute of New Zealand isn't representative of any Body Corporate in the ordinary or strict sense, but rather is a reference to the body of responsibilities that are to be discharged by Mr Wells and the other people who are the trustees of this Trust. In the course of submissions we can discuss the relevance of all that, but
10 you've made your point and I don't think you need to keep hammering it home repetitively. It's like putting more screws in box than it really needs to have a tight lid.

CROSS-EXAMINATION CONTINUES: MRS HADEN

Q. Just going back to the issues I had with the very first document I brought up.

15 I'm just trying to get the difference, if I was to say "it is being submitted" or "it will be submitted". Is there a difference to you as to timeframes?

A. I think I've already answered that, but that indicates an intention of something that is either in process or happening in the future.

Q. So "is being" gives the connotation of something in the future, as opposed to 20 something that's occurring now?

A. In my mind yes.

Q. In the Act, as you correctly stated earlier, that the primary function of the association is animal welfare. Why in the primary function of your organisation being animal welfare did you not need to be incorporated. Why was it deemed

25 not necessary?

A. You're asking me for a legal opinion, and I have answered that earlier. The whole of 2000 was a robust, very robust application process that in the end resolved that it was not necessary for an organisation to be incorporated for it to be approved by the Minister.

30 Q. In 1999 you incorporated two other Trusts. The Archangel Trust and the National Animal Welfare Trust. What I'm trying to get to is why was there a necessity to incorporate one lot which didn't have a public function and not incorporate another one which did have a public function?

A. They were two entirely different organisations, in fact neither of those Trusts

have functioned at all since incorporation and I was acting on instructions of

Canadians who asked that they do be registered under the Charitable Trust

Act, but they were not applicants under the Animal Welfare Act.

Q. So when I first became involved with AWINZ there were people who had trouble finding accountability, How do people find who is accountable behind AWINZ?

A. An approved organisation is accountable to the Minister.

Q. The organisation represented by the trustees therefore has no accountability?

A. It is accountable to the Minister and through that the Ministry of Agriculture carries out an audit once a year to ensure that the Trust is in fact complying with its obligations under the Animal Welfare Act and in the whole time that those audits have been carried out, not significant deficiencies have been found.

Q. Is it not true that prior to your engagement as manager of Animal Welfare Waitakere, that these audits were conducted by N E Wells & Associates Limited?

A. No, that's not correct. The MAF audits are conducted by the MAF compliance unit. They are employees of MAF.

Q. What audits were done by N E Wells & Associates?

A. They were audits required by the North Shore City Council for their compliance under the ISO 9000 accreditation, they were not related at all to anything required by MAF.

Q. Can you perhaps explain how the Trust has lost through me asking questions about the running of it?

A. I don't understand the question.

Q. This hearing is about quantum. I'm asking how the Trust has suffered a loss because I sought accountability from it?

A. I'm sorry I still don't understand.

Objection Mr Wright

THE COURT: Mr Wright is correct Mrs Haden. The third cause of action in defamation is very plainly when I look at the statement of claim, one pursued by this witness on his own, in his personal capacity.

5 CROSS-EXAMINATION CONTINUES: MRS HADEN

Q. In your personal capacity, could you tell me how in your personal capacity you have suffered because of the questions I've asked about the apparent conflict of interest as demonstrated in Court today?

A. I'm sorry, I still don't understand the question.

10 **Q. Have you suffered any loss due to my questioning the conflicts of interest which appear in this Court today?**

A. Yes, your many phone calls have to a wide range of people, have made it very difficult for the Animal Welfare Institute to function properly because of the diversions that we've had to pursue in dealing with the issues that you've

15 raised.

Q. Can you itemise when I've made these phone calls and how long ago I made these phone calls and who I made these phone calls to?

A. Well I could. You made a phone call to two trustees of AWINZ who decided they were not prepared to be harassed any more.

20 OBJECTION: MRS HADEN (12.53 .00)

A. Your Honour I'm giving hearsay evidence and I really feel as though I'm moving into an area that I should not, because it is hearsay.

THE COURT: Mrs Haden I think you do need to take some care here for your own sake in terms

25 that by asking these very wide in scope questions you are possibly offering the witness and opportunity to elaborate upon what in his contention is the damage he has suffered and possibly to take it beyond matters that he has identified in his evidence to date. In other words do you want to give him the chance to double ice his damages claim cake or not. You may be offering him that by the very form of

30 question that you're proffering him.

MRS HADEN:

.Your Honour he actually didn't answer the question because I asked him how he had suffered and he immediately went on to talk about the other trustees and that's not the question Your Honour, he actually threw it outside the scope of my questioning.

5 directed the questions at him and he brought in third parties.

THE COURT: Well technically I think what you say is perfectly correct, but just to go back to my first point where I'm just counselling some care and consideration on your part. In his affidavit or affidavits that are in front of me today and that you have seen, at

10 various points he as I recall it anyway, describes the effect on him as he would wish the Court to identify and accept it of the things which you

have done. My concern for you was that by asking this totally open ended question, you 're right, you're perfectly right he talked about the trustees or the Trust rather than you, you are giving him a golden opportunity to add to that catalogue. Do you really want to do that.

15

MRS HADEN:

No Your Honour I'll withdraw the question.

THE COURT: You are perfectly entitled to cross-examine him as to the substance of what he said

20 in terms of effects upon him so that might result in the Court being persuaded that those effects were less wide or less extensive or less generally than he asserts. I don't want to stop you doing that but just to be as clear as I can about it warning you against giving him an opportunity to add to his list of complaints in a fashion that otherwise would not have been available to him.

25 COURT ADJOURNS: 12.56 PM

COURT RESUMES: 2.24 PM

CROSS•EXAMINATION CONTINUES: MRS HADEN

Q. Mr Wells what loss o'

Q, Your Honour just a little point I don't recall Mr Wells being sworn, is that normal? I was just wondering if it's normal in the civil jurisdiction not to swear witnesses and whether we can have some clarification as to whether or not this evidence that's being given has been sworn,

THE COURT: Q, You swore him did you not?

THE COURT TAKER: A I did swear him yes of course,

MRS HADEN: Your Honour I must have missed that I'm sorry, thank you, I just wanted to cross the t's so to speak,

THE COURT: I certainly remember him taking the oath Mrs Haden, but I always like to have lateral support for my recollections,

CROSS•EXAMINATION CONTINUES: MRS HADEN Q, Mr Wells what loss have you suffered?

THE COURT: You'll remember my warning Mrs Haden,

MRS HADEN: Yes Your Honour.

CROSS•EXAMINATION CONTINUES: MRS HADEN

A, Your Honour I have been involved in animal welfare for close on 30 years and over that period I have built up a reputation both nationally and internationally as an expert in animal ethics and in animal law. I have been consulted by a wide range of organisations, so my reputation internationally has been of a fairly high standing to the point where I am consulted by organisations internationally on matters relating to animal ethics and animal law reform. The attacks on my integrity that have occurred through the publication of the statements that these proceedings are about have greatly damaged that reputation to the point where I find it now difficult to uphold my reputation internationally. I have been a speaker at international conferences both in this country, in Australia, Europe and the United States, and through that have built up as I say Your Honour a reputation as an international expert in my field. To have statements published that I am guilty of fraud, that I am criminal, that I'm engaged in white collar crime absolutely rejected. In my view they have attacked my integrity and have had the tendency to destroy that reputation that has been built up over a long period of time. It has had a tremendous effect on my ability to function both in that capacity and also as a manager of Animal Welfare at Waitakere where some interference by the defendant in my staff activities created some problems with the staff there. Incorrect-

Q. Excuse me, can you please-

THE COURT: Pause Mrs Haden, you asked the question. I warned you before, you did so once again of the risks that you were taking. Having asked the question the witness is entitled to answer it in his own way and I'm going to let him do so.

CROSS•EXAMINATION CONTINUES: MRS HADEN

A, Because of interference in staff activities that I was involved in it created a difficult situation with my staff where I was quite concerned to see reports, erroneous reports on websites published by the defendant that related to confidential staff settlement matters in terms of employment issues. That has made it difficult to administer my job adequately as manager of Animal Welfare to the point that in 2006 my director had a discussion with me and suggested that I take some time off because the stress that it was causing to me was affecting my ability to act properly as a manager. I could go on Your Honour.

Q. I am referring specifically to page 15 of your affidavit point 80, where you state your loss of income?

A. Give me that reference again.

Q. Page 15, point 80? A Is this a new question Your Honour?

THE COURT:

Yes I think so yes.

CROSS-EXAMINATION CONTINUES: MRS HADEN

Q Yes that was trying to elicit from you, the value of your loss as you've put it in

your affidavit. Can you refer to that paragraph, the sum of money you've personally lost?

A. That's right

Q. And the subsequent affidavit filed in January you produced documents which

were for another entity?

A. Yes that's right. That affidavit Your Honour was filed after the defendant asked

for more detail of that and included in that affidavit as Exhibit notes were invoices that had been tendered over a period of time. My contract with UNITEC was on the basis of my company Wells Associates Limited whereby I

provided lecturing services to UNITEC. Those services have now been terminated and I no longer have income through my company for those services.

Q Your company, is that a party to these proceedings?

A. No it is not

Q. So this income does not come direct to you, it comes to your company?

A. It comes to me because I am the person who is actually delivering those lectures. I was the person who was actually delivering the lectures. The company cannot deliver lectures, it has to operate through a person.

Q. Are you contracted to UNITEC or is the company contracted to UNITEC?

Q. The income and the invoices are between UNITEC and the company?

A. That's correct, and that in turn affected the income that I could derive from performing those lectures.

Q. Those figures, are they based on extrapolation or on known facts? 5 A. On known facts.

Q. Could you provide the facts as to what the figures would have been had you had it?

A. I believe I did in my affidavit.

Q. You suggested outlines.

10 A. At the beginning of 2007 an agreed hourly rate was established and had those lectures in the year of 2007 been conducted to the same hours as in 2006 at the agreed hourly rate they would have been in excess of \$18,000 in 2007.

Q. Do you have any independent evidence to suggest what UNITEC based their decision on, other than hearsay evidence, real evidence that they chose to not 15 engage you?

A. No it was not hearsay evidence. A professor at UNITEC informed me that -

Q. That's hearsay.

A. No, it's not hearsay, because it was said directly to me.

Q. No, but it's not in the presence of me. It's therefore I submit Your Honour

20 unless he can produce documents which prove that this is the reason why UNITEC did not establish, it's hearsay.

THE COURT:

I think it's best to leave issues of hearsay or not and admissibility or not to argument afterwards. You are asking these questions. The third time I mentioned and the

25 warning I gave you. I think that at this stage it's best that we simply take the answers we get and their weight of worth can be debated later on. Finish your answer Mr Wells .

CROSS-EXAMINATION CONTINUES: MRS HADEN

A. Yes Your Honour. A professor at UNITEC told me directly during a discussion

30 that UNITEC needs to keep you at arms length because of the impact of these proceedings on UNITEC.

Q. Could you please name that professor?

A. Yes. Professor Natalie Warren.

RE-EXAMINATION: MR WRIGHT

Q. Mr Wells. Mrs Haden has pointed out in her evidence in cross-examination

agreed with her that the various roles that you play in relation to animal 5 welfare. Do you see those roles as being complimentary or in conflict?

A. Very much complimentary. This is a very small country and the number of people engaged in the area of profession of animal welfare is quite small. We come across each other all the time. In a country of this size it's inevitable that people will find themselves in various roles, none of them are in conflict with

10 each other.

Q. Do you perceive any potential in your fulfilling these various roles of gaining in a financial sense from any of them other than your employment role?

A. No I haven't gained financially in any of these matters except that fact that I am employed by Waitakere City for a salary to be manager of Animal Welfare.

15 Q. Finally Mr Wells, the various bodies involved MAF, Waitakere, UNITECT and AWINZ, are they cumulatively aware of the various roles you play, or is that an open \neg

A. Absolutely. Those organisations are intertwined in delivering a very successful project. and that is whether territorial authorities can successfully deliver

20 animal welfare services alongside dog control services. It's been operating since 1995 and it's important that those organisations all work together.

Q. Is anyone other than Mrs Haden, or anyone involved in any of those organisations ever raised any concern whatsoever about any conflict of interest?

25 A. They have not.

QUESTIONS FROM THE COURT -NIL
WITNESS EXCUSED

Abbreviated Coutts

Q. How often does the Trust meet?

A. The Trust doesn't meet weekly or monthly. It was formed as a tool to help the

Waitakere City Council and the other operations. It's not as if we meet daily or

weekly because there's not a lot to talk about.

Q. So when you have a consultation amongst the trustees, how does it occur?

Do you have formal meetings at all?

How do you administer that? A The administration of the animal welfare people?

5 Q. Yes, AWINZ has a duty to supervise and instruct and look after the animal welfare warranted officers. Do these issues with people not necessitate any meetings?

A We, to my knowledge that situation hasn't arisen, but I'm sure if it did we would be called together to discuss it. 10 Q. So there have been two animal welfare

officers who have been dismissed within the past year. Did the

AWINZ Trust meet to discuss these people?

A. I'm sure if that had have been the case we would have been advised to do that.

15 MRS HADEN: Your Honour I've got a study Employment Court decision here of one of those officers who was an animal welfare officer of proof that this has in fact happened, and my concerns all the way along have been that this Trust is not normal in the sense that it doesn't seem to have any meetings. Mrs Coutts very first telephone

20 talk with me was the fact that the Trust hadn't met and he couldn't recall any meetings and he couldn't recall any-

THE COURT: Is this Employment Court case that you're referring to one between the trustees and some person employed by them?

25

MRS HADEN: It was an animal welfare officer who was warranted under AWINZ.

THE COURT: Who were the parties to the case, that's really my question?

30

MRS HADEN: The people are employed by Waitakere City Council Your Honour.

THE COURT : Is the case between Waitakere City and the individual or individuals?

MRS HADEN :

5 It was, but the Animal Institute of New Zealand under its contract with MAF has responsibilities for the officers that they warrant, and as such they've got to report to the Minister as to anything that's happened regarding these animal welfare officers and therefore it's perhaps presumptuous of me that if you are warranting someone and need to observe these people that the committee that oversees them would

10 meet and discuss the issues,

THE COURT: I fear we are starting to get away from what this case is all about Mrs Haden, into internal activities of these trustees vis a vis officers, who in fact as I gather it from what you have just then told me, once duly qualified have been employed by a local

15 authority rather than by the trustees themselves, is that correct?

MRS HADEN : Yes, but they're still required to sign a contract with the Animal Welfare Institute of New Zealand who undertakes to keep them up to date ▯

20

THE COURT : In terms of skills and so on, upskilling I think is the expression commonly used these days.

25 MRS HADEN : The obligations, I've actually been given that Your Honour. They have the responsibility to monitor their performance and to ensure that these people are acting accordingly. There is a real responsibility

▯

THE COURT: 30 What's that got to do with our case today?

MRS HADEN: My point is, if the Trust doesn't meet, if the Trust doesn't discuss these issues then -

THE COURT: What are the issues, if there were such, to do with the case today?

MRS HADEN:

I guess you're right Your Honour.

THE COURT:

We seem to be going down a side street

MRS HADEN: That's fine, I accept that Your Honour.

CROSS-EXAMINATION CONTINUES: MRS HADEN

Q. On the recording that you've produced to the Court, I'm just wondering why you would have said "why have you hung up on me", if that was not in fact what had happened?

A. That was your statement. I did not hang up on you. The answerphone clicked in before I could reach it, it has a very short ring cycle before it clicks in and I did not hang up on you, I never touched the phone.

Q. I put it to you that we had a conversation and it was because you hung up on me and the answerphone clicked on that that's what triggered me to become so angry at the time of stress?

A. I may have said Graeme Coutts Associates and then the phone clicked in. Now it's a waste of time we trying to talk over an answerphone system that's going in my ear. There was no way I was being rude to Mrs Haden, none whatsoever.

RE-EXAMINATION: MR WRIGHT -Nil WITNESS EXCUSED