

Members

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

Dated: 12 June 2008

Decision Number: 2008-09

Initiated by

**BILL ENGLISH, DEPUTY LEADER,
THE NEW ZEALAND NATIONAL PARTY**

In relation to

Election advertisements

NEW ZEALAND FIRST

Findings and Determination

Banners on a house in Tauranga promoting New Zealand First did not display promoter statements. The offence will be reported to the Police.

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. The facts will be reported to the Police in accordance with section 70.

This headnote does not form part of the decision.

Subject

Two banners displayed on a house in Tauranga promoting New Zealand First.

Photographs of the banners submitted to the Electoral Commission indicate there is no promoter statement on either of the banners.

Issues raised

The Electoral Commission considered whether:

- the banners are election advertisements within the meaning of the Electoral Finance Act 2007 and, if so, they contain promoter statements and their publication is authorised as required by the Act
- any offence has been committed and, if so, the offence should be reported to the Police.

Electoral Finance Act 2007

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 fashion.

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

Sections 63 and 65 also impose requirements in relation to who may promote, or be authorised to promote, an election advertisement.

Sections 63(4) and 65(4) provide that it is an offence to wilfully contravene the above requirements. If the Electoral Commission believes an offence has been committed under those sections, 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 there is no public interest in reporting those facts to the Police.

Comments from New Zealand First

The financial agent for New Zealand First was invited to comment but no response has been received by the Electoral Commission.

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 banners as depicted in the photographs submitted are an advertisement within the meaning of section 63 and section 65 of the Act, as they can reasonably be regarded as encouraging or persuading voters to vote for New Zealand First and they were published in the regulated period.

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.

The financial agent for New Zealand First has not provided any comment about the banners, and the Electoral Commission does not have any information upon which to make any findings about:

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

No promoter statement is visible on the banners as depicted in the photographs, therefore the display of the banners 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 banners were deliberately displayed on the house 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.

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

- **the banners promoting New Zealand First are 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

27 June 2008

Exhibits

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

- 1 Emails on behalf of Bill English, Deputy Leader, New Zealand National Party
- 2 Photographs of the banners