

COMPLAINT NUMBER	19/293
COMPLAINANTS	H Gauld & J Hitchen
ADVERTISER	New Zealand National Party
ADVERTISEMENT	New Zealand National Party, Digital Marketing
DATE OF MEETING	12 August 2019
OUTCOME	No Grounds to Proceed

Advertisement: The New Zealand National Party twitter advertisement shows a 17 April 2019 statement by the Prime Minister on Capital Gains Tax in which she said: “We’ve ruled it out, nor is it something we will implement under my leadership.” It then shows a 22 July 2019 clip of the Prime Minister saying “Three elections I have run on Capital Gains and I haven’t changed my view on it.” The advertisement ends with the text “You can’t trust Labour on tax.” The small print states the advertisement was authorised by Simon Bridges, Leader of the Opposition.

The Chair ruled there were no grounds for the complaints to proceed

Complainant, J Gauld, said: I believe the advertisement can't trust Labour on tax's uploaded to the New Zealand National Party's Social Media accounts on 30 July is misleading because this electoral advertisement implies that the Prime Minister has backtracked on her decision to no longer campaign for or implement a capital gains tax.(1) The PM stated at a press conference on 17 April (as aired in the first half of the advertisement): I've ruled it out, It is not something we will campaigned upon, nor is it something we will implement under my leadership.(2) The Labour Party's website confirms that The Government is not adopting any of the recommendations on capital gains taxation and has agreed no further work is necessary on that aspect of the report.(3) There is no evidence that the government is planning to implement a Capital Gains Tax, or that the Labour Party plans to campaign for a CGT.

However, After showing the PM's press conference from 17 April, The National Party's advertisement then plays an edited portion of an interview the Prime Minister gave to TVNZ that aired on 22 July. The PM states "So three elections, three elections I have run on capital gains. And I haven’t changed my view on it".(4) In the 30 seconds following this statement, the PM reiterates that this government will not be implementing a CGT. During the April 17 Press Conference, the PM stated the same thing; that she personally still supports a CGT: I still believe capital gains tax would have made a difference. The Labour party has now campaigned on this for three elections (5) "I still believe this is a tool that could have brought greater fairness to our tax system"(6) and "It is still something that I personally believe" (7) Conflating the PM's personal belief in a CGT expressed on July 22 as a backtrack from the decision on April 17 not to implement or campaign on a CGT whilst she is leader of the Labour Party is misleading, particularly when the statement she gave in the 22 July interview expressing personal support for a CGT is the same as her views expressed in the 17 April press conference.

The advertisement closes with the text “You Can’t Trust Labour On Tax. This advertisement is implying the Labour Party is untrustworthy on tax issues because its leader has changed her mind about a CGT between July and April. This is false. There is no evidence in this

advertisement that "You Can't Trust Labour on Tax. and there is no evidence that the Labour leader has changed her mind on a CGT between April and July.

I believe this advertisement is in breach of Rule 2(b) of the Advertising Standards code, it misleads the electorate by falsely representing the PM's statements to confuse viewers and exploit a potential lack of knowledge about the PM's personal view on a CGT vs what her policy on CGT while in office. Had parts of either of the PM's statements not been omitted, the advertisement would have been unable to make the claim "You Can't Trust Labour on Tax because both the April and July statements would have been consistent with one another.

- (1) 17 April Press Conference: <https://www.youtube.com/watch?v=9X90zksQlbY> from 1:55
- (2) 17 April Press Conference: <https://www.youtube.com/watch?v=9X90zksQlbY> from 10:23
- (3) https://www.labour.org.nz/future_of_tax
- (4) 22 July Interview: <https://www.youtube.com/watch?v=1ioIFekGEeQ> from 6:08
- (5) 17 April Press Conference: <https://www.youtube.com/watch?v=9X90zksQlbY> from 0:55
- (6) 17 April Press Conference: <https://www.youtube.com/watch?v=9X90zksQlbY> from 6:53
- (7) 17 April Press Conference: <https://www.youtube.com/watch?v=9X90zksQlbY> from 13:54

Complainant, J Hitchen, said: My complaint is that the National party is misleading the public by saying that the Prime Minister is going to continue with enforcing a CGT when publicly she has stated she is not. They are using snippets prior to that announcement to enforce their narrative. This of course is untrue and should be removed instead of grandstanding political misinformation.

The relevant provisions were Advertising Standards Code - Principle 2, Rule 2(b), Rule 2(e);

Principle 2: Truthful Presentation: Advertisements must be truthful, balanced and not misleading.

Rule 2(b): Truthful Presentation: Advertisements must not mislead or be likely to mislead, deceive or confuse consumers, abuse their trust or exploit their lack of knowledge. This includes by implication, inaccuracy, ambiguity, exaggeration, unrealistic claim, omission false representation or otherwise. Obvious hyperbole identifiable as such is not considered to be misleading.

Rule 2(e): Advocacy Advertising: Advocacy advertising must clearly state the identity and position of the advertiser. Opinion in support of the advertiser's position must be clearly distinguishable from factual information. Factual information must be able to be substantiated.

The Chair noted the Complainants' concerns the advertisement was misleading by using unrelated statements from the Prime Minister to imply Labour may introduce a Capital Gains Tax policy in the future.

The Chair confirmed the advertisement for the National Party was an advocacy advertisement provided for under Rule 2(e) of the Advertising Standards Code. Robust expression of opinion is allowed, as long as the advertiser is clearly identified, and the Advertiser's position is clear.

The Chair ruled the Advertiser had met the identity requirements of an advocacy advertisement. The advertisement appears on the National Party Twitter account and includes the National Party logo and an authorisation statement. Therefore, the Chair said the context, placement and content made the identity of the Advertiser and their position clear.

Having established the advertisement was from the New Zealand National Party, the Chair noted that political advertisements were not only acceptable but encouraged, as they were an essential and desirable part of the functioning of a democratic society.

The Chair also observed that in a free and democratic society, differences of political opinion should be openly debated without undue hindrance or interference from authorities and in no way should political parties, politicians, lobby groups or advocates be unnecessarily fettered by a technical or unduly strict interpretation of the rules and regulations.

The Chair said with regard to the complaints before her, the Advertiser was drawing attention to the Prime Minister's personal support for a Capital Gains Tax against the political reality of not being to implement that policy under a coalition government. This type of advocacy advertising reflecting an opposition party's view, was provided for under the Code and did not meet the threshold to be misleading.

The Chair said taking into account the context, medium and likely audience, the advocacy advertisement did not breach Principle 2 or Rule 2(b) of the Advertising Standards Code.

The Chair said there were no grounds for the complaints to proceed.

Chair's Ruling: Complaints **No Grounds to Proceed**

APPEAL INFORMATION

According to the procedures of the Advertising Standards Complaints Board, all decisions are able to be appealed by any party to the complaint. Information on our Appeal process is on our website www.asa.co.nz. Appeals must be made in writing via email or letter within 14 days of receipt of this decision.