

Article July 2021

In 2005, I was asked by publicist Leigh Sutton and former Mayor and Member of Parliament John Terris to provide a bi monthly article for a new publication. It was initially titled Hutt Alive and later morphed into a new moniker - Vibrant Hutt. On a cold and miserable Sunday afternoon in May 2021 I drafted this following article. The next day, I got an email from Leigh saying that she was bringing an end to the magazine effectively immediately. So, rather than let it go to waste, here is what would have been my very last Vibrant Hutt article.

A couple of winters ago in a time before COVID, the Perfect Woman (PW) and I were down south on our annual skiing week. Up on the slopes of Cardrona, just out of Wanaka, social distancing was not a phrase we were familiar with in those germ free halcyon days. I always enjoy the four or five minutes on the chair lift, sitting next to a complete stranger, with the whole interaction being even stranger (excuse the pun) because their face is invariably covered by balaclavas, helmets and goggles or sunglasses. In other words, you can't recognise anyone. My stock question is "where are you from?". It's usually Sydney, Melbourne or the Gold Coast. After thanking them for their tourist dollars on behalf of the people of New Zealand, we chat about the economy, their (and now, our) useless politicians, the Wallabies and All Blacks. I have been known to remind one or two that as Aussies they should all rejoice in that they are girt by sea. Lucky things! The Aussie skiers are a pretty good bunch I'd have to say.

The Asian skiers are all supreme athletes dressed in the smartest of kit, and when they spy my classic 1980 ski boots and retro jacket, they suppress a laugh and avoid conversation by pretending they don't speak English. They are very polite though. The North Americans are normally 'lifties' following the various seasons around the world. A great lifestyle but I'm not sure that they are doing much thinking about saving for their retirement planning. But hey, they are normally millennials, and "work life balance" is more important than financial prosperity. Besides, they're doing stuff they love each and every day for a whole season (skiing and snowboarding) while the rich tourists are cranking up their credit cards and doing the same for only a few days. Who has got it right?

So, with this as background, I joined the queue and jumped on the chairlift next to another bloke. I asked my normal question where was he from. He replied 'Wellington' with a strong European accent. Thinking he was a newish Kiwi, I asked how many years he had been here. About 60. I suspected then who I was sitting next to. We swapped first names and when he introduced himself as Mark, it confirmed it. He and I then had a great, albeit brief chat about the Wellington Children's Hospital that he and his partner Dorothy Spotswood were building.

What a legend this bloke Mark Dunajtschik is. Apparently, he's very hands on and will be seen on a Saturday morning with his ute (no doubt, Jacinda) and trailer getting rid of some rubbish from one of the many buildings he owns. He didn't want to simply give the \$50 million estimated build cost of the hospital to the Health Department. He said he'd get it done himself and he has. Mark should get a Knighthood and Dorothy be made a Dame. I'm told that she has also been super generous to Hutt Valley Netball for many years. An inspiring couple.

So, when I spied a letter to the DomPost editor on 28 April 2021 signed by Mark Dunajtschik, my interest was piqued. This is what it said:

“The NZ Transport Agency projecting the cycleway between Ngāūranga and Petone to cost \$190 million is astonishing (April 24).

For \$190m I could build three hospitals, despite a hospital being a highly complex edifice packed with modern expensive technology and complicated design features, like sophisticated base isolation and IL4 resilience demands.

A cycleway is a basic surface construction proved pioneered and perfected by the Romans 2000 years ago. Why should it cost such an enormous sum?”.

As a cyclist, I personally want this cycleway completed. I know it will look very smart with fishing spots and BBQ tables etc, but it does seem that someone is taking the mickey here.

And then I read something from the Mayor and the Hutt City Council about the Eastern Bays shared path. I’m thrilled that Council has decided to do this. The mayor and Council were earlier reported to be shelving the project but at least on this occasion, common sense has prevailed. It will be a fantastic tourist attraction and is terrific for Hutt citizens who enjoy walking and cycling. Well done Council!

However, the article went on to say that “Construction will be completed in stages over five years.” Yes, that’s right reader. Five years. Seriously? For heaven’s sake. Why does everything sensible this Council does take so long? And yet dumb decisions, like the new rubbish and recycling regime get implemented with undue haste.

And now I want to talk about something that the Financial Markets Authority [FMA] sent out recently.

It’s titled ‘Insider Trading’ and here it is:

*“**Important:** Insider trading is a type of market abuse or misconduct. Another type is market manipulation. This note is intended to give new or inexperienced investors a brief introduction to laws that apply to people trading in our markets, and to help them understand their obligations. While we have tried to make it understandable and user-friendly, please note that some of the legal provisions can be complicated. This note contains just some examples of insider conduct, and is not a comprehensive guide to all activities that could be unlawful.*

Why insider trading and other insider conduct is unlawful

Our mission is to make New Zealand’s financial markets fair, efficient and transparent. We want to ensure our markets reflect genuine supply and demand, in order to preserve their integrity.

Fair, efficient, transparent markets work on the basis that everyone trading has the same information. If some people have material information before others and are allowed to take advantage of this, it undermines the fairness of the market, and causes detriment to those investors who are not ‘in the know’.

If investors think that some people are trading (or encouraging others to trade) with the benefit of inside information it undermines the integrity and reputation of our markets.

What is insider conduct?

The Financial Markets Conduct Act defines someone as an **'information insider'** if A) they have material information relating to a company or other entity listed on a licensed market such as NZX, and B) that information is not generally available to the market.

'Material information' is information that a reasonable person would expect to have a material effect on the price of financial products quoted on a licensed market, if the information was generally available to the market.

An information insider can **break the law** in different ways, for example:

- they can buy or sell the relevant financial products
- they can share the inside information with someone else who they know will buy or sell the financial products
- they can encourage other people to buy, sell, or hold the financial products, even if they don't tell them why.

Examples of **insider conduct** include:

- The chairperson of a listed company sells her shares in the company before bad news about the company is publicly announced
- A listed company employee sees whiteboard notes about an imminent offshore expansion that has not been publicly announced and tells his father to buy shares in the company
- A lawyer tells his share-trading friend that a listed company client will soon announce big news that will likely push up the price of its shares.....

What we do to stop it

NZX is responsible for frontline market surveillance, including the detection of potential insider conduct. Where NZX considers trading to be suspicious, that trading is referred to us [FMA] for investigation.

We can also investigate reports of concerning conduct directly and take action where breaches of the law have occurred, including filing civil or criminal proceedings in court.....

Penalties for insider trading

We have a range of enforcement tools we can use to deter people from attempting or engaging in, insider conduct, ranging from a formal warning right up to prosecution.

What we use depends on the circumstances of the offence, the level of sophistication, the impact on others, and the public interest in prosecution.

In serious cases, insider trading may amount to a criminal offence and be punishable with up to five years imprisonment and a maximum fine of \$500,000 for individuals or \$2.5 million for companies.

Recent examples

Promisia

In 2019, Eoin Malcolm Miller Johnson, a former chair of NZX-listed Promisia Integrative Limited (PIL) admitted to insider trading conduct and breaching a director's disclosure obligations.

Johnson committed the breaches when he acquired more than 2.5 million PIL shares for \$45,950, shortly after he resigned as its chair and director – positions that had given him access to confidential sales information that was not available to the public. He then failed to inform the NZX of his change in holding, as required.

He agreed to pay \$75,000 to the FMA, in lieu of a penalty, and was barred for five years from acting as a director, senior manager or consultant for a listed company or any entities regulated by the FMA...

Eroad

In 2017, the FMA filed charges in the Auckland District Court alleging insider trading by two people – one of whom was an Eroad employee at the time of the alleged offence, the other a former employee.

The charges alleged that the employee had sent text messages to the former employee containing confidential information about Eroad's performance, suggesting they sell their shares.

Jeffrey Peter Honey pleaded guilty to passing on the inside information and was sentenced to six months home detention, while the former employee denied the charge of trading on that information, and was ultimately found not guilty in 2018."

Despite the Financial Markets Authority being able to take action where insider trading has occurred, it would appear that there's no law against a public official using insider information for some pecuniary gain.

What would happen I wonder if some NZ Transport Agency employees or the Minister of Transport bought several farms that were smack in the middle of where a new expressway had been mooted in non-public discussions to be built? Or if a Minister of Health's wife and in-laws bought a house or building right where officials had, in confidential documents suggested that a new hospital was planned to be built?

Interesting questions eh?

Back to Mark Dunajtschik.

All four of us flew back from Queenstown to Wellington on the same plane. When we got to the baggage claim area, we had a further chat. Their bags arrived along with their skis. He's in his 80s by the way. He grabbed his bags, put his and I think Dorothy's skis over his shoulder and headed for the exit. I felt then very blessed to be a Kiwi. Here was a couple worth about half a billion dollars doing what every other average Kiwi was doing. There was no limousine waiting to pick him up or some flunky carrying his bags and skis. They were simply just regular folk who had just happened to donate 50 million bucks for the kids of Wellington. Pretty cool eh?