

7 August 2008

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## CONFIDENTIAL

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**WELLINGTON**

## Defamatory Article/s

1. We act for the New Zealand Chiropractors' Association Inc and its members.
2. The article written by Professor David Colquhoun and published by the New Zealand Medical Journal (**NZMJ**) in its 25 July 2008 edition (Vol 121, No 1278) is defamatory of all members of the Chiropractic profession, the New Zealand College of Chiropractic and its President. It is one of the most blatant examples of defamation that we have seen. It is of significant concern that an article in those terms could be written and published in view of the inevitable consequences of those actions.
3. It asserts, for instance, that 82% of Chiropractors used the title Doctor in order to mislead: that is, they used the title intentionally "to imply that they were registered medical practitioners". It asserts that this is in breach of the law, and that "it seems clear that the law is not being enforced and it is widely flouted". It attacks the chiropractic profession, for instance, by suggesting that it preys on the "weak-minded, ignorant, and superstitious", and that it is "gobbledygook". It states that the idea of giving a qualification in chiropractic is "ludicrous", and such a qualification is "accredited by experts in nonsense". It falsely overstates a risk of death to patients that receive treatment.
4. The article written by Andrew Gilby and published by NZMJ is defamatory also. It makes assertions derived from wholly inadequate research, does not detail the criteria upon which its assessments are made thus making statistical "assertions", and considers that use of the title "Doctor" by chiropractors is "not permissible" and that such practitioners are "unlikely" to be complying with the law. The article suggests that this may harm clients seeking healthcare, and attributes various malicious motives to chiropractors' use of the title "Doctor" other than as a legitimate courtesy title.
5. Each of these statements are defamatory in that:

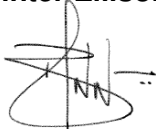
**MINTER ELLISON GROUP AND ASSOCIATED OFFICES**

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- (a) the publications tend to lower the entire profession: including the practitioners of that profession; the teachings and concepts of the profession itself; those associated with regulating the profession and its practitioners; and those that are responsible for educating and certifying practitioners - in the estimation of right thinking members of society generally; and/or
  - (b) the publications contain false statements about the profession, its practitioners, regulators, and educators, that have been published to the discredit of those persons; and/or
  - (c) the publications are published without justification and are calculated to injure the reputation of the profession, its practitioners, regulators, and educators, by exposing them to hatred, contempt or ridicule.
6. Allegations of such an extreme nature are regarded by the courts as amounting to a clear cut case of defamation.
7. Before further steps are taken, we request, in accordance with section 25 of the Defamation Act, that Professor David Colquhoun, Mr Andrew Gilby, and Professor Frank Frizelle publish, in the next edition of the publication, with substantially similar prominence, a retraction of the statements in the articles and an apology to the profession, including its practitioners, regulators, and educators. The terms of the retraction and apology must be approved by us before publication.
8. We request further that the Association on behalf of the profession be given the opportunity to write a reasonable reply to the articles, to be published in the next edition of the publication, and with substantially similar prominence.
9. In accordance with section 25(2) of the Defamation Act, if this course of action is accepted, you are each, jointly and severally, obliged to offer to pay to the Association, on behalf of the Chiropractic profession:
  - (a) the solicitor and client costs incurred by the Association, its members and its Council in connection with the publication of the retraction; and
  - (b) all other expenses reasonably incurred by the Association, its members and its Council in connection with the defamatory statements that have been published; and
  - (c) compensation for pecuniary loss suffered by the Association, its members and its Council as a direct result of the publication complained of.
10. We will advise you of the solicitor and client costs and of other expenses incurred upon your agreement to proceed under section 25.
11. We require your response by 5.00 pm on Monday 11 August 2008.

Yours faithfully

**Minter Ellison Rudd Watts**



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Partner

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