



COSA NEW ZEALAND INCORPORATED
CASUALTIES OF FALSE SEXUAL ALLEGATIONS

UK: THE WRONGLY CONVICTED ARE VICTIMS TOO

The battle over false convictions is on in the UK.

An Observer newspaper report says that while Tony Blair is in favour of more concern for the victims of crime, a reform agenda framed in a language of 'putting the victim first' usually overlooks the fact of there being many victims of the present criminal justice system itself.

The writer says looking after the alleged victim is a direction that has had enough attention, and more attention to balance is needed, as there is evidence that too many defendants are being convicted wrongly. A reform agenda framed in a language of 'putting the victim first' overlooks the fact that there are many victims of the present criminal justice system. Any human system can make mistakes, and miscarriages of justice can and do occur.

Considering the question of just how many miscarriages of justice victims of the present system are there, the report says we tend to think wrongful convictions are rare and exceptional. Prominent cases such as the Birmingham six, Guildford Four, Bridgewater four, M25 three, Cardiff three, and Stephen Downing, says the report, create the impression that miscarriages of justice are seen as very much an intermittent, high profile and small scale problem; that there are very few victims in the context of the statistics of all criminal convictions.

There are in fact many more cases than those which receive prominent media coverage.

Although these are then overturned later, the accused has been wronged, but never seen as a victim. An average of 770 a year are abated (criminal cases), and 3,500 quashed per year (criminal cases in magistrate's courts). The reasons have included

- misdirection by judges, the most common cause of routine successful appeals;
- unreliable confessions;

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More personal disasters:

NZ: Exonerated man now more at peace; former Mangakino policeman negotiating secret settlement with police; jury finds woman guilty of conspiracy to prosecute; dentist found not guilty of indecent assault charges; jailed mother refused early parole; woman to be charged with making false statement.

USA: First priest cleared this year is exonerated, astonished, and angry; couple charged with extortion over allegations re Celine Dion's husband.

'A burgeoning movement of ordinary good people'

Media 'go on looking for darkness where there is in fact none'

Backgrounder: 'The Hague Conference'

- financial and other incentives which created unreliable 'cell confession evidence';
- non-disclosure of vital evidence;
- malicious accusations;
- badly conducted defences; and
- 'racism'.

Other factors can enter, for example the 'time loss' effect: if a person goes to appeal, this can bring a longer sentence if they lose. It is clear that the

present system of criminal justice is, indeed, in urgent need of reform, says the writer.

The scales of injustice by Michael Naughton, Guardian Unlimited, Observer, 28/7/02; see <http://www.observer.co.uk/crimedebate/story/0,12079,764137,00.html>

SYSTEMIC FAILURE IN NEW ZEALAND JUSTICE SYSTEM - QC

Innocent people accused of rape are enduring terrifying court trials because of systemic failure in the justice system, says Wellington QC Donald Stevens.

Speaking to Eastern Hutt and Pencarrow Rotary Clubs, he said five systemic failings allowed false complaints to snowball once lodged: the mid-1980s law change removing the requirement of judges to warn juries of the dangers of uncorroborated evidence in a sex case; police no longer properly exercising discretion to prosecute sometimes leaving a flimsy case for a jury to decide on; experienced people leaving the police force leaving rookies to investigate rapes; a reluctance of crown prosecutors to halt prosecutions which had no hope of success; and judges being too cautious in exercising power to halt a trial in circumstances where a reasonable jury could not convict.

The result was, he said, that "any deceitful or disturbed person can make a fabricated allegation, and that's enough to put the person on trial.

"The system is failing, important safeguards in the justice system are failing." Not a lot was being done to resist the tide of false complaints because it was not seen as politically correct.

"We must not shirk from asking ourselves how much the agitation of radical feminists and rape crisis organisations has contributed towards various of these systematic failings," Dr Stevens said.

"It is sobering to reflect that there are some who influence the feminist jurisprudence, and the lobbying of rape crisis organisations who appear to take the view that it is a lesser so-

cial evil for an innocent man to be convicted of rape than for a complainant not to be believed."

Dominion Post, Wellington, NZ: System failing falsely accused, says QC, by Mark Stevens, 15/11/02 edn 2, p 7

INTERNAL ADJUSTMENTS IN COSA

Your committee, from time to time, pauses to reflect on the effectiveness of our group in meeting COSA objectives within the constraints of our resources.

Support and fellowship, in particular, being a cornerstone of our purpose can not be allowed to be outstripped or overshadowed by more distant or academic subjects for focus and input.

Being mindful that any drift in our connectedness within our membership would indeed be very sad, we plan to schedule our general meetings a little closer together thereby making them slightly more frequent.

Parallel to this we will endeavour to get a newsletter circulated with each meeting notice.

Obviously, with more frequency, such things as sourcing newsletter material, compilation input and production costs become increasingly significant.

This will necessitate the newsletter being less substantial in volume but more numerous for a similar effort and cost, but hopefully just as interesting and relevant.

We trust this approach will find favour with members, while any comment or suggestions will be valued.

NEW OPPORTUNITY FOR COURT REVIEW INPUT

The Law Commission has released the second of three discussion documents relating to the government's request to review the New Zealand court system.

The document is called "*SEEKING SOLUTIONS*", *Options for Change to the NZ Court System*.

In May 2002 the Law Commission published the first discussion document "Striking the Balance", and invited public submissions to try to capture the day-to-day reality for all people involved in the court system. In response, the Commission received more submissions than for any other paper in the past 5 years - including some from people with connections to COSA.

The responses demonstrated that there were serious issues for people who come into contact with the Courts, and "Seeking Solutions" analyses these issues and trends in Court reform.

The document is in five parts:

(1) **VOICES** - summarises the most commonly held views and suggestions that people made to improve the Courts. Four additional chapters present the views of particular perspectives, including ethnic minorities, maori, victims, and people with disabilities.

(2) **ACCESS TO COURTS** - highlights four main problem areas:

(a) lack of available and suitable, legal and court related information to help people make informed choices.

(b) connecting with Courts - raises questions about the best compromise between bricks and mortar and information technologies.

(c) representation standards by lawyers and resources for lawyers or individuals choosing to represent themselves is discussed.

(d) cost of Court action can be so high as to put access to Courts beyond reach.

(3) **PROCESSES** - discusses criminal and civil justice processes to promote efficiency while protecting the rights of all parties.

This part of the document examines the **criminal justice** section, ways of dealing with offenders **outside the Court**, eg, restorative processes. The **criminal list** considers ways of making court law more understandable and less alienating, while maintaining efficiency.

Reduction of delay by **pre-trial management of jury trials** is discussed in the next chapter. The **civil justice** section discusses greater use of **alternative dispute resolution**. **Court rules and cases management** are scrutinized in the next chapter. **High volume** cases, such as debt and small claims which make up a large majority of District Court load needs to be streamlined. The final chapter in this section covers **open justice**, referring to public access to Court hearings and records of Court hearings.

(4) **STRUCTURE** - discusses workload of the general Courts and options for the distribution of the work within existing structures or newly created ones. Specialist Courts and their appropriateness, and Maori land and appellant Courts are examined along, with a chapter on Tribunals. An examination of 5 possibilities of change to the Appeal structure is included.

(5) **WHAT DO YOU THINK** - the final part of this document invites responses and submissions to the Law Commission. At the rear is a framework and blank pages are provided to respond.

For a copy of Seeking Solutions see www.lawcom.govt.nz or write to Law Commission, PO Box 2590, Wellington.

Recommendations from the Law Commission to the Government are expected to be released in the 2nd half of 2003.

We encourage readers to participate, with submissions closing 17 April 2003

ACC'S PROCESSING OF SENSITIVE CLAIMS

Gail Kettle, Branch Manager for the ACC National Claims Unit, has provided details on the mechanics of and steps to ACC's acceptance of sensitive claims for alleged sexual abuse:

ACC provides cover for sensitive claims, being a mental injury arising from a sexual abuse crime.

The claim is accepted once the GP or counsellor has lodged an ACC45 claim for injury form and an ACC290 Sensitive Claims Cover Determination Form, and ACC is satisfied that the claimant meets the criteria for cover.

The ACC45 is lodged with ACC after the claimant first consults with their provider [doctor or counsellor].

ACC normally then asks that the claimant attend up to another 3 sessions with a counsellor to complete the ACC290, with details of the abuse and the mental injury that has resulted.

In some cases, ie acute ones, where there has been DSAC (Doctors for Sexual Abuse Care) involvement, the claim may be accepted earlier.

The claim is not accepted until ACC has all necessary info - ie, usually after the ACC290 is received. However, the deemed date of 'injury' is the date that the person first sought treatment for the injury as that injury. This is usually the date they complete the ACC45. The date of 'lodgement' is the date ACC receives the ACC45.

Entitlements are usually considered from date of lodgement.

As the COSA editors see it, there is rather a lot of interactivity to establish a claim: from 1 to 3 or even 4 interactions between each claimant (or claim) and up to 3 officials - a doctor, counsellor and ACC.

Also, from the ACC point of view there are 3 critical dates for claims, arising chronologically:

1. The first date, the date of the injury. This is not the date of the alleged act that caused the alleged injury (mental) but the date the claimant first sought treatment for the injury as that injury. This is usually the date the claimant completes the ACC45.
2. The second date, the date of lodgement. This is the date the claim is first received - ie, lodged - by the ACC of-

ficer. If ACC later accepts the sensitive claim, the date of lodgement is used as the date from which any entitlement starts.

3. The third date, the date of ACC's acceptance of the claim.

The first point renders historical claims to be recent for the purposes of entitlement, no matter when the alleged incident/s occurred. However, Clause 55 of the Injury Prevention Rehabilitation and Compensation Act effective from 1 April 2002, that reinstated lump sums, bans claimants with a sensitive claim from lump sum compensation where the date of the **act** [of sexual abuse] precedes the date of the legislation (Schedule 1, Part 3 - Lump Sum Compensation):

A person who suffers mental injury ... is not entitled to lump sum compensation for permanent impairment under this schedule if the **act** last occurred before 1 April 2002.

Such a historical claim may however be covered - for some types of compensation but not the new lump sums - by old legislation that is still in effect, mainly the Accident Insurance Act 1998.

All this gives no inkling of the quality of the assessment of a claim's content by the doctors, counsellors, and ACC.

We hope that a focus on the quality of these assessments occurs in the near future.

By mid-2004, the first lump-sum payments will start to come into effect.

We await the figures for 2001/2, and improvements in ACC's assessments, with interest.

FAMILY RIGHTS VIOLATED: \$US750,000 PAYOUT

USA, San Diego, 2000: Bill and Becky Wallace are in pursuit of justice after false accusations in 1990 that on their boy's 3rd birthday they planned to kill him as a sacrifice to Satan.

According to a press item, "Court documents show the Wallis's ordeal began during a September 1991 session in a psychiatric hospital between Becky Wallis's sister, a schizophrenic with a history of severe mental illness, and Candace Young, a psychotherapist who served on [a group called] the Ritual Abuse Task Force."

As a result of various officials' actions that followed - mainly by a CPS social worker, a deputy district attorney, and Escondido police officers and their supervisor - the Wallises' two young children, then aged 3 and 5, were removed, for reasons and under circumstances that are the subject of conflicting reports.

For instance, in a Juvenile Court, a judge discounted the satanic abuse allegations, but kept the children from their parents because a Dr Mary Spencer reported that the daughter showed signs of abuse in an extensive physical examination. That finding was however reversed two months later when Dr Susan Horowitz, a child-abuse specialist at Children's Hospital, reported that her examination of Spencer's records and photos of the Wallis girl revealed no abuse.

In 1992 the family filed a lawsuit against certain police, county social workers, and a physician for violating their rights to be free from "unreasonable intrusions on their privacy, person and home". The family won a settlement for "a nominal amount" with the county of San Diego. The physician, Dr Mary Spencer, was dropped as a defendant after a ruling that she was immune from the suit by law. Now, said the report, Bill and Becky Wallis have been directed to receive \$750,000 from the city of Escondido. Winning did not come easy: a US District court twice ruled against the Wallises, and the Wallises twice had to appeal in a higher court to have the suit reinstated.

The case is not over, as the Wallises still have suits filed against individual police officers.

San Diego Tribune: Parents of 2 seized kids to get \$750,000; Escondido case arose from story of satanic threat by Mark Sauer 2/11/00

MORE PERSONAL DISASTERS

Another chronology in the unfolding story, focusing mainly on New Zealand

2002

September

NZ: Exonerated man now more at peace

David Dougherty, already exonerated of a rape, is now more at peace since someone else has been arrested largely it is believed on the basis of incriminating DNA evidence.

Mr Dougherty, who is now working, owns his own home, does voluntary work, and plays squash, said the obsessive-compulsive disorder he had been diagnosed with and brought on by the stress, has eased.

He was advised of the arrest by a police officer who visited him.

'The officer who told him the news ... didn't say sorry again', said the report, 'But he didn't have to.' "Him turning up was worth more than any words that the police could put on a piece of paper for me. The fact they took the effort to come down here and not just send me a local cop told me all I needed to know.

"It was a really big week for me. I hadn't realized the weight it took off me."

Dougherty can now face up to his doubters, by Donna Chisholm, Sunday Star Times 29/9/02

NZ: Former Mangakino policeman negotiating secret settlement with police

A report says:

'Former Mangakino police officer Colin McLean is negotiating a settlement with the police - seven months after he was acquitted of rape following a trial in the High Court at Rotorua.'

In April a jury found Mr McLean not guilty of raping a woman at Tokoroa in Dec 1997, and of assaulting her in Feb 1998. In a previous trial on the same matters he was found guilty, but that was overturned because the jury became aware of a previous rape charge that related to events in 1994, although he had been acquitted. Although he was acquitted of

the 1994 charge, he had been dismissed from the police, not to be reinstated so far.

Mr McLean has been acquitted twice now, and the police are settling, but the parties agreed not to talk about the negotiations, Mr McLean's lawyer, Murray McKechnie, said.

New Zealand Women's Weekly magazine had been facing a contempt of court charge over the case, because it had published material asserting his innocence a month before Mr McLean was to stand trial - leading to the case being adjourned to April in 2002. Chief Justice Dame Sian Elias and Justice Morris had reserved their decision.

Officer acquitted of rape seeks settlement, The Press, Christchurch, 25/10/02 p A5

NZ: Jury finds woman guilty of conspiracy to prosecute

A jury found Melissa Marie Antonievic guilty of two out of seven charges of conspiracy to prosecute brought against her in a private prosecution by Peter John Hartley. This was over claims that she and her husband were drugged and sexually attacked by Mr Hartley, of Upper Hutt.

Woman found guilty of false claims Press 2/12/02 A9; and Lawyer warns jurors case may revolt them, The Press, Christchurch, 27/11/02

NZ: Dentist found not guilty of indecent assault charges

'He was arrested in January last year [2001] and faced six indecent assault charges. But his name, the name and suburb of his dental practice, and the name of the Canterbury town where he practiced during the 1980s, were suppressed throughout the two-year legal battle. Yesterday a Christchurch District Court acquitted him'.

Jury finds dentist not guilty, by Keri Welham, The Press, Christchurch, 7/12/02 p A16

NZ: JAILED MOTHER REFUSED EARLY PAROLE

'A woman who murdered her husband allegedly to protect their toddler son from suspected sexual abuse has had her bid for early prison release rejected.'

Pauline Brown is serving a sentence in Christchurch Women's Prison for murdering her estranged husband William Rainsford in September 1993 in Arrowtown.

She had earlier had a provocation claim rejected, the Court of Appeal saying "Brown was possessed of only the slightest evidence suggesting anything improper on Bill Rainsford's part towards her children".

Parole bid fails for Arrowtown husband-killer, by Matt Conway, The Press, Christchurch, 10/12/02 p 1.

NZ: WOMAN TO BE CHARGED WITH MAKING FALSE STATEMENT

'Detective Sergeant Nigel Keall, of Hamilton, said a woman told police last Monday she was indecently assaulted by one man, raped by two others, and abducted by a fourth.

'Mr Keall said the allegations were investigated thoroughly and led police to charging the woman with making a false statement.'

COSA notes that the title that the newspaper chose to use in publishing this information was provocative: "Rape victim now accused".

Rape victim now accused, Daily News, Hamilton, 17/12/02 p 3.

USA: FIRST PRIEST CLEARED THIS YEAR IS EXONERATED, ASTONISHED, AND ANGRY

Excerpts:

Foster, 47, the first priest accused of sexual misconduct this year to be cleared, remains astonished by what happened to him: He, along with the late Rev. William J. Cummings, was accused in an Aug. 14 civil lawsuit of molesting a former Newton teenager, Paul R. Edwards, during the 1980s.

But within days, evidence surfaced that strongly rebutted the charges by Edwards, who has a history of fabricating stories. Edwards dropped the lawsuit after his lawyer abandoned the case. The judge assigned to the case expressed "significant concerns" about the truthfulness of the allegations. A week later, on Sept. 10, the archdiocese decided the charges were unsubstantiated and [Cardinal Bernard F.] Law ordered Foster reinstated.

Reinstated priest: 'Yes, I am angry', by Walter V. Robinson, Boston Globe, 24/11/02 p A1.

USA: COUPLE CHARGED WITH EXTORTION OVER ALLEGATIONS RE CELINE DION'S HUSBAND

A Californian woman who claimed Celine Dion's husband, Rene Angelil, raped her, has been arrested and charged, along with her husband, with trying to extort US\$13.5m (NZ\$25.2m) from Angelil, police said.

Yun Kyeong Kwon Sung and Ae Hoe Kwon face felony charges of extortion and witness soliciting a bribe and a misdemeanour for conspiracy to commit extortion.

Sung 47, and Kwon 50, filed a civil lawsuit last March in Las Vegas alleging Angelil raped Sung in March 2000 at the Imperial Palace hotel casino on the Las Vegas Strip. The couple also filed a Las Vegas police report in March 2002 - two years after the alleged assault.

Police began investigating the alleged extortion seven weeks ago, said Captain Tom Lozich, and during a meeting about the sexual assault case between the couple, their attorney, and Angelil's attorney, it became "very clear we had an extortion".

Extortion arrest clears singer's husband of rape, Sunday Star times, Auckland, 19/01/03.

'A BURGEONING MOVEMENT OF ORDINARY GOOD PEOPLE'

Nov 2002: On the same day that the UK Government announced a new raft of measures to combat sexual abuse, a paedophile former

priest Michael Hill was convicted for a second time. Three days later, when he was sentenced, a new crime Bill was published that included indefinite prison sentencing for sex offenders. Perhaps no coincidence, this put 'the Catholic Church in the media dock struggling to prove its innocence' said a recent article.

While the media had been blamed for the barrage of attacks on the Church, that was only half the story, the report said.

The people served by the stories had to be spotlighted too, the item said, and it put forward some very interesting facts about who was helping push the media stories in the first place:

Margaret Kennedy, a social worker who heads a pressure group for victims of clergy abuse, which in her definition includes consensual adult affairs. Ms Kennedy has been prominent in promoting claims of 'Christian abuse survivors' for over a decade and is an advocate of the discredited 'recovered memory' process of abuse history and therapy.

Kennedy's organization and others such as alleged multiple [ie, multiple personality disorder sufferer] and priestly abuse survivor Colm O'Gorman who runs the *One in Four* group are networked to compensation lawyers who specialize in claims against institutions for abuse. Solicitor Richard Scorer, quoted in the Times, is a leading member of the Association of Child Abuse Lawyers [ACAL] set up by a former barrister, Lee Moore, who claims to be a multiple and 'satanic' abuse victim and the discredited Cleveland social worker, now psychotherapist, Sue Richardson.*

Of course, says the report, there is nothing wrong with victims seeking succour nor claiming damages, but what was disturbing was that some abuse claims were false, which harmed those falsely accused, the institutions held responsible, and the false accusers themselves.

In the article, the media are accused of having only miniscule coverage of the recent House of Commons 'Home Affairs Committee Report' (HACR): it looked into the how past

investigations into abuse cases in children's homes, some of which were Catholic-run, were conducted. Yet that report had contained 'a damning indictment on the potential for miscarriage of justice in police trawls'. It also contained claims by Peter Gardson, secretary of ACAL, that he had never come across a false allegation in the 700 claims he was handling, and stated the claimants were suffering from 'repressed memory' and 'dissociation' until contacted by the police who enquired as to whether they had been abused. The article called it absurd to believe a good proportion of the claimants when they had no conscious memory of abuse until the prospect of compensation became apparent.

While it was hoped that the Nolan report (the Catholic-Church-commissioned "Review on Child Protection in the Catholic Church in England and Wales" 2001, conducted by Lord Nolan), would correct some of the damaging fallacies, it has simply ignited the expectation of a festering mass of iniquity 'silenced' or 'tolerated'. It went on:

Genuine offenders should be brought to justice and victims compensated. The church also has a duty to truth and a responsibility to identify injustice. There is a burgeoning movement of ordinary good people affected by false abuse accusations, and an all party parliamentary group examining abuse investigations. [words in bold highlighted by COSA] Instead of the Church succumbing to despair, it could be that a witchhunt might ignite an informed movement against the injustice of false abuse allegations, not just within the Church, but in society at large.

- *Catholic Herald UK: How often do the media bear false witness? Margaret Jervis, former journalist, Legal Affairs Adviser for BFMS 29/11/02*

*Footnote: 'In the 1987 Cleveland case parents grouped together to complain that they had been wrongly accused of sexual abuse on the basis of unsound medical evidence and fishy methods of "disclosure". Within days the revelations caused a national scandal of broad political dimensions. Over a hundred

children were returned to their families without a single criminal prosecution. A year later a judicial inquiry report slammed the social worker [Sue Richardson] and paediatrician [Marietta Higgs] involved and the term "Cleveland" became a by-word for the dangers of welfare zealotry.' - *The Road to Shieldfield (Part 1)*.

MEDIA 'GO ON LOOKING FOR DARKNESS WHERE THERE IS IN FACT NONE'

Late last year in Britain, Cardinal Cormac O'Connor, Archbishop of Westminster, was held up as an achiever in the field of child protection by Ray Wyre, who is described as 'perhaps the world's leading authority on the prevention and treatment of paedophilia'.

Wyre's statement, made at a national conference of child protection officers according to an editorial in the UK's *The Tablet*, was contrasted with how the media were baying for the resignation of Cardinal O'Connor.

Mr Wyre had pointed to the way the cardinal had appointed Lord Nolan to head an independent committee of experts to design new procedures that would make the Catholic Church in England and Wales a model of good practice in child protection. Cardinal O'Connor had set this up after admitting failure in the case of Michael Hill, a paedophile former priest. But since then 'expensive and draconian' recommendations in the Nolan report have been implemented in full by bishops of England and Wales.

No grounds for O'Connor's resignation have therefore been adduced, the editorial said. What had recently been made much of was the case of an unnamed priest who admitted making a homosexual advance to a 17-yr-old as a seminarian 16 years ago. That case had been dealt with by the church following the Nolan procedures: an expert panel carried out a risk assessment and decided the priest was not a risk to children, and he was left in post as the panel had recommended. No matter how wrong the conduct was, says the editorial, to represent that priest as a paedophile was a misrepresentation.

The Tablet said 'But there is no doubt in anyone's mind that indeed very great damage has been done to the victims featured by the media', and continued by assenting to the suggestion by the founder of Christian Survivors of Sexual Abuse Margaret Kennedy that the cardinal should lead the Church in 'supporting victims pastorally with bidding prayers'. The editorial finished by alluding to public disquiet about the media, when they 'go on looking for darkness where there is in fact none, or only inevitable human imperfection'. The editorial said great newspapers and great institutions like the BBC should have strong editors capable of reining back a relentless media barrage if it lacks the foundation that would justify it.

- *The Tablet (UK): More sinned against than sinning (Editorial) 30/11/02*

The Netherlands set up the Hague Conference by a Royal Decree in 1897, but it gained a new life in 1955 when a statute made it a permanent intergovernmental organization, with members German Fed Republic, Austria, Belgium, Denmark, Spain, Finland, France, Italy, Japan, Luxembourg, Norway, Netherlands, Portugal, the UK (incl. Northern Ireland), Sweden and Switzerland. Others have joined by vote of existing members.

The Conference's purpose is to work for the unification of 'private international law'. It conducts its business by means of people with legal knowledge and experience, and of Netherlands nationality and other nationalities. It is linked to the Minister of Foreign Affairs and the Netherlands government.

See <http://www.hcch.net/e/infosheet.html>

BACKGROUNDER

'THE HAGUE CONFERENCE'

New Zealand accepted the Hague Conference Statute in February 2002. This was essentially a formal move as our country was already a signatory to The Hague Conference's conventions on '**Legalisation**', '**Child Abduction**', and '**Adoption cooperation**'. New Zealanders may be affected by its conventions via disputes over a spouse taking a child of theirs overseas.

Opinions expressed in this newsletter are not necessarily those of COSA New Zealand Inc