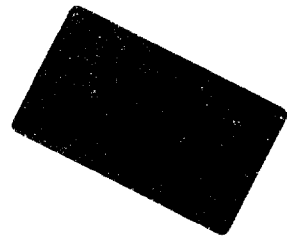
IN THE HIGH COURT OF NEW ZEALAND
TAURANGA REGISTRY **CP No. 22/00**



IN THE MATTER of the Defamation Act 1992

BETWEEN **DAVID WILLIAM REEVES**

First Plaintiff

A N D **WENDY HELEN MOUNTFORT**

712

Second Plaintiff

DAVID EYARE MOUNTFORT

Third Plaintiff

A N D **JAMES GRANT MACE**

Defendant

Date of Hearing: 30 May 2001

Counsel: P Mabey QC for the Plaintiffs
No appearance for the Defendant

Judgment: 15 June 2001

RESERVED JUDGMENT OF PRIESTLEY J

Solicitors:
Jackson Reeves & Friis, DX HP40052 Tauranga
J G Mace, 12 Barclay Avenue, Te Aroha

Counsel Acting:
P Mabey QC, P O Box 13199
Tauranga

The Issue

[1] The sole issue for the Court to decide is the quantum of damages to be awarded against the defendant in respect of defamation of the three plaintiffs.

Background

[2] The plaintiffs began this proceeding in August 2000. The defendant was served but, as outlined in a subsequent section of this judgment, has not defended the proceeding.

[3] The second plaintiff was a close friend of one Barbara McNicoll ("the deceased"). The third plaintiff is the son of the second plaintiff. He is also the godson of the deceased and a beneficiary under the deceased's will. The first plaintiff was the deceased's solicitor and had prepared her will. There is no direct evidence about the defendant's involvement in this background but counsel for the plaintiffs instructions were that the defendant was a relative (possibly a nephew) of the deceased's late husband.

[4] At some stage, and there is no evidence as to when, the second plaintiff and the deceased flew to Hawaii for a holiday together. Whilst they were there the deceased lost consciousness when she was swimming. She was flown back to New Zealand but never regained consciousness and died.

[5] It appears that the defendant was aggrieved by the terms of the deceased's will. He wrote and published three letters, detailed subsequently in this judgment, in November 1997, October 1998 and April – July 2000. Portions of those letters defamed the plaintiffs.

The Defendant's Stance

[6] The defendant who lives in Te Aroha was served with the plaintiffs' notice of proceeding and statement of claim. On 19 September 2000 the defendant attended an initial conference before Master Kennedy-Grant in the High Court at Rotorua. He indicated to the Master that he had not yet made up his mind whether to obtain legal representation. The importance of doing so was stressed to him by the Master. There was a subsequent conference before Master Kennedy-Grant which the defendant also attended in the High Court at Rotorua on 23 November 2000. At that conference the defendant confirmed that he intended to take no further part in the proceeding. The Master ordered the proceeding to be set down for trial as to damages under R 463 of the High Court Rules.

[7] The Rotorua High Court Deputy Registrar wrote to the defendant on 22 February 2001 advising him both of the fixture date and the preliminary callover. In a letter dated 2 May 2001 received at the Rotorua High Court on 14 May 2001, the defendant wrote acknowledging receipt of the 22 February letter and advising that he would be neither represented nor present. At the start of the hearing before me the defendant was called. There was no appearance.

[8] No statement of defence has been filed. In terms of R 130(3) of the High Court Rules the allegations contained in the amended statement of claim are deemed to be admitted.

Defamatory Words and Publication

[9] In November 1997 the defendant distributed a letter to legal practitioners in the Tauranga district. The letter was cast in the following terms:

> *For Your Information.*
>
> *Mr David W Reeves of 250 Maungatapu Road Tauranga is a dishonest solicitor.*
>
> *Early in 1986 Mr Reeves was instructed to write a new will for a Seventy One year old widow client with no immediate family.*

In the new will that Mr Reeves prepared some of Barbara's considerable assets were to be left to her late husband's neice [sic] *and nephew. Over an earlier period of about twenty five years, Barbara made three other wills leaving all of her assets upon her death to a One Mr David Mountford, her God Son.*

Barbara's long time friend, her God Son's mother Mrs Wendy Mountford was upset that her Son David was not to be left all Barbara's assets and they quarrelled about this.

To try and repair their friendship Barbara, took Mrs Mountford on holiday to Hawaii. While in a swimming pool Barbara lost consciousness and nearly drowned, Barbara never regained consciousness and died some two weeks later in Tauranga Hospital after being flown back to New Zealand.

Mrs Mountford knew that Barbara was changing her will and she knew the terms of the new will, and also the fact that upon her death Barbara wished to be cremated.

Mrs Mountford is or was a practice nurse and worked for her husband who is a Plastic Surgeon and G.P.

After Barbara's death the will that was drawn up by Solicitor Mr David Reeves was destroyed along with any copies that Barbara may have had.

How could this happen? Mr Reeves and Mrs Mountford are close friends by their own admission, this fact actually worked in their favour and they are on record as saying that Barbara never mentioned changing her will, and was happy as it was.

Barbara told other friends on different occasions that she intended changing her will, and at a later date that she had changed her will.

These people were long time friends and knew Barbara well, they have nothing to gain by telling lies and have sworn affidavit's saying that Barbara told them that she had changed her will.

So again Mr Reeves I call you a lier [sic] *and a dishonest Solicitor. Mr Paul Mountford who is a quiet, gentle man knows what happened, when it became apparent that he may have had to answer questions in a court when Barbara's neice* [sic] *and nephew were considering challenging Barbara's Will, He said he would not. I can only assume that Mr Mountford knows something terrible happened and can not tell a lie.*

After threats that he would Sue because of the questions being asked of Mr Reeves, the claim against Barbara's estate was dropped but the evidence is still on record Mr Reeves.

> *What happened to Barbara in Hawaii, did she meet her demise naturally or was she helped? What was Mrs Mountford holding over Mr Reeves to make him destroy a valid last Will that he had drawn up? How much of what happened is Mr Mountford aware of? When there is over $600,000-00 at stake perhaps some people could be driven to extra-ordinary lengths to make sure they keep it.*
>
> *I can not sign my name to this, because to prove the claims I have made I require the Will that Mr Reeves drew up but alas that Will was destroyed by Mr Reeves and Mrs Mountford.*
>
> *What I have done is to send a copy of this letter to the Tauranga Police with my name.*
>
> *Perhaps one of you honest solicitors might like to see what can be done to uncover what really happened to Barbara in hawaii* [sic].

[10] This letter was apparently sent to all legal firms and sole practitioners practising in Tauranga.

[11] Approximately a year after distribution of this first letter the defendant made an appointment to see the first plaintiff at his firm's office. The appointment was made under a false name. The first plaintiff when he initially met the defendant thought he was a new client. During the course of the meeting it became evident that the defendant was the author of the first letter. The defendant apparently asked the first plaintiff why no action had been taken against him. The first plaintiff confronted the defendant about his allegations, denied any dishonesty, and remonstrated that the allegations made against the second plaintiff were tantamount to an allegation of murder. During this meeting the first plaintiff went to some pains to deny that he had destroyed the deceased's will and explained to the defendant his firm's system of copying wills to clients and keeping the original in the firm's deeds safe as well as recording the document on a card index.

[12] In October 1998 the defendant wrote and published a second letter. This letter was distributed to the first plaintiff's wife and also delivered to the address of another woman bearing the first plaintiff's surname in Tauranga. The second letter was cast in identical terms to the first letter but contained the following two additional paragraphs:

So in summary what we have is a wimpish Mr David Mountford who had already had gifts or loans of money which he squandered, and after Barbara died David was heard to say, Quote "there is going to be some trouble with the Will but it is all right now. We also have a dishonest Solicitor and anurse [sic] *who worked in a Doctors surgery, who are confirmed friends and the nurse just happens to be on holiday with Barbara when she is taken ill.*

Our own legal council [sic] *were sure that Mr Reeves had carried out Barbaras instructions and prepared a new will a matter of months before she died. Our council along with the Police said there was little they could do because of the lack of evidence.*

[13] In April 2000 and again in July 2000 the defendant distributed a third letter. This letter was cast in the following terms:

For Your Information

Mr David W Reeves of Crawford Road, TePuna Tauranga is a dishonest Solicitor.

Early in 1986 Mr Reeves was instructed to write a new will for a Seventy One year old widow client with no immediate family.

In the new will that Mr Reeves prepared some of Barbara's considerable assets were to be left to her late husband's niece and nephew. Over an earlier period of about twenty five years, Barbara made three other wills leaving all her assets upon her death to a One Mr David Mountford, her God Son.

Barbara's long time friend, her God Son's mother Mrs Wendy Mountford was upset that her son David was not to be left all Barbara's assets. Barbara told her relations that she had become disillusioned with Mrs Mountford's friendship and that they had quarrelled over the fact that Barbara had changed her will and described David as Dilettante, unable to settle to any task.

Towards the end of 1986 to try and repair their friendship Barbara, took Mrs Mountford on holiday to Hawaii. While swimming Barbara lost consciousness and nearly drowned, Barbara never regained consciousness and died some two weeks later in Tauranga Hospital after being flown back to New Zealand.

It was just a small matter then for Mrs Mountford to enter Barbara's House, and remove any copy of the last will that was only months old and for Mr Reeves to dispose of the will in his office and present the will for probate that favoured David completely.

Barbara told other friends on different occasion's that she intended changing her will, and at a later date that she had changed her will,

Barbara also mentioned that she was surprised that Mr Reeves did not try and talk her out of changing her will.

These people were long time friends and knew Barbara well, they have nothing to gain by telling lies and have sworn affidavit's saying that Barbara told them that she had changed her will.

By their own admission that Reeve's and the Mountford's are close friends and this fact actually worked in their favour and they are on record as saying that Barbara never mentioned changing her will and was happy as it was. Of course they were going to say that because they had already disposed of the will that also included Barbara's neice [sic] *and nephew.*

When Barbara's relations were considering contesting the will that was put forward for probate, and questions were being asked about the possibility of a later will, Mr Reeves and or the Solicitors engaged to defend any claim against the will said they were going to sue Barbara's neice and nephew. After these threats the claim against Barbara's estate was dropped but the evidence is still on record Mr Reeve's.

Why was David Mountford heard to say "there is going to be some trouble with the will but it is all right now" and David said that before Barbara's neice and nephew were aware that anything was amiss with Barbara's last will.

Why did Mr Mountford say he would not appear in court to answer questions when Barbara's neice and nephew were considering challenging Barbara's will?

Mrs Wendy Mountford was the force behind all the wrong doing. It was her that had quarrelled with Barbara. It was her that would of entered Barbara's House. The $600,000-00 had been Davids for so long and now she was seeing some of it slipping away. [sic]

[14] The first publication or distribution of this third letter was limited to posting copies of it to the two neighbours of the second plaintiff; to the two neighbours of the third plaintiff; and to each of the partners in the first plaintiff's firm (he being a consultant) Jackson Reeves & Friis in Tauranga.

[15] Wider distribution of the letter was effected in July 2000 by hand delivery to various businesses in the Tauranga central business district. A private investigator employed by the first plaintiff ascertained that seventeen businesses in the area recalled having received the letter, which appears to have been slipped underneath the doors of the premises concerned.

Defamation of First Plaintiff

[16] The defamation of the first plaintiff is unjustified and serious. The unblemished reputation of an elderly and highly respected solicitor has been attacked.

[17] The publication of the first letter and the third letter appears to have been a deliberate attempt by the defendant to damage the plaintiff's reputation. The allegations made are serious ones to level against any solicitor. The defamation is particularly serious when measured against the reputation of a practitioner in the twilight of a long and respected career.

[18] The defamatory words so far as the first plaintiff is concerned include:

[a] The statement that he is a dishonest solicitor.

[b] The statement or suggestion that the first plaintiff in concert with the second plaintiff destroyed an operative will and copies of that will and additionally conspired to conceal an intention of the deceased to change the will.

[c] The first plaintiff is a liar and, again, a dishonest solicitor.

[d] That the second plaintiff may have had something which she was "holding over" the first plaintiff which motivated him to destroy the deceased's last will.

[e] That the first plaintiff was dishonest and corrupt in his practise as a solicitor in as much as he carried out instructions from the deceased to prepare a new will before her death but had in some way concealed this.

[f] That the first plaintiff had conspired with the second plaintiff to destroy the deceased's will and told lies.

[19] The first plaintiff is aged 76. He was admitted as a solicitor in 1954 and practised as a partner in a Tauranga firm for 42 years until he became a consultant in April 1998. He is in good health and still works a full week. In an affidavit the first plaintiff deposes that so far as the distribution of the first letter to practitioners in the Tauranga district was concerned, he was not concerned about its impact on those lawyers who knew him and whom he believed would respect his honesty and integrity. He was, however, particularly concerned about the impact which the letter may have had amongst young partners and staff solicitors in larger Tauranga firms with whom he had had no personal dealings.

[20] The distribution of the third letter, however, to business premises in the Tauranga central business district was legitimately of greater concern to the first plaintiff. He deposes in his affidavit that he has had no way of gauging the damage which the publication may have caused. The first plaintiff's name is incorporated into a firm's name. The first plaintiff had built up a substantial conveyancing trust and wills practice and has also been involved in numerous business and commercial transactions over the years. As a result he had a very large client base.

[21] To attract the new clients which inevitably flow from the city of Tauranga's commercial and population growth, reputation and an ability to attract clients by word of mouth are important. The first plaintiff is particularly concerned that the third letter's distribution might have damaged his reputation and his professional integrity particularly having regard to the "no smoke without fire" principle.

[22] The private investigator who canvassed business premises in the Devonport Road and Willow Street areas of Tauranga where the third letter was distributed was able to identify six business people who, having received and read the letter, admitted to some doubts about the first plaintiff's reputation and reliability, although they did not know him personally. Perhaps the most serious of these was a representative of Harveys Real Estate who confessed that she had been influenced by the content of the third letter to the point of not personally being prepared to choose the first plaintiff as a solicitor.

[23] Some of the business recipients of the letter were totally uninfluenced by it and indeed, knowing the first plaintiff personally and his reputation, disregarded the letter's content. However, the effect of the defamatory words on some members of the business community and in particular the effect of those words on the first plaintiff's professional integrity are not to be minimised.

Defamation of Second Plaintiff

[24] The defamation of the second plaintiff contained in the three letters is apparent. The defamations included the following:

[a] That the second plaintiff in taking the deceased to Hawaii on holiday was motivated primarily by greed and the need to protect the interests of her son (the third plaintiff).

[b] The second plaintiff conspired with the first plaintiff to destroy the deceased's will and to tell lies.

[c] The second plaintiff exerted some form of improper influence or pressure over the first plaintiff to cause him to breach his professional responsibilities.

[d] The second plaintiff was dishonest and motivated by the pecuniary interests of her son.

[e] The deceased may have died unnaturally in Hawaii as a result of some activity of the second plaintiff.

[f] The second plaintiff wrongly entered the deceased's home and removed and destroyed copies of her will.

[25] The second plaintiff has sworn an affidavit. She deposes that she is the wife of a recently retired Tauranga surgeon. The second plaintiff and her husband have

lived in Tauranga for 51 years with the exception of a brief period in England when Mr Mountfort was undergoing post-graduate study.

[26] The second plaintiff and the deceased were close friends. The deceased was the godmother of the second plaintiff's son. She and the deceased had known each other since 1950.

[27] The second plaintiff deposes that she knew nothing of the contents of the deceased's will. She was unaware that her son was a beneficiary although, since the deceased had no children, she suspected that the third plaintiff and the deceased's other godchildren might be named beneficiaries. There had never, on the second plaintiff's evidence, been any discussion between the deceased and her over the terms of her will.

[28] The second plaintiff has had a fairly high profile in the Tauranga community. She was a Board member for seven years of Tauranga High School and in the 1970s was also a Board member of Tauranga Polytechnic. She was a founding member and committee member (for 30 years) of the Tauranga Ski Club. She and her husband are active members of an Anglican church in Tauranga. Both she and her husband are well known in Tauranga professional and business circles.

[29] The second plaintiff has, over the last two years, had a brain tumour surgically removed and received subsequent treatment. It has been a stressful time for her. She deposes:

> *21. To be accused of the death of a good friend is an awful thing – even more so when it is apparently done for money. The allegations against me are completely false and the fact that the defendant has chosen to continue to send out his letters over a three year period makes it worse. There is no telling the effect that the letters may have had and there is no telling if further letters will be sent out in the future.*

Defamation of Third Plaintiff

[30] As is apparent from the term of the letters, the defamation of the third plaintiff is not as serious as the defamation of the other two plaintiffs. The defendant

has not alleged that the third plaintiff is a party to his godmother's death or party to a conspiracy over her will.

[31] The defamatory words against the third plaintiff are:

[a] That he is wimpish.

[b] That he is something of a spendthrift. He squanders money.

[c] That he was perhaps aware that there was a problem about the deceased's will and that he may have condoned the conduct of the first and second plaintiffs motivated by his own pecuniary interest.

[32] The pleading and counsel's submissions in respect of this third defamatory ingredient rely on a passage contained in the third letter which states:

> *Why was David Mountford heard to say "there is going to be some trouble with the will but it is all right now" and David said that before Barbara's neice* [sic] *and nephew were aware that anything was amiss with Barbara's last will.*

[33] The third plaintiff deposes that he is 44 years of age, married with three children and a property developer in Tauranga. At the end of his secondary school career the deceased transferred a modest number of shares to him. Subsequently when he was a property developer he borrowed $8,000 from the deceased at commercial rates. He met all interest payments but the principal, which was not due for repayment until after the deceased's death, was forgiven in terms of her will.

[34] The third plaintiff is much more concerned about the effect the letters had on his parents than he is about any effect the defamation had on him personally. He is nonetheless concerned that perhaps the defendant's letters may have impacted on his business reputation.

Decision

[35] The sole issue before me as a result of the way this proceeding has developed, is to decide the quantum of damages. There is absolutely no doubt that all three plaintiffs have been defamed. The attacks on the reputation of the first plaintiff and the second plaintiff are particularly serious.

[36] The third plaintiff has also been defamed. Despite the pleadings and counsel's submissions, however, I am not prepared to find that the words attributed to the third plaintiff, "there is going to be some trouble with the will but it is all right now" go as far as suggesting that the third plaintiff was aware of the second plaintiff's alleged involvement in the deceased's death and the destruction of her will and that he was, by those words, condoning his mother's conduct motivated by greed and his own personal interests. There is insufficient evidence before me about the context of the alleged remark to justify drawing that inference.

[37] The plaintiffs' counsel responsibly submitted that the defamation of the first plaintiff was the worst and that of the third plaintiff the least serious. In counsel's submission damages should be awarded to the first plaintiff at a figure of at least $100,000, to the second plaintiff at a figure of at least $60,000, and to the third plaintiff at a much lower figure, possibly somewhere in the vicinity of $5,000.

[38] In counsel's submission the circumstances of this case justified the Court considering an additional award of exemplary damages on the basis that the defendant's conduct was high-handed. In that regard counsel referred to the apparently deliberate publication of the defendant's second and third letters in the wake of him having had the opportunity of an interview with the first plaintiff and having learned at that interview about the first plaintiff's practice of supplying copies of wills.

[39] The amended statement of claim is subdivided into four causes of action. The first cause of action relates to the defendant's first letter. The second cause of action relates to the defendant's second letter. The third cause of action relates to the publication of the defendant's third letter in April 2000. The fourth cause of action

relates to publication of the defendant's third letter to the business community in July 2000.

[40] The first plaintiff claimed general damages and punitive damages totalling $100,000 in respect of the first cause of action; $10,000 in respect of the second cause of action; $20,000 in respect of the third cause of action; and $100,000 general and punitive damages in respect of the fourth cause of action. The second plaintiff claims identical sums in respect of the first three causes of action and $40,000 general and punitive damages in respect of the fourth cause of action. The third plaintiff seeks $10,000 general damages in respect of the second, third and fourth causes of action.

[41] In ***Television New Zealand v Quinn*** [1996] 3 NZLR 24 the Court of Appeal considered the issue of exemplary damages in New Zealand. The judgment of Lord Cooke is helpful in that regard:

> Exemplary or punitive damages are available in New Zealand where the defendant's conduct has been high-handed to an extent calling for punishment beyond that inflicted by any award of compensatory (including aggravated) damages. The Defamation Act 1992, s.28, preserves them by providing that in any proceedings for defamation punitive damages may be awarded against a defendant only where that defendant has acted in flagrant disregard of the rights of the plaintiff. There is little, if any, difference between that and the former law. Mr Miles was naturally not prepared to argue that the New Zealand Bill of Rights Act 1990, s.14, affirming freedom of expression, should lead to a modification of the common law so as to rule out this head of damages altogether. Section 28 of the Defamation Act alone would make any such argument very difficult, to say the least. Also the English Court of Appeal in *John* have not suggested that the European Convention excludes exemplary damages.
>
> The latter case and *Riches v. New Group Newspapers Ltd* [1986] Q.B. 256 are examples of separate awards of compensatory and exemplary damages (a course perhaps reflecting contests as to whether the cases fell within the restricted categories wherein such awards are allowed in England). But the ordinary practice in both England and New Zealand is to direct a global award, even if the jury are satisfied that an added punitive element should be reflected in it. See for instance *Cassell & Co. Ltd v. Broome* [1972] A.C. 1027, 1072, per Lord Hailsham of St. Marylebone L.C., and *Taylor v. Beere*, cit. supra. This has been thought to militate against an impermissible doubling

> up. One consequence of this practice is that it is not possible to conclude with certainty how often New Zealand jury awards have included something for punitive damages.
>
> It may be convenient to insert a reminder at this point that the narrowing into three categories of the types of case in which exemplary damages may be awarded, which was carried out by the House of Lords per Lord Devlin in England in *Rookes v. Barnard* [1964] A.C. 1129, has not been followed in New Zealand: see *Taylor v. Beere*, cit. supra; *Donselaar v. Donselaar* [1982] 1 NZLR 97; *McKenzie v. Attorney-General* [1992] 2 NZLR 14, 21 and the accident compensation cases there collected; *Aquaculture Corporation v. New Zealand Green Mussel Co. Ltd* [1990] 3 NZLR 299. A consequence in the field of defamation is that we are not troubled with the issue that has required attention in *John* and other English cases about whether a defendant news medium made 'the requisite calculation'. This will remain so after the present case. Whether the defendant calculated or presumed that the publication complained of would be profitable on balance, even allowing for possible liability in damages, will remain one factor relevant in considering exemplary damages. It will not be an essential condition of an award of such damages.

[42] I am somewhat wary about awarding exemplary damages in this case, particularly given the limited state of the evidence. Certainly the defendant's actions in persisting with the publication of the second and third letters could be described as high-handed. I know nothing, however, about the defendant's motivation or the reasons which may have driven him to defame the plaintiffs. It is safe for me to assume that the defendant is not a media organisation or hoping to reap some commercial benefit from his defamation. There is no evidence to suggest that the defendant's actions have in any way been profitable to him personally. On the facts of this case I consider that an award of general damages will properly compensate the plaintiffs and that an exemplary damages award is not called for.

[43] New Zealand case law provides little guide about appropriate levels of quantum. In the normal course of events the quantum of damages awards are left to civil juries subject only to the overriding discretion of the Court to set aside damages awards which are unreasonably high or excessive.

[44] Damages awards are relatively infrequent in New Zealand and despite a tentative request to the Court of Appeal by counsel in ***Television New Zealand v***

Quinn (supra) to set some guidelines, no attempt has been made to fix tariffs or scales. It would in my judgment, be unwise to attempt to limit the overriding discretion of juries or judges alone to fix appropriate compensatory damages in this area. The circumstances of each case are infinitely various.

[45] Two somewhat differing views were expressed on the issue of quantum in ***Television New Zealand v Quinn*** (supra) by McKay J and McGechan J respectively. McKay J considered that some guide to appropriate levels of damages could be found by looking at defamation verdicts generally:

> We have had many cases cited to us, and differing judicial views from many Judges in different countries. For my part, I do not believe any useful guidance could be obtained from comparing awards in personal injuries cases, even in the days before such claims were replaced by accident compensation. In England, where the Court in setting aside a verdict can itself fix the damages, it will use its own experience as a guide in order to achieve a degree of consistency. Comparisons with awards in other countries are of limited value. I believe the best guide is to apply the experience of other verdicts in other defamation cases to arrive at what appears to be the appropriate level in the particular case, and to recognise that a reasonable jury may properly go some distance above or below that figure. I do not suggest any detailed comparison of one award with another, as I believe that would be unhelpful. What is called for is rather a judgement of the particular case in the light of the overall experience. The relatively small number of cases that go to trial in New Zealand makes the task more difficult, but responsible counsel make a similar assessment when advising on the amount to be claimed, and in advising on settlement. Judges must do the same. [at 44 – 45]

[46] McGechan J, on the other hand, considered that precedent was of limited use other than as a yardstick to measure extremes:

> In my view, comparisons can have some value – not by any means determinative, but some value – at the extreme of determination whether an award is so irrational as to be set aside. It is a matter of common sense. If a figure is "completely unheard of" or "unparalleled", that may be some guide as to whether it is supportable. It is artificial to ignore that human reality. However, it is only at that extreme that the exercise is at all useful; and even then, given the very different circumstances of individual cases, applicable only with real caution. As I will develop infra in relation to submissions juries should be assisted with "ranges", there simply is not the data or consistency of awards in New Zealand to allow routine

> comparisons case by case *[sic]*. Comparisons are some guide to extreme limits; but within that, no guide to the appropriate. [at 53-54]

[47] The purpose of damages in defamation cases was examined by the Court of Appeal in ***Television New Zealand v Keith*** [1994] 2 NZLR 84, 86:

> Damages for defamation are intended to be compensation for the injury to reputation, and for the natural injury to feelings, and the grief and distress caused by the publication: see *Gatley on Libel and Slander* (8th ed, 1981) para 1453; *McCarey v Associated Newspapers Ltd (No 2)* [1965] 2 QB 86 at pp 104-105 per Pearson LJ. Damages can also be regarded as a vindication of the plaintiff and of his reputation. The Judge in this case referred to a comment by Windeyer J in *Uren v John Fairfax & Sons Pty Ltd* (1966) 117 CLR 118 at p 150, where he said:
>
> > "It seems to me that, properly speaking, a man defamed does not get compensation for his damaged reputation. He gets damages because he was injured in his reputation, that is simply because he was publicly defamed. For this reason, compensation by damages operates in two ways - as a vindication of the plaintiff to the public and as consolation to him for a wrong done. Compensation is here a solatium rather than a monetary recompense for harm measurable in money."
> >
> > [per McKay J]

[48] Some limits in respect of quantum were indicated by Cooke P in ***Television New Zealand v Quinn*** [1996] 3 NZLR 24, 37:

> In relation to damages, liability for defamation having been established, the reasonable limit on the award is that it must not exceed what is sufficient or adequate to vindicate the plaintiff's reputation, assuage his or her injured feelings, and carry any punishment which is called for because the compensatory award is not sufficient or adequate for the purposes of punishment and deterrence: see for instance *Cassell & Co Ltd v Broome* (*cit supra*) at p 1089 per Lord Reid. [at 37]

[49] It was counsel's submission that I might derive some assistance from ***Hawkins v Ayers***, (High Court Auckland CP1246/92, 6 March 1996, Tompkins J) where the plaintiff sought damages of $200,000 against an unrepresented defendant who did not appear. The defamatory words in question took place against the background of Papakura local body elections in 1992 when the plaintiff was standing

as a mayoral candidate. Defamatory words were allegedly used by the defendant during the course of a radio talkback interview and also in a pamphlet, 11,957 copies of which were distributed in the Papakura area. The defamatory words alleged misconduct in respect of a language school and also alleged political corruption on the part of the plaintiff's local body ticket.

[50] The trial judge was satisfied that the defamatory statements had serious consequences on the election campaign which was then in progress and that public reaction had a lasting effect during the campaign. In the view of Tompkins J the plaintiff was:

> "entitled ... to an award of damages that would provide some solatium for the wrong that has been done to him, and the quantum of the award must be sufficient to signal to the plaintiff that his reputation has been vindicated.

General damages in the sum of $130,000 was awarded.

[51] I derive some assistance from ***Hawkins v Ayers*** (supra) as a guide to quantum. I approach the task of fixing quantum, however, having regard to the clear statements of principle relating to the policy and purpose of damages awards in defamation cases made by the Court of Appeal in the two cases I have mentioned.

[52] Relevant factors which I need to weigh include the defendant's failure to defend the proceedings; the absence of any apology; the fact that the letters defaming the first plaintiff were distributed to the professional colleagues of the first plaintiff in the region where he practised; and the fact that the reputation of all three plaintiffs is, on the evidence before me, unblemished. An aggravating factor so far as the defamation of the first plaintiff is concerned is the defendant's publication of further defamatory material after the first plaintiff had confronted the defendant a year after the publication of the first letter.

[53] So far as the first plaintiff is concerned the attack on his reputation is scurrilous and unjustified. To accuse a practising solicitor of dishonesty constitutes a grave slur on his professional integrity and reputation. So too were the defamations relating to the first plaintiff's actions in respect of the deceased's will

and his alleged conspiracy with the second plaintiff. These defamations were circulated, apparently deliberately, to people amongst whom the defamatory words would have had significant meaning, namely the first plaintiff's professional colleagues in the district where he practised and also the Tauranga business community. The fact that most of the recipients would probably have recognised the defamatory words as being false in no way mitigates the defamation.

[54] In my judgment the first plaintiff is entitled to a substantial award of damages which vindicates his reputation and provides adequate consolation for the defamation which in fact occurred. I therefore award the first plaintiff general damages in the sum of $95,000 being a global sum in respect of all four causes of action.

[55] The defamation of the second plaintiff was cruel and unjustified. Not only has it caused her considerable personal distress but it also had the potential to besmirch her reputation in a community where she has a relatively high public profile. The distribution of the three letters might not have been as potentially damaging to the second plaintiff as it was to the first plaintiff, but nonetheless her name would be well known in Tauranga professional and business circles, members of whom received the defamatory material.

[56] The second plaintiff's reputation must be vindicated by a substantial damages award in these circumstances. To suggest that the second plaintiff in some way has suborned the first plaintiff from his professional duties and to suggest further that she may have had a hand in the unfortunate death of her friend constitute serious slurs on the second plaintiff's reputation. I award the second plaintiff general damages in respect of all four causes of action in the global sum of $65,000.

[57] The defamation of the third plaintiff is, for the reasons I have stated, less serious. Circulation of the second letter was limited, that being the letter which contains the most serious defamation of the third plaintiff. Nonetheless it has been suggested that he is a wimp, a dilettante and a spendthrift. I award the third plaintiff general damages in respect of all three causes of action in respect of which he seeks relief in the global sum of $3,500.

[58] The plaintiffs seek an permanent injunction against the defendant prohibiting the defendant further publishing the letters which are the subject of the proceeding or making any further written or oral publication to similar effect. I am satisfied that this is an appropriate case to make a permanent injunction in those terms.

Orders

[59] Judgment is entered for the first plaintiff in the sum of $95,000.

[60] Judgment is entered in favour of the second plaintiff in the sum of $65,000.

[61] Judgment is entered in favour of the third plaintiff in the sum of $3,500.

[62] The plaintiffs are entitled to costs on the 2B Scale.

[63] A permanent injunction will issue in terms of paragraph [58] of this decision.

Priestley J

Dated at Auckland this 15th day of June 2001 at 4.30 a.m./p.m.