

## **‘Muzzling’ of scientists and scientific institutions and the Protection of whistle-blowers: Submission to the ICSU Committee on Freedom and Responsibility in the conduct of Science (CFRS)**

**Summary:** *Scientific freedom of communication and expression is influenced by a number of factors including: commercial confidentiality; seeking to improve the professionalisation of public communication; funding pressures; and avoidance of cost and the administrative burden of legal action and official information requests. The desire to expose fraudulent information and misconduct is strongly felt, but the perception among the science community is that the protection of whistle-blowers is effectively very weak.*

The Royal Society of New Zealand subscribes to, and endorses, the International Council of Sciences (ICSU) Principle of the Universality (freedom and responsibility) of Science. As such we welcome the opportunity to respond to the CFRS call for views around the ‘muzzling’ of scientists and scientific institutions, and the protection of whistle-blowers.

### **‘Muzzling’ of scientists and scientific institutions**

Freedom of expression and communication are fundamental to the furtherance of scientific inquiry for the benefit of society, but there are a number of factors that can put restrictions on such expression, and the judgement of ‘benefit to society’ may vary from different perspectives.

There are a range of institutions in which publicly funded science occurs. These differ from country to country and even institutions with common names, such as universities, operate within different legislative and cultural parameters in different countries.

New Zealand is rare in that more science is publicly funded than is privately funded, and scientists that are publicly funded work in a wide range of entities. New Zealand has eight universities and, Under Section 161-2 of the Education Act (1989), academic freedom and the autonomy of tertiary institutions are to be preserved and enhanced, with New Zealand universities explicitly mandated to “accept a role as critic and conscience of society” and “to question and test received wisdom, to put forward new ideas and to state controversial or unpopular opinions”. New Zealand also has research associations (some, but not all, owned by their sector; some are charities), and eight crown research institutes (owned by the Crown and reporting to Parliament). The latter two groups operate in a corporate legal framework, as well as a competitive business environment on which they are reliant for much of their revenue. The implication of this is that they have legal liabilities regarding the statements and actions of their employees.

Each of these entities has its own protocols for engagement with the media, as well as for resolving or mediating internal disagreement (which can often be the genesis for people resorting to the media and is not peculiar to science-based organisations). The result is that freedom to communicate is influenced by a number of factors:

### *Commercial confidentiality*

Research institutions undertake research for both Government agencies and the private sector where there can be confidentiality agreements, trade secrets, copyright restrictions, and commercial sensitivities. In New Zealand, for publicly funded research in areas such as the dairy industry, which comprises a large fraction of the New Zealand economy, it is likely to be against the national interest to publish everything, as New Zealand industry is supported by the margin its intellectual property creates for the sector. Thus national interest and commercial interest can be closely aligned. If taxpayer funding is used, a 'public' obligation of targeting the wealth creation towards the domestic economy is likely to apply. In these situations, economic benefit to the country from restricting access to the information could be considered as the benefit to society. However, the line between what is or isn't justified as commercially or nationally sensitive can be unclear, and there are situations where commercial interests and public interests can diverge.

### *Communicating with the public*

While in universities, engagement with the media is best left primarily to the discretion of individual academics, in seeking to improve the professionalisation of public communication, crown research institutions can have in place formal protocols for engagement with the media. Science and research operate through a process of challenge and argument, but this can be confusing to the public where speculative arguments are placed uncritically alongside research evidence. This can result in policies that include: managerial approval before speaking to media; consulting communications managers, and discussion of intentions. Some research outcomes can directly impact upon stakeholder decisions, such as insurance premiums, and as such it can be considered important to create robust messages. In the case of natural hazards responses in New Zealand, such as for earthquakes, the crown research institute GNS Science has a special policy where a media trained duty person at any given time will be the dedicated and only contact person. Ignoring such policies can lead to the possibility of disciplinary action. In this situation the belief is that such restrictions can provide public benefit in the clarity of public communication.

Uncertainty around these procedures, including not knowing who is meant to approve communications, can cause problems so it is important to ensure that researchers know the policies in place. In addition, the media often seek rapid responses and so simply not being able to respond fast enough can limit the communication of science. Some scientists may also fear, and have experienced, their research being misinterpreted by the media and so avoid communicating it with them.

There are also other pressures that can distort research communication:

### *Funding pressures*

Pressure to secure funding can create an environment that discourages outspoken comment that could be perceived as jeopardising such funding, especially in a time of recession, with jobs and promotion at stake. In such situations there is seldom a clear act of muzzling, rather a gradual withdrawal of benefits and opportunity that is difficult to pinpoint. These pressures can influence the beginning of the research process, when deciding which area of research to investigate, right through to publication, when deciding what papers to write and submit. When the potential impacts can affect a researcher's career and research funding, researchers may prefer to stick to uncontroversial and low risk work.

Concerns over funding, particularly with commercial partners, can also result in pressure to deliver results it is believed commercial partners want to hear, and with results counter to these downplayed. Scientists' communication with these clients can be restricted to allow the research findings to be presented in this way.

*The “hassle effect” and deliberate hindrance*

The threat of litigation from commercial interests can discourage research institutes from making public statements about commercial products, due to the time and cost of defending such actions. Similarly, industries that feel threatened by research findings can use repeated Official Information Act requests to delay and distract researchers away from their research. The result is that the institution may shy away from, or restrict, the communication of research in these areas to avoid the cost and administrative time in meeting such requests<sup>1</sup>.

Since 1994, the Royal Society of New Zealand has been involved in a survey of New Zealand scientists and technologists, with the latest survey published in 2010<sup>2</sup>. This survey included questions on freedom of expression (see Table 1). While the majority of respondents reported being free to speak freely on public policy issues, there was an increased sense of restrictions for publications. Whereas in 1996 researchers felt less restraint in the publishing than their public presence, by 2007 it seemed the two domains were viewed much more similarly.

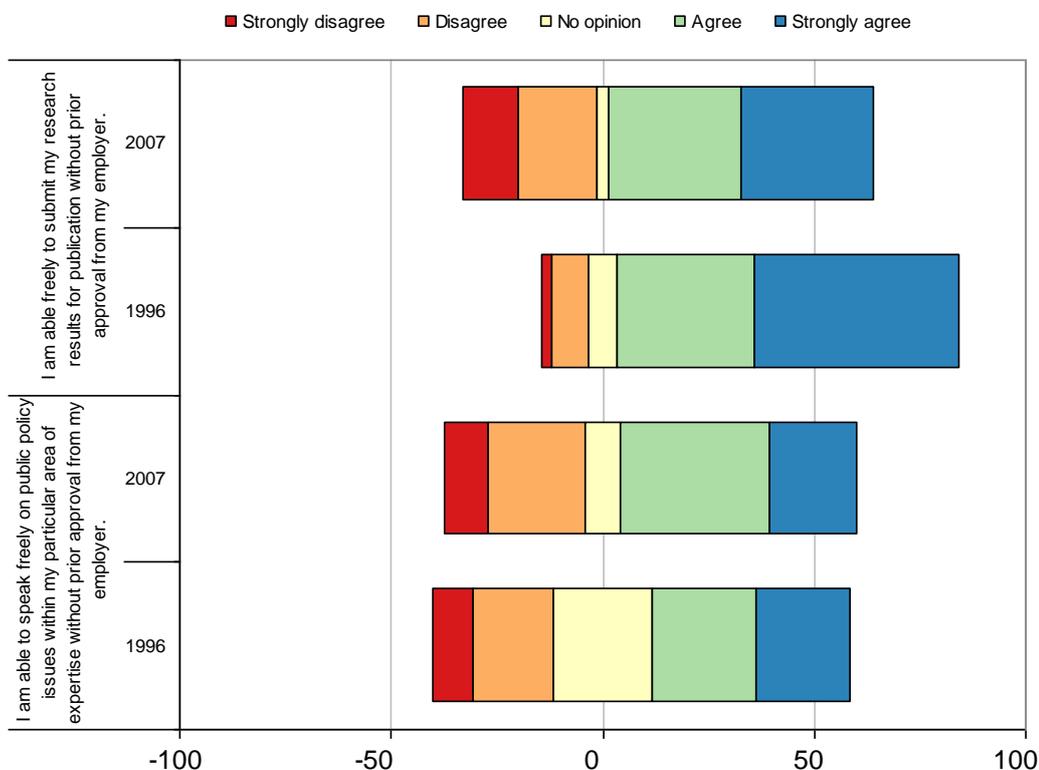


Table 1: Comparison of results between 1996 and 2007 on questions regarding freedom of expression, from the 2008 Survey of New Zealand scientists and technologists<sup>2</sup>

<sup>1</sup> Misuse of the Official Information Act by the tobacco industry in New Zealand. Tob Control 2010;19:4 346-347. 7 July 2010

<sup>2</sup> Jack Sommer, 2008 Survey of New Zealand scientists and technologists, New Zealand Science Review, Vol 67 (1) 2010, p. 2-40

## Protection of whistle-blowers

The belief that fraudulent information and misconduct should be exposed is strongly felt in New Zealand. In the 1996 survey of New Zealand scientists and technologists<sup>3</sup>, a question concerning the responsibility of the scientist to expose fraud on the part of another was asked. This question was not repeated in 2008 “because the response was so overwhelmingly positive that it seemed unlikely to yield much useful information”.

However, there are unfortunately too many instances where scientific professionals around the world blow the whistle and suffer damage to their careers because of it. Whistle-blower protection legislation in New Zealand centres on the *Protected Disclosures Act 2000* (PDA), which is essentially concerned with government agencies. Public entities have protections written into their employment policies to protect employees who make disclosures of information about serious wrongdoing in or by an organisation, including an act, omission, or course of conduct that constitutes a serious risk to public health or public safety or the environment.

Some research institutions also adhere to the International Standard ISO 15189 which stipulates accreditation criteria for organisations and staff analysing and reporting on specimens or other material derived from human clinical material. This standard has specific clauses relating to the integrity and ethical behaviour of the organisation in which the staff work and requires the institute to demonstrate that it has real mechanisms in place to safeguard whistle-blowers and to allow scientists’ concerns to be addressed at a recognised, official forum.

Nevertheless, there can be occasions where the interpretation of what constitutes serious wrongdoing may vary and researchers can find themselves at odds with their employers over the release of contractually confidential research information. Protection of whistle-blowers needs not only to be present in a robust form, but also to be seen to be so. The perception among the science community is that the protection is effectively very weak. In order to increase faith in whistle-blower protection, the process would need to be seen to work quickly, and to impose severe sanctions against obstruction or flouting. Given the international treatment that whistle-blowers have received, it would take a great number of positive examples to create real confidence in the operation of such systems.

With academic misconduct, increased pressures to publish, and sometimes “noisy” data, there need to be scrupulous methods to ensure honesty. New Zealand universities have procedures for protecting whistle-blowers. However, a protected report can remain unactioned because responsibility for pursuing the matter might rest with a single senior administrator, who may put the report in the “too hard basket”. The secrecy which protects the whistle-blower also shields the administrator from pressure to act in a timely manner.

## Role of the Royal Society of New Zealand and CFRS

In regard to research fraud and misconduct, the Royal Society of New Zealand requires its members to adhere to a Code of Professional Standards and Ethics in Science, Technology, and the

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<sup>3</sup> Sommer J, Sommer D. 1997. Profiles: A survey of New Zealand scientists and technologists. Wellington, Royal Society of New Zealand

Humanities, which operates as a voluntary code for all other persons involved in science, technology, and the humanities in New Zealand<sup>4</sup>. This code relates to: integrity and professionalism; honesty; compliance with the law and relevant standards; respect for colleagues; respect for communities; protection of the well-being and privacy of individuals; duty to funders and purchasers of research; protection of the welfare of animals; protection of the environment; continuing education and communication of knowledge; and appropriate use of genetic information. Complaints about breaches to these standards can be made to the Society which will then convene a Professional Standards and Ethics Panel. The Society usually budgets NZ\$50,000 per year to cover the legal costs involved in addressing complaints made about such breaches,

For the International Science Council and the CFRS, there could be merit in: recognising the multiple goals of research, whether it is producing and communicating new knowledge, or producing commercial returns and economic growth; the expectations of freedom of expression within each context; and the impact of research funding opportunities on overt and self-censorship.

### **Additional Information and References**

This response was produced by the Royal Society of New Zealand from a range of submissions from its members, Fellows and Constituent Organisations, and signed off by the Chair of the Society's Academy. Any enquiries about this submission or others should be addressed to the Royal Society of New Zealand's External Affairs Manager, Dr Marc Rands (Email: [marc.rands@royalsociety.org.nz](mailto:marc.rands@royalsociety.org.nz)). Responses are published on the Society's website ([www.royalsociety.org.nz/publications/policy](http://www.royalsociety.org.nz/publications/policy)).

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<sup>4</sup> Royal Society of New Zealand Code of Ethics  
(<http://www.royalsociety.org.nz/organisation/about/code/#compliance-with-code>)