

**IN THE HIGH COURT OF NEW ZEALAND
AUCKLAND REGISTRY**

**CIV-2015-404-1845
[2016] NZHC**

UNDER the Defamation Act 1992

BETWEEN JORDAN HENRY WILLIAMS
Plaintiff

AND COLIN GRAEME CRAIG
First Defendant

AND NATHANIEL JOHN HESLOP, KEVIN
STITT, ANGELA MARIA STORR
Second Defendants

Hearing: 30 August 2016

Representation: PA McKnight and A Romanos for Plaintiff
SJ Mills QC and J Graham for first Defendant
DM Hughes and JVR James for First-named Second Defendant
Second Defendants, K Stitt and A Storr, self-represented

Rulings:

RULINGS OF TOOGOOD J
**[Rulings on issues addressed in interlocutory hearing on 30 August 2016 -
Results]**

[1] These are my rulings, so far as I have been able to give them, on the interlocutory matters argued by counsel in Rotorua on Tuesday, 30 August 2016. I acknowledge my gratitude to counsel and the parties for accommodating a hearing out of Auckland. Time has not permitted me to give fully reasoned decisions but I consider it desirable to inform the parties of my rulings to inform their preparation for a trial due to start on Monday.

Evidence of Nicky Hager

[2] I am satisfied that Mr Hager is qualified as an expert to give opinion evidence under s 25 of the Evidence Act 2006 for the purpose of providing assistance to the jury on the matters summarised by Mr McKay in his written submissions of 29 August 2016 at paragraph 15; namely:

- (a) Whether, based on his research and experience, he considers political blogs such as WhaleOil influence media stories in the mainstream national media; and
- (b) Whether, based on Mr Williams's responses to materials put to him, and Mr Hager's research and experience, he would expect someone as Mr Williams to be aware of the influence of political blogs such as WhaleOil on the mainstream national media.

[3] While the schedule to Mr Hager's draft brief provides some assistance in determining whether he is qualified to give expert opinion evidence, I doubt that the schedule should form part of his evidence at trial. It can be resorted to by him under cross-examination if his qualifications as an expert are challenged.

[4] I understand that a further brief of the evidence to be given by Mr Hager will be provided, probably after the principal evidence for the plaintiff has been given, but, in any event, in sufficient time to enable counsel for the plaintiff to challenge the admissibility of any aspect of it.

Objections to opinion evidence of Mr Bradbury

[5] I have decided that Mr Bradbury's animosity towards Mr Williams, as revealed by the contents of his draft brief of evidence, make it impossible for him to comply, in giving expert opinion evidence, with the overriding duty to assist the Court *impartially* on relevant matters within his area of expertise,¹ and to meet the requirement that he should not be an advocate for Mr Craig.²

[6] It follows that Mr Bradbury's evidence must be confined to purely factual matters that are relevant to issues in the trial.

Objections to Ms MacGregor's evidence

[7] I am satisfied on the basis of the alleged imputations which are admitted by Mr Craig, and his defences of truth and qualified privilege, that the substance (that is, the truth) of Ms MacGregor's allegations of sexual harassment and other conduct by Mr Craig is relevant to matters in issue. It was Mr Craig who, from the outset, characterised the allegations as false; a position he has maintained in the pleadings and his proposed evidence. Moreover, it would be wholly unrealistic, in the context of the case, for the first defendant to attempt to confine Ms MacGregor's evidence to supporting Mr Williams's evidence as to what he was told by her, and whether the disclosures Mr Williams made to the Board accurately reflected what he had been told.

[8] In the reasons for my ruling which I hope will be available to counsel tomorrow (or, if not, on Monday morning) I will address the extent to which I consider evidence about the proceedings of the Human Rights Review Tribunal will be relevant.

[9] While I accept it will be relevant for Ms MacGregor to give some brief evidence of the effect on her of both Mr Craig's allegedly defamatory statements forming the basis of Mr Williams's claim, and Mr Craig's subsequent conduct and later statements, that evidence as currently drafted contains a considerable amount of

¹ High Court Rules, Schedule 4, cl 1.

² High Court Rules, Schedule 4, cl 2.

irrelevant material about Ms MacGregor and her family which is not relevant to issues in the trial. To the extent that it is relevant, it is presently cast in such a way as to unfairly prejudice Mr Craig to an extent which is outweighed by its limited probative value.³

Evidence of Mr Stringer

[10] To the extent that Mr Stringer gives evidence tending to support the assertions by Mr Williams that the sexual harassment and other allegations made by Ms MacGregor are true, they are admissible as evidence of what was said, to his direct knowledge. In the time available I have not yet had an opportunity to study Mr Stringer's evidence with sufficient care to express a view now about how much of his evidence is inadmissible, but I will include my decisions in the reasons for ruling which I will deliver tomorrow.

Decisions of Human Rights Review Tribunal

[11] I am satisfied that s 50 of the Evidence Act 2006 prevents the admission of the decisions of the Human Rights Review Tribunal into evidence, either to prove that Mr Craig was untruthful about the substance of Ms MacGregor's allegations or as to his veracity generally. In any event, I am satisfied under s 37 of the Act that the evidence would not be substantially helpful to the jury in determining the issues at trial. The substance of the Tribunal's decisions can be put to Mr Craig in cross-examination for response without attributing any conclusions on those matters to the Tribunal.

[12] It follows that the decisions should not form part of the common bundle.

Evidence of Mr Heslop and his witnesses.

[13] It is not clear to me to what extent the proposed Heslop evidence is admissible in the event of the discontinuance against the second defendants. Katz J will need to consider that issue in light of counsel's approach to that evidence if the

³ Evidence Act 2006, s 8(1)(a).

discontinuance takes effect. I observe, however, that the evidence of Mr Edwards at paragraph 16, and of Mr McLaughlin at paragraph 13, is inadmissible evidence of their opinions of Mr Williams's character rather evidence than as going to his reputation generally.



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Toogood J