

Members present

Hon Andrew McGechan (President)
Chief Judge Joe Williams – *ex officio* (Maori Land Court)
Ms Belinda Clark – *ex officio* (Secretary for Justice)
Dr Helena Catt (Chief Executive)

Dated: 29 July 2008

Decision Number: 2008-11

Initiated by

PHIL DE JOUX ON 24 APRIL 2008

In relation to

Election advertisement

PROGRESSIVE

Subject

Progressive advertisement appearing in the Southland Express on 10 April 2008 re BZP.

Findings and Determination

The item is an election advertisement and did not contain a promoter statement. The offence will be reported to the Police.

No determination was made as to who was the promoter of the election advertisement. Contravention of sections 63(2)(a) and 65(1)(b) of the Electoral Finance Act 2007, by failure to display promoter statements, amounting to offences under sections 63(4) and 65(4) of the Act. Depending on who is the promoter, may have breached sections 65(1)(a) and 63(2)(b). The facts will be reported to the Police in accordance with section 70.

This headnote does not form part of the decision.

Subject

Progressive advertisement appearing in the Southland Express on 10 April 2008 re BZP.

Issues raised

Phil de Joux suggests the item is a party advertisement and that although it bears a promoter statement the address is that of Parliament and not that of the promoter.

“The strength to care” which appears as a subhead is the party’s election slogan (mentioned in press release by Party President, Matt Robson, on 15 May 2008).

Statutory provisions

Section 5 of the Act defines an election advertisement to be, in summary, any form of words and/or graphics that could reasonably be regarded as encouraging or persuading voters to vote or not to vote in a particular way.

Section 63 of the Act requires any election advertisement published during the regulated period to contain a statement of the name and address of the promoter of the advertisement.

Section 65 applies both within the regulated period and at other times, but only to election advertisements that encourage voters to vote in favour of the subject of the advertisement. Such advertisements which are promoted by someone other than the party must have written authorisation

from the party. This section also requires such election advertisements to contain a statement of the name and address of the promoter of the advertisement.

Comments from Jim Anderton

A response was received from Jim Anderton, 30 June 2008. The response claims that the item is a factual statement about a new law and argues that community debate about issues is not the same as electioneering.

Electoral Commission's Determination

The Electoral Commission has considered the requirements of the Act along with the items listed as exhibits (below).

In the view of the Electoral Commission the newspaper advertisement is an election advertisement within the meaning of section 5, section 63 and section 65 of the Act, as it can reasonably be regarded as encouraging or persuading voters to vote for Progressive and it was published in the regulated period. This view is taken because the party's election slogan is prominent in the advertisement.

Sections 63 and 65 provide that a promoter must not *publish, or cause or permit to be published, an election advertisement* unless the requirements of those provisions are met, including that the advertisements contain a promoter statement and the promoter is entitled and/or authorised to publish the advertisement.

It is not clear from the advertisement nor the letter from Mr Anderton:

- who the promoter is
- whether the promoter is entitled to publish the newspaper advertisement in accordance with section 63(2)(b)
- whether the promoter is authorised to publish the newspaper advertisement in accordance with section 65(1)(a).

No promoter statement is visible therefore the publication of the advertisement appears to contravene section 63(2)(a) and section 65(1)(b).

Section 63(4) and section 65(4) provide that *every promoter is guilty of an illegal practice who wilfully contravenes* section 63(2) or section 65 respectively. It appears to the Electoral Commission that the newspaper advertisement was deliberately designed and published and as such could be viewed as being a wilful contravention.

Where the Electoral Commission believes that an offence has been committed under Part 2 sub-part 6 of the Act, section 70 requires the Commission to report to the Police the facts that belief is based on unless the Commission:

considers that the offence is so inconsequential that there is no public interest in reporting those facts to the New Zealand Police.

The Electoral Commission is required to make a value judgement in relation to the nature and extent of the public interest and the level of seriousness involved in the concept of "inconsequential" (see the case of *Judith Kirk v The Electoral Commission* unreported, 9 June 2008, Mackenzie J, HC Wellington CIV 2008-485-805).

The Electoral Commission considered all the information currently available in relation to this case and is of the view that the offence is not so inconsequential that there is no public interest in reporting the matter. Therefore the Commission will report to the New Zealand Police the facts upon which it bases its belief that an offence has been committed.

The Commission will also issue an advisory notice to party and third party financial agents that the prominent use of an election slogan or other election campaign elements is likely to mean that the item is considered to be an election advertisement.

For the above reasons it is the view of the Electoral Commission that:

- **the Progressive advertisement appearing in the Southland Express on 10th April 2008 re BZP is published in circumstances amounting to the commission of an offence for the purposes of sections 63(4) and 65(4) of the Electoral Finance Act 2007**
- **the offence is not so inconsequential that there is no public interest in reporting the matter**

and in accordance with section 70 the Electoral Commission will report to the New Zealand Police the facts upon which it bases its belief that an offence has been committed.

Signed for and on behalf of the Electoral Commission



Dr Helena Catt
Chief Executive and Commissioner
New Zealand Electoral Commission

1 August 2008

Exhibits

The following items were received and considered by the Electoral Commission when it determined this matter:

1. Email from Phil de Joux raising the issue
2. Copy of the advertisement
3. Letter from Jim Anderton