IN THE HIGH COURT OF NEW ZEALAND
CHRISTCHURCH REGISTRY

CIV-2015-409-000575
[2016] NZHC 1956

BETWEEN	COLIN GRAEME CRAIG Plaintiff
AND	JOHN STRINGER Defendant

Hearing: 15 August 2016

Appearances: Mr C G Craig (Plaintiff) in person
Mr J Stringer (Defendant) in person

Judgment: 22 August 2016

AMENDED JUDGMENT (REISSUED: 25 AUGUST 2016)
OF ASSOCIATE JUDGE MATTHEWS

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[1] Mr Craig sues Mr Stringer in defamation. His current pleading is an amended statement of claim dated 31 May 2016, filed on 8 June 2016. Mr Stringer filed a statement of defence to the original statement of claim, and subsequently an amended statement of defence to the same pleading. He is yet to plead to the amended statement of claim.

[2] There are six interlocutory applications before the Court and these are determined by this judgment. They are:

(a) Application by Mr Stringer for further and better discovery.

(b) Application by Mr Craig for further and better discovery, and in relation to inspection.

(c) Application by Mr Craig for non-party discovery by Social Media Consultants Limited (SMC).

(d) Application by Mr Craig for leave to add additional causes of action and to file a second amended statement of claim.

(e) Application by Mr Craig for leave to serve further interrogatories.

(f) Application by Mr Craig to strike out Mr Stringer's defence.

Application by Mr Stringer for further and better discovery

[3] Mr Craig is the former leader of the Conservative Party which participated in the general election in 2014. Mr Stringer is a former member of the Board of the Conservative Party. Mr Craig says, in his amended statement of claim, that in June, July and August 2015 Mr Stringer defamed him in what he describes as a relentless succession of publications in various media.

[4] By inference from the pleadings, serious altercations arose between Mr Craig and Mr Stringer, and between Mr Craig and other members of the Board of the Conservative Party, in mid-2015. It seems that at least some of these altercations had their genesis in Mr Craig's association with his former press secretary, Ms Rachel MacGregor. One issue which arose from the disquiet within the Conservative Party was whether Mr Craig should remain as its leader. While this issue was under consideration Mr Craig decided to send out a form of ballot paper to members of the Conservative Party, by which those members who received it were asked to tick one of two boxes, the first reading "Colin Please Continue" and the other reading "Colin Time to Give it Away". The former was set out under the word "Yes", next to which was a diagram of a hand with a raised thumb. The latter was set out under the word "No", accompanied by a diagram of a hand with a thumb pointing downwards.

[5] Mr Craig alleges that Mr Stringer made various defamatory comments about him in relation to his taking this step. As I understand it, the essence of Mr Craig's complaint is that Mr Stringer alleged that the ballot was rigged, in that it was sent only to selected members of the Conservative Party who were thought to support Mr Craig, or perhaps that members who were known to oppose Mr Craig continuing as leader were omitted from the list of persons to whom it was sent. Mr Craig denies

both these allegations and sues in relation to the statements he says Mr Stringer made on this issue and which he maintains were defamatory.

[6] Mr Stringer says that Mr Craig must discover all the ballot papers that were received by the Conservative Party. He says that each ballot paper contains a coded notation at the bottom left corner which corresponds to a membership number, and from this he will be able to ascertain whether in fact the ballot papers were sent to all members of the party or only to a selection. He says that by this means he will be able to establish his defence, which is to the effect that the statements he made about the ballot being sent out selectively were actually true.

[7] The pleadings also raise an issue over statements that Mr Stringer is said to have made about the number of ballot papers.

[8] Mr Craig has not discovered the ballot papers. He says they are not discoverable because, first, he has them neither in his possession nor control, as they are held and owned by the Conservative Party, with which he is no longer involved. Secondly, he says that the ballot papers will not provide to Mr Stringer the information he seeks, namely the persons to whom the ballot was circulated. This is for two reasons, first because the ballot papers do not bear names, but only numbers, and the numbers are meaningless without access to the Conservative Party membership database which again is neither in Mr Craig's possession nor control. Secondly, the ballot papers sought are only those which were returned, not those which were sent out, and they will not therefore disclose to Mr Stringer (nor would they disclose to anyone else) whether ballot papers were sent to all members.

[9] In my opinion, Mr Craig is right in this contention. I am unable to see how viewing the ballot papers that were returned could assist in any way with establishing either who ballot papers were sent to or, more relevantly given the issue under review, who they were not sent to. Nor can Mr Craig discover documents that he does not have or control.

[10] I therefore decline Mr Stringer's application.

Mr Craig's application for further and better discovery

[11] Part of Mr Craig's application for further and better discovery entails a complaint that although Mr Stringer has discovered a number of documents, he has only provided by way of inspection about 40 which can be correlated to Mr Stringer's discovery affidavit. He accepts that he has received a number of other documents but he is unable to ascertain whether they are discovered documents and, if so, which documents they are within Mr Stringer's list.

[12] After discussion with Mr Craig and Mr Stringer it was agreed that Mr Stringer will now provide to Mr Craig one set of copies of all non-privileged discovered documents numbered at the top right-hand corner with the number each document bears in his list, and I direct that this will be completed by 5.00 pm on 19 August 2016.

[13] The second issue raised on this application relates to a claim of privilege by Mr Stringer in relation to certain documents, on the basis that he is a journalist and entitled to the protection given to him as a journalist by s 68 of the Evidence Act 2006.

[14] Section 68(1) provides:

> **Protection of journalists' sources**
>
> If a journalist has promised an informant not to disclose the informant's identity, neither the journalist nor his or her employer is compellable in a civil or criminal proceeding to answer any question or produce any document that would disclose the identity of the informant or enable that identity to be discovered.

[15] A judge of the High Court may order that subs (1) is not to apply if satisfied that, having regard to the issues to be determined in the proceeding, the public interest in the disclosure of evidence of the informant's identity outweighs any likely adverse effect of the disclosure on the informant or any other person, and the public interest in the communication of facts and opinion to the public by the news media and in the ability of the news media to access sources of facts.[1]

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[1] Evidence Act 2006, s 68(2).

[16] Although reference is made to a judge of the High Court, an Associate Judge has jurisdiction to determine this point on an interlocutory application in chambers, by virtue of s 26IA of the Judicature Act 1908.

[17] Mr Stringer maintains that he is a journalist, and that he has promised a person from whom he obtained information not to disclose that person's identity. Mr Craig says that Mr Stringer is not a journalist. Although he runs a blog site, it is not a blog which might result in a finding by the Court that Mr Stringer is a journalist. This issue arose for determination in *Slater v Blomfield*.[2]

[18] In *Slater v Blomfield* the Court noted that s 68 "was the product of a process of evolution in the common law, statute, and High Court Rules whereby protection from the disclosure of confidential sources was extended to persons including journalists".[3]

[19] After tracing the history of the exception to the general requirement of disclosure which is now embodied in s 68, Asher J considered the approach which the Court should take to the application of s 68(1). The first point to be established was whether Mr Slater, who runs the Whale Oil Blog, is a journalist and whether the blog is a news medium. The Court was materially assisted in this by a good deal of evidence directed precisely at this point. In the course of discussion the learned Judge referred to a number of factors which may be relevant to the Court's determination. These include such matters as whether the blog site provides news, breaks stories and provides commentary on current stories on a regular basis, whether the blogger or the blog site receives payment for work in providing news services or other commentary, whether the blog provides genuine new information of interest over a wide range of topics, and whether (in that case) Mr Slater's normal work was journalism, and whether he carried out that work regularly and consistently. These were factors which his Honour discussed on the basis of the evidence presented to the Court in that case, but are not presented by the Court as a finite or comprehensive list of indicia which a Court might take into account.

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2 *Slater v Blomfield* [2014] NZHC 2221, [2014] 3 NZLR 835.
3 At [19].

[20] Based on that summary of the case Mr Craig submits that Mr Stringer does not publish regular news to a wide audience, does not make revenue from blogging, nor provide commentary as an expert, does not provide new or breaking news on a regular basis, and has a primary occupation (and income) as a businessman.

[21] For Mr Stringer to claim the protection of journalists' sources which is given by s 68, he must establish that he is a journalist in terms of that rule, as Mr Slater set about to do in *Slater v Blomfield*.

[22] Mr Stringer's input on this point is contained in a document titled "Defendant's Reply in Evidence", an unsworn but signed statement containing a relatively scant description of his blog site and his work in relation to it. He says that he has provided news, broken stories, and provided commentary on current events, which Mr Craig has described as the "go to place" for particular discussions on conservative politics. He says material from his blog is frequently re-posted by others and it has provided genuine new information of interest over a wide range of topics. He says the blog site "has been carried out with a degree of regularity and consistency". He says that he himself has awards for writing and prizes from news media, is a published novelist, has produced work which has been syndicated in New Zealand and Australia and has published numerous articles in a wide variety of newspapers and magazines as a "stringer" both in New Zealand and elsewhere. Three daily newspapers and a news website are cited as examples. He says he has received money for his work blogging "privately". He says that at the relevant time he was writing up to eight posts a day and within the first 12 months of operating his blog he was the twelfth most read blog in New Zealand according to an assessment firm, Parachute.

[23] I have considered the material put before the Court by Mr Stringer in this statement. The weight to be accorded to it is lessened by the fact that it is not sworn, and by the fact that the statements Mr Stringer makes are in general terms, and unsupported by any exhibited material which might have been relevant to them. By way of example I refer to Mr Stringer's assertion that his blog site has provided genuine new information of interest over a wide range of topics. No examples are given of any new information or news stories which he is said to have broken, or

new commentary he is said to have made on current events. Further, Mr Stringer's assertion that work on the blog site has been carried out with a degree of regularity and consistency is not supported by any information such as, for example, a chronology. Mr Stringer's assertion that he has received money for his blogging work privately lacks any elaboration or supporting materials.

[24] The assertion that Mr Stringer is a journalist who should enjoy the protection of disclosure of sources given by s 68 falls well short of being established. I am, therefore, satisfied that all documents which have been discovered with redaction, or not discovered at all, on the basis of s 68 are now to be discovered in full and without redaction.

[25] The third aspect of the application for further discovery is derived from a list in part 4 of Mr Stringer's affidavit of documents headed "Documents no longer in my control". In this part Mr Stringer lists emails which he says have been lost as a result of the theft of two laptops which contained emails and which, though the laptops have been recovered, can no longer be accessed. He describes these as emails "lost" in the respective inboxes of his two laptops. Accepting this statement at face value, it is contrary to the list of emails which follows, as all bar four of the groups of emails, which are described by reference to named persons, are described as emails to those persons, rather than emails from them. That being the case, they would not have been in Mr Stringer's inbox in any event.

[26] Be that as it may, the issue presently requiring determination is whether Mr Stringer should be required to take further steps to endeavour to obtain access to the emails which he has described in the most general terms, merely as emails to (or in some cases from) named persons. Evidence produced for Mr Craig from an independent consultant with expertise in obtaining information from damaged computers satisfies me that there is a probability that the emails concerned could be recovered from the damaged computers. Mr Craig asks that I order discovery of all relevant documents to or from (as the case may be) the named persons which are relevant to the issues in this proceeding. Mr Craig says the important period for this discovery is November 2014 to 13 August 2015, which is the date range of issues raised in the amended statement of claim, including the lengthy passage of

particulars which give rise to what Mr Craig says is aggravation of the defamation by Mr Stringer.[4] Mr Craig says that although the actual publications relied on in the amended statement of claim span a date range of 20 June to 13 August 2015, there was what he described as a build up to these statements which comprised collusion between Mr Stringer and others to harm his reputation. This, Mr Craig says, is summarised in paragraph 22.

[27] Mr Stringer says that ordering discovery as sought is disproportionate to the issues that are raised. He notes that this was the subject of observations, and a finding, by Associate Judge Osborne in a judgment dated 22 April 2016 on an application by Mr Craig for non-party discovery of emails by Vodafone, which was opposed by both Mr Stringer and by Vodafone itself.[5] In that application the Judge observed that Mr Craig's application was broadly drafted, as he sought an order in relation to all email correspondence through Mr Stringer's account between 1 November 2014 and 26 February 2016. He described Mr Craig's concern as to potential omission of relevant documents being driven by Mr Craig's "apparent determination to track through Mr Stringer's entire email correspondence over a 16 month period". His Honour compared this with the publication period of three months and then said:[6]

> The sheer scope of the application for non-party discovery, well beyond the focused months of the claim, strongly suggests in old-fashioned terms "a fishing expedition". In terms of the approach to discovery mandated since the current discovery rules came into effect in February 2012, the non-party orders sought by Mr Craig are not proportionate to the subject-matter of the proceeding.

[28] Mr Stringer says that Mr Craig seems to think that anything said about him may be defamatory, so he should know what has been said. He says that the list in part 4 of his affidavit simply states what may or may not exist and he has already discovered all the documents which he considers to be relevant. He says there will be thousands of others.

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4 In paragraph 22, Mr Craig pleads that certain statements referred to earlier in the document "were published with flagrant disregard for Mr Craig's rights and warrant an award of aggravated and punitive damages having regard to paragraphs 16 to 21 above and the following ...". Nearly nine pages of pleadings follow, all as numbered parts of paragraph 22.

5 *Craig v Stringer* [2016] NZHC 768.

6 At [11] (citations omitted).

[29] Mr Craig in reply to this says that relevance is judged by the pleadings and he no longer seeks the broad recovery of emails which he sought in the Vodafone application, only emails relating to the persons named in part 4, and over a narrower date range.

[30] The issue of access to emails to (and in some cases from) the persons named in part 4 has only arisen because these emails are described in part 4 as Mr Stringer says he cannot access them due to damage to his two stolen computers. It follows that had the computers not been stolen (or damaged) these emails would have been considered for their discoverability as part of the initial discovery exercise. Claimed problems with access have resulted in that consideration being put to one side. As I am satisfied that there is a probability that the access problems can be satisfactorily disposed of, the emails in question fall for consideration once more.

[31] I note that Mr Craig has undertaken to pay for the cost of work on Mr Stringer's computers to the extent that it is required in order for access to his inbox (and outbox) is re-established.

[32] For these reasons I am satisfied that an order should be made that Mr Stringer is to give particular discovery of such of the emails to (and to the extent mentioned in part 4, from) the persons named in part 4 of his affidavit of documents within the date range of 1 November 2014 and 13 August 2015 as are relevant to issues pleaded in this case. This discovery is to be given in a supplementary affidavit of documents which is to be filed and served within 30 working days. Because of this time limit Mr Stringer is to take such steps as are necessary to gain access as soon as practicable to the inbox/outbox of his computers to the extent required for this exercise and Mr Craig is to cooperate in all material respects with this exercise given his undertaking to pay the reasonable cost and his identification of an expert able to undertake this task.

[33] I reserve leave to Mr Stringer to file a memorandum, supported by an affidavit from a suitably qualified expert if, contrary to my expectation based on the evidence now before me, access to these emails cannot in fact be gained.

[34] For the avoidance of any doubt I direct that Mr Craig is to pay the costs of the attendances of the computer expert for this exercise, immediately upon receipt of invoice.

[35] The final issue raised in argument on this application concerned the agreement of the parties to refer to the solicitors' firm of Denham Bramwell those documents in respect of which privilege is claimed, but disputed, with that firm making a binding ruling. I record that the parties agreed in argument that this arrangement will continue.

Application by Mr Craig for non-party discovery by SMC

[36] Mr Craig applies for orders that SMC, which is not a party to this proceeding, give discovery of emails between Mr Pete Belt, of SMC, and Mr Stringer concerning Mr Craig or Mr Stringer or the Conservative Party in the date range 24 August 2014 and 20 May 2016. He also applies for an order directing discovery of emails between Mr Stringer and other representatives of SMC concerning Mr Craig, Mr Stringer or the Conservative Party in the same date range. Finally, he seeks discovery of other documents, electronic or otherwise, that have passed between Mr Stringer and SMC management, staff, contractors or other representatives concerning Mr Craig, Mr Stringer or the Conservative Party in the same date range. He notes that this would include, but not be limited to, texts, letters, photographs and copies of invoices.

[37] SMC has filed a memorandum dated 28 June by its counsel, Mr Brian Henry and Ms Alyssa Dunlop, advising that they hold instructions in relation to the application, that they have been supplied with the amended statement of claim and the statement of defence, and that their client does not oppose the application. However, it indicates that "a quantity of the material sought by the plaintiff will be met by claims of journalistic privilege".

[38] Mr Craig explains that he alleges not only that Mr Stringer defamed him, as pleaded, but also that Mr Stringer's defamation is aggravated as "Mr Stringer deliberately and over a period of many months colluded with Social Media Consultants Limited (Whaleoil) in a deliberate campaign to defame Mr Craig and

destroy his reputation." Mr Craig says that Mr Stringer deliberately leaked information to Whale Oil in breach of signed confidentiality and code of conduct agreements, which I take to be references to documents within the ambit of the Conservative Party, that Mr Stringer and Whale Oil falsely denied that Mr Stringer was the source of the allegations about Mr Craig to Whale Oil, when in fact he was that source, that Mr Stringer wrote material critical of Mr Craig that was then published as blog posts under the name of Mr Slater of Whale Oil, and that there were discussions between Mr Stringer and Whale Oil about how to attack Mr Craig by further publications, who to interview and what to print to that end. Mr Craig says this is not an exclusive list of the means of aggravation on which he will rely. The particulars for these allegations of aggravation are set out in paragraph 22 of the amended statement of claim to which I have referred earlier.

[39] Mr Stringer says that the documents sought are not relevant to issues in this proceeding but rather to issues in a proceeding he has brought against Mr Craig in the High Court at Auckland. He also says that non-party discovery has been denied by the Court on the application for discovery by Vodafone.

[40] I do not see the latter point as relevant, nor am I in a position to judge the relevance of documents on Mr Stringer's proceeding in Auckland. I am satisfied that the material sought from SMC on this proceeding should be discovered by SMC. Mr Craig expresses an expectation that there will only be some 20 documents involved. That remains to be seen.

[41] At least one of the issues raised as a reason for wanting the discovery is whether Mr Stringer was the source of the allegations about Mr Craig, in communications to Whale Oil. That description, and the terms of the response to the application by SMC itself, gives a clear indication that s 68 of the Evidence Act will be in sharp focus. It will be recalled that the application of s 68 to the activities of the Whale Oil blog has already been determined by the Court in *Slater v Blomfield*.[7] Any dispute there may be about that issue is for another day. I make an order in terms of paragraph 2 of Mr Craig's interlocutory application dated 13 June 2016.

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7 *Slater v Blomfield*, above n 2.

Application by Mr Craig for leave to add additional causes of action

[42] This proceeding was filed on 10 September 2015. Mr Craig says that since that time Mr Stringer has made further public statements about him which are defamatory. He seeks leave to file an amended statement of claim pleading nine additional causes of action. He notes, correctly, that leave is required under r 7.77(4) as the causes of action relate to events after the proceeding was filed. The close of pleadings date has been set at 31 October 2016.

[43] Mr Craig says that he will sue Mr Stringer on these causes of action in any event, that the most efficient way for that to be done is by way of this proceeding, and that doing so will not have any significant impact on the proceeding in terms of causing delay. Any additional expense would be less than that incurred on a separate proceeding.

[44] Elaborating on this, Mr Craig says that the same witnesses would be called and only slightly more evidence would be involved. It would be inefficient to require a separate proceeding with all attendant interlocutory issues and inconvenience to witnesses who would already have been required to give evidence once. Mr Craig says he would consent to a condition on leave that he does not seek additional discovery, or seek to deliver further interrogatories relating to the new causes of action. Finally he says that the new clauses which he proposes are simply added to the amended statement of claim, and no other amendments are proposed.

[45] Mr Stringer complains that the amount by way of damages which is claimed is increasing, that the Court has already criticised this case as unduly complex and that this will be more of what he describes as a "chronological creeping barrage" of allegations against him. He says that the additional causes of action will clog the proceeding without having any likelihood of adding anything to the ultimate outcome of the case.

[46] The principal factors to be weighed, in my view, are these. First, the close of pleadings date has not yet passed so Mr Craig is at liberty to amend his pleading. On that basis he could plead additional causes of action in relation to events prior to the

proceeding being issued, without leave. Thus the pleading as recorded in the amended statement of claim is not at this point final.

[47] Secondly, Mr Craig can as of right file a new proceeding with the proposed new causes of action, as they are not statute-barred. Mr Stringer will therefore face these causes of action whether it is in this proceeding or not.

[48] Conversely, there are two factors suggesting leave should be declined. This is a complicated proceeding. The principal complicating factor, in my view, is the allegation of aggravation outlined in the multitude of allegations pleaded in paragraph 22. Although there are 31 causes of action based on separate publications, that does not of itself make this an exceptionally complicated proceeding, though this will, of course, result in a relatively long hearing. Presentation of the case in such a way that the evidence on the causes of action is clearly and separately enunciated will be of paramount importance, as indeed will presentation of evidence in defence.

[49] The second factor is Mr Stringer is self-represented and has a lot on his plate defending this case as it is.

[50] On balance, I consider that leave should be granted. In my view the benefits of having all issues between Mr Craig and Mr Stringer determined in one proceeding and at one trial outweigh factors which suggest that there should be two proceedings and two trials. I am conscious that both Mr Craig and Mr Stringer have assured me that although they are not represented, they are receiving competent legal advice as this case goes along. It is certainly not too late for either or both of them to instruct counsel to take over the running of this case. Any delay that granting leave might cause can be significantly lessened by imposing conditions in relation to discovery and interrogatories as noted.

[51] I therefore grant leave to Mr Craig to file an amended statement of claim in the form of the draft submitted to the Court, on condition that there will not be any further application by him for discovery, or any application for leave to serve further interrogatories, arising from the nine additional causes of action added to his claim.

Application by Mr Craig to serve further interrogatories

[52] Mr Craig has already served interrogatories. He seeks leave to serve more as set out in a draft of the proposed interrogatories which is before the Court. Mr Stringer opposes leave saying the interrogatories are intrusive and extraneous to the proceeding, in that they seek information related to outside topics or simply general information that raises internal Conservative Party machinations which are not at issue in the proceeding.

[53] Mr Craig's principal reason for seeking to administer further interrogatories is that since earlier interrogatories were answered Mr Stringer has filed two further affidavits by way of discovery and has twice amended his statement of defence. These documents introduce new material. Mr Craig also says that the answering of the interrogatories he now wishes to serve will reduce the time taken at trial, as well as better enabling him to prepare for trial.

[54] There are a number of principles which must be considered in relation to the interrogatories which Mr Craig seeks to ask. Interrogatories cannot be asked with a view to ascertaining facts which are merely evidence of facts in issue.[8] Interrogatories must be specific – they must not be oppressive, which is understood to mean contrary to the rules of justice or fair play, or burdensome or wrongful.[9] They must not be open-ended or raise multiple issues in one question, or fail to identify a reasonable span of time. It may be unreasonable to require a party to answer interrogatories at a late stage of preparation, when extensive enquiries may be needed to answer them.[10] Interrogatories must not be vexatious, meaning unreasonable, frivolous or more in the nature of a ploy to achieve delay or abuse the process of the Court. They must not be unduly burdensome.[11] Interrogatories may be unduly burdensome if, for example, they require a search through records over a period of years, or if they require an undue level of detail to reply.

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8 *Evans v Harris* (1991) 6 PRNZ 329 (HC).
9 *Elston v State Services Commission (No 2)* [1979] 1 NZLR 210 (SC) at 215.
10 *Todd Pohokura Ltd v Shell Exploration NZ Ltd* [2009] NZCA 561 at [23].
11 See *Shore v Thomas* [1949] NZLR 690 (SC), where leave was refused to deliver over 150 interrogatories as they would throw an unreasonable burden on the defendants.

[55] The overall thrust of the various principles, and the application of those principles in numerous decided cases, is that interrogatories must be fair in the circumstances, to the party to whom it is sought that they be delivered.

[56] Against the background of this brief review I have considered the proposed interrogatories compiled by Mr Craig. They are 43 in number.

[57] Almost all of the proposed interrogatories are contrary to one or more of the principles to which I have referred. It is not necessary to refer to each and every one of the interrogatories. I have formed a clear view that because of the number of interrogatories, the fact that Mr Craig seeks responses at the same time as he is seeking a considerable volume of additional discovery, and materially amending his statement of claim requiring completion of a detailed statement of defence, it would be unfair on Mr Stringer to require him to also answer 43 further interrogatories. That conclusion, coupled with the terms of the interrogatories themselves, can only direct one outcome. I therefore refer to examples of the interrogatories, only.

[58] First, interrogatory 5.1.1 provides:

> Please list as accurately as possible and in detail each communication that you have had with Mr Jordan Williams about the plaintiff (based on your pleadings JSSOC 2.46 this will be about 6 – 8 communications). Include the date and time where possible. In particular please detail what specific allegations he made about Mr Craig in each conversation.

[59] This interrogatory contains several questions, is open-ended as to time and type of communication and requires an inordinate amount of detail – for example, depending on whether the communications were written (in which case there may be a record) or oral, the request to include the date and time is overly burdensome.

[60] Interrogatory 5.1.2 is in these terms:

> Please detail in full and as exactly as possible the wording of the SXT's told to you by Mr Williams [SOD 14.5(iii) and JSSOC para 2.12].

[61] This refers to sexually explicit texts "told to" Mr Stringer by Mr Williams. It is unclear how Mr Stringer could possibly answer this question. Indeed it is unclear what it means. Does it refer to texts which Mr Williams had received from another

party and then told Mr Stringer about? Does it refer to texts sent by Mr Williams to Mr Stringer?

[62] Interrogatory 5.1.4 says:

> Do you accept the allegations of Mr Williams were serious?

[63] This question is hopelessly vague. It might be inferred that the allegations referred to are those which are referred to in interrogatory 5.1.1. However, even if that is so (and it is not in my view clear) the question is still unacceptable. The answer, whatever it is, is not probative of any issue in the case.

[64] Interrogatory 5.2.1 requires Mr Stringer to "list as accurately and completely as possible the communications that passed between yourself and 'Whaleoil' between ... [certain dates]". The question goes on to define Whale Oil as including all staff and contract bloggers, including but not limited to four named persons, one of whom is described as "Spanish Bride". This interrogatory is completely unacceptable. Mr Stringer is himself a blogger. It is clear that he had communications by one means or another with some people from Whale Oil at some time or other, but to ask for a list of all communications he had with all staff and contract bloggers with Whale Oil over a period of four and a quarter months is oppressive.

[65] Interrogatory 5.2.3 is in these terms:

> Other than yourself, Mr Pete Belt, and Mr Cameron Slater please list those people who knew that you were leaking information about Mr Craig and the Conservative Party to the Whale Oil Blog and to the best of your knowledge the date at which they became aware that you were doing this. Please include at what date Mrs Stringer became aware you were doing this.

[66] This interrogatory presupposes that Mr Stringer was "leaking information", itself an imprecise term, asks Mr Stringer a question he cannot possibly answer as it relates to the knowledge of other persons, and the date on which Mr Stringer's wife became aware of something, a fact within her knowledge and not necessarily that of Mr Stringer.

[67] Interrogatory 5.4.4 asks Mr Stringer why he did not discover certain documents. Interrogatory 5.4.5 asks Mr Stringer which journalist contacted which board members on 15 June 2015 about a settlement amount paid by Mr Craig to Ms MacGregor. The former question has nothing to do with the issues in this case and the latter asks Mr Stringer to give information he could not possibly have, as it is information within the knowledge of the board members who may have been contacted by journalists.

[68] Interrogatory 5.5.3 asks Mr Stringer "Where (sic) you aware of the book dirty politics (sic) and if 'yes' did you read it?" I do not see it as necessary that this question be answered. I do not see it as in any way relevant to the issues presently raised on the pleadings.

[69] In interrogatory 5.5.6 Mr Stringer is asked whether he was aware "of the leaked communications between Mr Slater and Mr Williams colloquially known as the 'Whale Oil Dump' and if 'yes' did you read it?" This question presupposes there were "leaked communications", whatever that may mean, and is vague in its terms. The enquiry as to whether Mr Stringer read the material is not shown to be relevant to an issue in this proceeding.

[70] In interrogatory 5.6.1 Mr Stringer is asked to "provide in detail the record of which of your computers were stolen how, where, and when." This is simply fishing for evidence and any relevance it may have is directed at compliance with interlocutory responsibilities, not issues arising in the substantive proceeding. Further questions on the same topic of computer theft fail for the same reason, as do questions about whether or not Mr Stringer complied with an arrangement that was made for independent checking of confidentiality claims on discovered documents.

[71] I have referred to only a sample of the proposed interrogatories, but numerous others fail for the given reasons, and others. The questions Mr Craig seeks to ask are well outside the principles which apply to the correct issuing of interrogatories.

[72] For the reasons given this application fails.

Application of Mr Craig to strike out parts of Mr Stringer's defence

[73] This is the second application Mr Craig has made to strike out all or part of Mr Stringer's defence. The first was the subject of a defended application and resulted in a judgment dated 4 March 2016.[12]

[74] As related in that judgment, Mr Stringer's initial defence also included a counterclaim. It ran, in total, to 78 pages, and the counterclaim appeared to contain 31 causes of action. After the first strike-out application Mr Stringer filed an amended statement of defence and counterclaim, 46 pages long, but annexed to it were a further 28 pages comprising 13 documents described as a "Defence Schedule".

[75] The Judge summarised the principles to be considered by the Court on an application to strike out all or part of a proceeding.[13] The Judge also set out the requirements for pleadings in terms of the High Court Rules and as a matter of the Court's inherent jurisdiction.[14]

[76] In addition to the passages to which I have referred the Judge also commented on the attachment of schedules, the use of footnotes and hyperlinks, the pleading of denials in defamation, the pleading of bad reputation, and the use of material which is in the nature of evidence and submissions. The Judge canvassed frivolous and vexatious material as part of pleadings, pleadings which were likely to cause prejudice or delay, the need to divide pleadings into paragraphs, and a reframing of meanings of statements as advanced by the plaintiff. All of this was a comprehensive guide to Mr Stringer, and is the background against which I must now assess the present application. In the event the Judge ordered that unless Mr Stringer filed and served an amended statement of claim within a specified time which rectified the deficiencies in his current amended statement of defence, so as to comply with the statutory and regularly provisions and other requirements referred to by the Judge, an order striking out the defence would be made.

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12 *Craig v Stringer* [2016] NZHC 362 [*Strike-out Judgment*].
13 At [7] - [10].
14 At [13] - [26].

[77] Mr Stringer filed an amended statement of defence. The present application is the consequence. I need add nothing of substance to the detailed exposition of the principles enunciated by the Judge on the first application.

[78] Mr Craig details 117 points on which he maintains that all or part of the latest statement of defence is deficient. This is the document described as "Updated First Amended Statement of Defence". It is dated 29 April and follows a first amended statement of defence dated 10 days earlier. Both of these documents were filed after issue of the judgment on the first strike-out application.

[79] The latest document contains 560 paragraphs and spans nearly 70 pages. It does not, this time, contain any schedules. It does, however, contain faults.

[80] To adopt the metaphor of Tipping J in *Marshall Futures Ltd (in liquidation) v Marshall*, the pleading is not, in my opinion, a total write off; rather it is one which is deficient but capable of repair.[15] The difficulty facing both Mr Stringer and Mr Craig lies in identifying necessary repairs and carrying them out. Once more I add to the chorus of observations in minutes and judgments on this case to the effect that it is a complex proceeding. In the course of argument I likened Mr Stringer's attempts to run his defence of this case himself to attempting open heart surgery. The state of his present pleading is such that he is inevitably faced with having to draft parts of it again. Further, he now has to plead to the second amended statement of claim for which I have granted leave in this judgment. It remains Mr Stringer's choice whether he takes advice and engages legal expertise from counsel conversant with the requirements for a proper pleading in defence of a claim for defamation, but Mr Stringer must realise that his case must be properly pleaded. In the judgment of 4 March the Court could not have been more clear, nor helpful in its enunciation of the relevant principles. I acknowledge that application of those principles is difficult, and seldom (if ever) more so than in a defamation case.

[81] My decision is that this case will not be struck out on the present application. There is sufficient before me to show that Mr Stringer has material which he should be entitled to present to the Court in defence of the claim, and striking out his

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15 *Marshall Futures Ltd (in liquidation) v Marshall* [1992] 1 NZLR 316 (HC) at 324.

defence will deprive him of that opportunity. Only around one-fifth of the clauses in the latest defence are questioned and, as will become apparent, many of Mr Craig's criticisms are ill-founded. Balanced against that, however, is Mr Craig's entitlement to a proper pleading. I would not require amendment, let alone consider striking out part of Mr Stringer's pleading, on the basis of a technicality where the principal purpose of a pleading, to fully and fairly inform the other party of the defence that is raised, is fundamentally met. If that is not the case, however, when Mr Stringer has re-pleaded, striking out all or part of a pleading may be the only result. That is not to pre-judge a document yet to be filed or an application yet to be made. I simply record this to show that the time has come when an acceptable pleading must be produced if it is to remain on file and go to trial. But that said, in a case of manifest complexity and technical difficulty run by litigants on their own behalf some latitude is warranted in the interests of justice.

[82] I turn now to the 117 criticisms made of the defendant's third amended statement of defence dated 29 April. A number of the issues raised by Mr Craig can be dealt with generically.

[83] First, a number of paragraphs are criticised as being "meaningless and unnecessary reference to a previous pleading". I decline to require any alteration to any of these paragraphs for this reason. It is sufficient that I direct Mr Stringer to review whether these references add anything to the pleading. I do not find them sufficiently inappropriate to take the matter any further than that. This deals with the points made in relation to paragraphs 266, 283, 343, 353, 359, 367, 373, 378, 382, 389 and 403.

[84] Secondly, numerous criticisms are made by Mr Craig of paragraphs within the document on the basis that they do not "provide any particular fact relevant to the claim". That is not, in this case, a criticism which I am prepared to accept. Mr Craig's claim is so wide and far-reaching that a test of relevance in a pleading is extremely difficult for Mr Stringer to apply. It follows that if – and I stress if – there are references to some irrelevant facts in the statement of defence, this does not in my view materially detract from the efficacy of the document, nor its compliance with the rules and principles of pleading. For all that those rules and principles are

important, the acceptability of pleadings is, in the final analysis, a matter of degree. Again, therefore, I direct Mr Stringer to review each and every one of the paragraphs to which these criticisms are levelled, and review the relevance of the material given. The paragraphs are 364, 365, 366, 368, 369, 370, 371, 372, 374, 375, 376, 379, 381, 382, 383, 384, 385, 386, 387, 390, 391, 392, 394, 395, 396, 397, 398, 399, 400, 402, 404, 405, 406, 407, 409, 410, 411, 412, 413, 414, 416, 417, 419, 420, 422, 423, 424, 425, 426, 428, 430, 431, 433, 434, 436, 438, 439, 441, 443, 445, 446, 447, 448, 451, 452, 454, 455, 456, 457, 458, 459, 460, 461, 463, 464, 465, 466, 468, 469, 470, 471, 473, 474, 475, 476, 477, 479, 480, 481, 482, 483, 484, 486, 487, 488, 489, 490, 492, 493, 494, 495, 496, 497, 498, 500, 501, 502, 503, 504 and 505.

[85] I turn now to specific criticisms of various paragraphs.

[86] **14** – Mr Craig's criticism is correct. The opening phrase should read "In relation to paragraph 14:" and then be followed by the numbered sub-paragraphs.

[87] **14.6 –** This sub-paragraph may stand as it is.

[88] **17** – Mr Stringer's pleading does not contain the words referred to by Mr Craig in his criticism. However, Mr Stringer is required to plead to paragraph 17.2.

[89] **21** – Mr Craig is correct – this is duplication of paragraph 20 and should be deleted.

[90] **275** – Mr Craig criticises this as a submission. It is not.

[91] **312 to 342 inclusive** – In each of these paragraphs Mr Stringer pleads that the words set out in certain paragraphs of the amended statement of claim do not bear and were not capable of bearing the meanings alleged in certain paragraphs. These are pleaded as an affirmative defence. In some cases, the statements made about the paragraphs do not correlate to the actual pleading, earlier in the document, in respect of that paragraph. For example, in paragraph 312 it is said that the words set out in paragraph 13 do not bear and were not capable of bearing the meanings

alleged in paragraph 14. However, in the pleading to paragraph 14, there are admissions which are inconsistent with this. Therefore, each of paragraphs 312 to 342 needs to be reconsidered by Mr Stringer and, if necessary recast, so that all inconsistencies are eliminated. The document must be internally consistent otherwise it does not give to Mr Craig proper notice of the case Mr Stringer will present. I am less concerned about the fact that Mr Stringer has sought to set out in paragraph 312 to 342 his pleading in relation to the meanings of words. If redrafted to avoid inconsistencies they put Mr Craig on notice of Mr Stringer's position in relation to each of the paragraphs from the amended statement of claim which are referred to. That said, Mr Stringer is to review whether this pleading could be better presented by including each of these paragraphs in his pleading to each of the paragraphs in the amended statement of claim to which they refer, rather than setting them out separately.

[92] **344** – Mr Craig says that parts of this pleading are inconsistent with previous pleadings. This is to be reviewed and any inconsistency is to be eliminated for the reasons I have just given.

[93] **345 to 351** – Mr Craig says these paragraphs do not provide particulars; rather they make submissions based on hearsay or restate the defamatory allegation which is not a particular of fact. I do not think any of these paragraphs contains a submission sufficient to warrant any alteration. Mr Stringer is entitled to present this material as he has. Repetition of each sentence from sub-paragraphs 14.1 to 14.8 of the amended statement of claim is perhaps unnecessary but it does serve to identify unambiguously the portion of paragraph 14 to which reference is being made. It can remain that way. It is the text beneath each underlined sentence that Mr Stringer presents as the particulars of his defence of truth.

[94] **354** – Mr Craig says that the denial in this paragraph is contrary to Mr Stringer's previous pleadings in which he has admitted some of the paragraphs referred to (23 to 33). Mr Stringer is to review this with care to iron out any inconsistency, for the reasons already given.

[95] **356** – Mr Craig says this is a statement of speculation or opinion and not a particular of fact. That is incorrect. The paragraph can perhaps be criticised for not giving specific reference to the Human Rights Commission correspondence, or to the statements by Mr Craig which are referred to, but this point is not raised so the paragraph may remain as it is.

[96] **361** – The underlined heading may remain, as in earlier paragraphs which I have canvassed. It is not a submission.

[97] **362** – Mr Craig says this is a submission. Again, it is not. It contains particulars which Mr Stringer relies on for his defence of truth to the statement pleaded by Mr Craig at paragraph 27.4. It is not presented as particulars should be, in listed sub-paragraphs with reference to source documents, but these points are not made by Mr Craig. Mr Stringer should review this paragraph and add further explanatory references to documents if there are any.

[98] **401** – Mr Craig says the denial of allegedly defamatory meanings of words in paragraphs 93 to 102 of the amended statement of claim is contradictory to Mr Stringer's previous pleadings in relation to these. This must be reviewed by Mr Stringer and any contradiction eliminated. The same applies to paragraphs 408, 418, 429, 432, 435, 437, 442, 453, 462, 467, 472, 478, 485, 491, 499, 506, and 557.

[99] **449** – Mr Stringer is to review whether this should refer to paragraph 224 or paragraph 223.

[100] **450** – Again Mr Stringer is to check whether the reference should be to paragraph 233 or paragraph 232. Mr Stringer is to check whether the denial is inconsistent with previous pleadings and eliminate any inconsistency.

[101] **453** – Mr Craig says this is an incorrect reference to paragraph 243 and should be to paragraph 242. Mr Stringer is to check and amend if required.

[102] **462, 467, 472, 478, 485, 491, 499, 506** – Again Mr Stringer is to check the reference and amend if required.

[103] **508 to 556 inclusive –** In relation to each of these paragraphs Mr Craig says that these do not provide any particular fact relevant to the claim or referred to in the publication, so all of these paragraphs should be struck out. All these paragraphs contain the particulars on which Mr Stringer relies in support of his defence of honest opinion. For reasons I have already given I am not prepared to strike out any of this material on the grounds that it is not relevant to the claim. As noted by the learned Judge in the judgment dated 4 March,[16] pleading particulars of a defence of truth, or a defence of honest opinion, is an area where the pleadings are particularly important. It is essential, therefore, that Mr Stringer give to Mr Craig full and clear particulars of the facts on which he will rely to substantiate his defence of honest opinion (and, elsewhere in his defence, truth). Mr Craig says that the particulars given do not provide any fact that was referred to in the publication in question. Mr Stringer is to review each and every one of the particulars in these paragraphs to ensure that they contain the full particulars on which he relies to support the defence of honest opinion. If that is as they presently stand, so be it.

[104] As noted by the learned Judge in the judgment dated 4 March, ss 38 to 40 of the Defamation Act 1992 require defences of truth and honest opinion to be particularised and pleaded separately. Mr Craig criticises the pleadings in paragraphs 157.1, 157.4 and 176.4 as presenting a defence of truth, which must be separately pleaded. Mr Stringer has pleaded a defence of truth elsewhere in the document. It is correct that there are references to truth in these paragraphs, but the stance taken by Mr Craig in relation to these paragraphs is unduly technical. I do not find these pleadings objectionable and they may stand.

[105] Mr Craig says that in portions of paragraphs 176.3, 233.1 and 243.6 Mr Stringer is attempting to plead or argue an alternative meaning of words, and/or is making a submission. I do not find this criticism justified in relation to paragraph 176.3. To the extent that this also pleads truth, I find it unobjectionable for the reasons given in the preceding paragraph.

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16 *Strike-out Judgment*, above n 11, at [18] and [19].

[106] Paragraph 233.1 does appear to attempt to argue an alternative meaning and to that extent it should be separately pleaded as an affirmative defence. I reject Mr Craig's second allegation that this paragraph contains a submission.

[107] The same applies in relation to paragraph 243.6.

[108] In relation to paragraphs 18, 30, 41, 50, 59, 79, 89, 99, 189, 198, 208 and 218 Mr Craig says that Mr Stringer is putting his reputation in issue which is an affirmative defence which must be separately pleaded.

[109] Mr Craig also criticises paragraph 560, which is beneath a heading "Notice of Evidence of Bad Reputation".

[110] Section 30 of the Defamation Act 1992 provides that a defendant may prove, in mitigation of damages, specific instances of misconduct by a plaintiff in order to establish that the plaintiff is a person whose reputation is generally bad in the aspect to which the proceedings relate. If Mr Stringer is to rely on this section he must comply with it, that is to say he must plead specific instances of misconduct tending to establish the position stated.

[111] Section 42 provides that where a defendant intends to adduce evidence of specific instances of misconduct by a plaintiff, in order to establish that the plaintiff is a person whose reputation is generally bad in the aspect to which the proceedings relate, the defendant is to include in the statement of defence a statement that he intends to adduce that evidence.

[112] These provisions differ from the sections of the Act which relate to defences of truth and honest opinion which must be pleaded separately (s 40) and with particulars complying with s 38. Section 42 by contrast only requires that a defendant include in a statement of defence a statement within the terms of the section.

[113] It follows that a pleading that a plaintiff has a bad reputation in relation to the issues raised in the proceeding is not an affirmative defence requiring a separate

pleading. All that is required is that the statement of defence give notice in accordance with s 42. It follows that the criticisms made by Mr Craig of the paragraphs I have listed in paragraph [108] of this judgment are not well founded.

[114] For all that, I have some concern about the vagueness of some of the statements made in those paragraphs. Section 42 is clear. The statement of defence must give notice of intention to adduce evidence on specific instances of misconduct, so those instances must be stated.

[115] Paragraph 560 is the paragraph by which Mr Stringer seeks to comply with s 42. In my view this paragraph is a statement that Mr Stringer intends to adduce evidence to establish that Mr Craig is a person whose reputation is generally bad in relation to the issues raised in the proceeding. I accept Mr Craig's submission that existing bad reputation can only be alleged in relation to matters that are directly in issue in the claim. Mr Stringer is therefore to review paragraph 560 to ensure that is the case. Mr Craig goes on to say that "The broad non specific claims of the defendant are vexatious and prejudicial". I do not accept that. The list of intended topics of evidence does lack specificity in some respects, but s 42 does not require the evidence to be listed in evidence format, and a succinct summary will suffice. In my view some of the descriptions of the evidence are too vague – for example, "(b) Independent reports and party reports". Mr Stringer is to review this material and ensure that paragraph 560 contains a more detailed list of every element of evidence that he intends to adduce, that each relates only to the reputation of Mr Craig in relation to the issues raised in the proceeding, and that each is supported with sufficiently specific detail to put Mr Craig on notice that evidence will be led on that topic. Thus, and only by way of example, the reference to independent reports and party reports should specify which reports Mr Stringer will rely on and the instances of misconduct that evidence will be led on. The same applies to public statements and conduct by Mr Craig. I anticipate a materially longer and more detailed statement in relation to the topics of evidence that Mr Stringer will adduce.

Outcome

[116] I make the following orders:

(a) The application by Mr Stringer for further and better discovery is dismissed.

(b) The application by Mr Craig for further and better discovery is granted in the following terms:

> Mr Stringer is to give particular discovery of such of the emails to (and to the extent mentioned in part 4 of his present affidavit of documents, from) the persons named in part 4 within the date range of 1 November 2014 and 13 August 2015 as are relevant to issues pleaded in this case. This discovery is to be given in a supplementary affidavit of documents which is to be filed and served within 30 working days.

(c) I reserve leave to Mr Stringer to file a memorandum supported by an affidavit from a suitably qualified expert if, contrary to the evidence presently before the Court, access to emails on his damaged computers cannot in fact be gained.

(d) Mr Craig is to pay the costs of the attendances of the computer expert for the exercise of extracting the relevant emails from Mr Stringer's computers.

(e) The application by Mr Craig for non-party discovery by Social Media Consultants Limited is granted in terms of paragraph 2 of the application dated 13 June 2016.

(f) Mr Craig will pay the reasonable costs of SMC in complying with this order.

(g) The application by Mr Craig for leave to add additional causes of action is granted. An amended statement of claim in the form of the draft submitted to the Court will be filed and served within five working days. It is an express condition of this leave that Mr Craig will not make any further application for discovery, or any application for leave

to serve interrogatories, arising from the nine additional causes of action added to his claim by this amendment.

(h) The application by Mr Craig to serve further interrogatories is refused.

(i) The application by Mr Craig to strike out parts of Mr Stringer's defence is refused.

(j) Mr Stringer is to file and serve an amended statement of defence (titled "Second Amended Statement of Defence"). In this document he will plead to the second amended statement of claim which Mr Craig has leave to file. In the course of so doing he will comply with the directions in paragraphs [84] to [115] of this judgment to the extent that they require review and amendment of his existing statement of defence.

J G Matthews
Associate Judge