

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

CIV-2015-404-1845

UNDER the Defamation Act 1992
BETWEEN JORDAN HENRY WILLIAMS
Plaintiff
AND COLIN GRAEME CRAIG
Defendant

Hearing: 30 August 2016
Representation: PA McKnight for Plaintiff
J McKay for Defendant
Rulings: 1 September 2016
Reasons: 6 September 2016

REASONS FOR RULINGS OF TOOGOOD J
[Rulings given on 1 September 2016]

[1] This ruling provides reasons for the results rulings I delivered in the proceeding on 1 September 2016 concerning the evidence of Mr Hager, Mr Bradbury, Ms MacGregor and Mr Stringer.

Evidence of Mr Hager

[2] I determined Mr Hager was qualified as an expert to give opinion evidence on the matters set out at [2](a) and (b) of my Ruling dated 30 August 2016. Although I was not persuaded that the extensive account of Mr Hager's writings set out in the schedule to his draft brief was relevant evidence which should be adduced at trial, I took it into account in determining the extent of his expertise on matters likely to be in issue. I was satisfied that Mr Hager's work as an investigative journalist writing on matters of political significance, and his familiarity with the use of "blogging" to achieve political ends, qualified him as "a person who has specialised knowledge or skill based on training, study, or experience"¹ on matters relevant to the likely issues at trial.

[3] Mr Hager's knowledge of those topics, considered against the likelihood that the members of the jury would not necessarily be aware of the nuances of political discourse in the Internet era, led me to conclude that his opinions would be of substantial help to the jury on:

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

¹ Evidence Act 2006, s 4.

[4] I understand that Mr Hager's evidence will be re-drafted in light of the evidence at trial. It will be a matter for Katz J, as the trial Judge, to rule on any objection as to relevance.

Evidence of Mr Bradbury

[5] I consider that adequate reasons have been given for my rejection of the proposition that Mr Bradbury may be called to give opinion evidence as an expert. I identified in Minute (No. 25) dated 26 August 2016 that it was plain that Mr Bradbury entertained negative personal views of Mr Williams. I referred to paragraphs 20 and 21 of his draft brief in which he described Mr Williams having acted deceptively as an act of "pure retaliation" against him. I also referred to paragraph 36 in which he accuses Mr Williams of lying to him and acting deceptively, and paragraph 37 in which he accuses Mr Williams of bullying, threatening and manipulative behaviour. I determined that, having regard to the content of his draft brief of evidence, Mr Bradbury would not be able to comply with the overriding duty of an expert witness to assist the Court impartially on relevant matters within his area of expertise, or to meet the requirement that he should not be an advocate for Mr Craig as required by the Code of Conduct for expert witnesses under the High Court Rules.²

[6] I ruled that Mr Bradbury's evidence must be confined to purely factual matters relevant to issues in the trial. The remaining paragraphs of Mr Bradbury's brief are of limited scope, and the trial issues are likely to be more clearly defined by the evidence of the plaintiff's witnesses given at trial, including cross-examination. I consider that Katz J will be better placed to rule on any questions of relevance and hearsay raised in relation to the balance of Mr Bradbury's proposed evidence.

Ms MacGregor's evidence

[7] I was satisfied on the basis of the alleged imputations which are admitted by Mr Craig; his defences of truth and qualified privilege; and the evidence he proposes to give, that the substance (that is, the truth) of Ms MacGregor's allegations of sexual

² High Court Rules, Schedule 4, cl 1 & 2.

harassment and other conduct by Mr Craig is relevant to matters likely to be in issue at the trial.

[8] I observed that it was Mr Craig who, from the outset, characterised the allegations as false. In making that observation I took into account:

- (a) the content of the Remarks pleaded at paragraph 27 of the second amended statement of claim;
- (b) Mr Craig's admission of the imputation, pleaded at paragraph 30.2 of the second amended statement of claim, that the remarks meant that Mr Williams had "lied by falsely alleging that Mr Craig has sexually harassed one or more persons", and the pleadings regarding the imputations generally;
- (c) the plaintiff's allegations about the content of the Leaflet at paragraph 35 of the second amended statement of claim;
- (d) the imputations pleaded by the plaintiff at paragraph 38 of the second amended statement of claim;
- (e) Mr Craig's admissions of paragraphs 38.2 and 38.11 to 38.14 inclusive of the second amended statement of claim;
- (f) Mr Craig's first affirmative defence in which he alleges at paragraphs 48 and 50 that the allegations that he had sexually harassed Ms MacGregor during the period which she had worked as his press secretary and other allegations about his relationship with Ms MacGregor were false;
- (g) Mr Craig's defence of truth to the allegations that Mr Williams had falsely accused him of sexual harassment and other conduct towards Ms MacGregor as pleaded; and

- (h) Mr Craig's plea of honest opinion based on the truth of his assertions which included allegations that Mr Williams had made false allegations about his conduct with Ms MacGregor.

[9] Further, I was satisfied that Mr Craig had put the nature of his relationship with Ms MacGregor in issue by submitting a brief of evidence, supporting his pleadings, which traverses that relationship and its history in some detail.

[10] I considered also that it would be wholly unrealistic, in the context of the case, for Mr Craig 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.

[11] I concluded on that basis that, subject to proper objections on the grounds of hearsay, paragraphs 1 to 80 of Ms MacGregor's brief of evidence dated 30 August 2016 are relevant and admissible.

[12] I said in my Ruling that I accepted it would 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. Such evidence is capable of being regarded by the jury as lending credibility to her testimony as to the relevant facts. Ms MacGregor's evidence in that regard should be limited to ensure that it is not unfairly prejudicial to Mr Craig to an extent which is outweighed by its probative value.

[13] To the extent that Ms MacGregor's evidence at paragraphs 81 to 86 contains conclusions, it should be edited to avoid expressions of opinion on matters which may be the subject of submissions to, and conclusions drawn by, the jury. Ms MacGregor is entitled, however, to give evidence of fact, from her direct knowledge, of the inferences drawn by others from Mr Craig's statements in the Remarks and the Leaflet: I refer particularly to paragraph 85.

[14] The matters addressed by Ms MacGregor at paragraphs 87 to 91 appear to me to be relevant to matters in issue, although Katz J is likely to be better placed to make a determination of their relevance as the issues are refined in the course of the trial.

Evidence of Mr Stringer

[15] In my Ruling, I noted that, 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, his statements will be admissible as evidence of what was said to his direct knowledge. Facts of which Mr Stringer has direct knowledge are also relevant to prove Mr Williams's statements of relevant events which occurred within the Conservative Party at material times.

[16] The second defendant has made specific challenges to paragraphs in Mr Stringer's brief of evidence. I address them as follows:

Paragraph 12: Unless restricted to Mr Stringer's personal observations, he cannot give evidence about how others felt. To do so is hearsay.

The objection is valid. Mr Stringer may give evidence of what he was told only as evidence of the fact that the statement or statements were made.

Paragraphs 13-20: These paragraphs do not relate to facts in issue and objection is taken on the grounds of relevance.

In general terms, the evidence is admissible as a response to Mr Craig's allegations that Mr Stringer orchestrated his dismissal from leadership of the Conservative Party in conjunction with Mr Williams and Mr Slater. The paragraphs plainly contain statements of opinion which are inadmissible. I refer, by way of example, to his assertion at paragraph 13 that it was clear to him, "that Mr Craig lied to the Board over a long period of time", and his allegation that Mr Craig's assurances that Ms MacGregor's concern were just a matter of employment issues and pay rates was untrue. It is correct that Mr Stringer may not give evidence about how other Board members felt, but

he may give evidence of the fact that certain statements were made to him by Board members, from which such an inference is available.

Paragraph 25: Mr Stringer's statement of belief in the second sentence is not factual evidence and is inadmissible.

The words in paragraph 25, "This was never explained to the Board" are admissible, but the remainder of the paragraph is opinion evidence and inadmissible by virtue of s 23 of the Evidence Act.

Paragraph 27: The third sentence is irrelevant and unfairly prejudicial.

As evidence explaining the Board's decision to require Mr Craig to resign as leader, Mr Stringer is entitled to give his reaction to being told that the leader of a conservative movement was writing what he (Mr Stringer) considered to be secret love letters to his secretary and that Mr Craig told him that Ms MacGregor was obsessed with him and that nothing was going on in their relationship.

Paragraph 30: This paragraph is irrelevant and/or unfairly prejudicial.

[17] I consider the comments at paragraph 30 are relevant as explaining Mr Stringer's observations and the views he held of Mr Craig's conduct as leader of the Conservative Party. They go to Mr Craig's state of mind at relevant times which evidence goes to his defence of qualified privilege.

Paragraph 31: This paragraph is irrelevant or unfairly prejudicial.

[18] While expressed in somewhat extravagant language, the paragraph purports to include statements of fact.

Paragraphs 33-37: These paragraphs are irrelevant.

[19] The objection is well-founded. At this stage of the proceeding I am unable to determine what relevance the evidence at paragraphs 35-37 has to

matters likely to be in issue at the trial. Katz J will be better placed to rule on this submission in the course of the trial.

Paragraphs 38-44: These paragraphs are irrelevant.

[20] Paragraph 38 is relevant to the allegation that Mr Williams was associated with Mr Slater and Mr Stringer in a campaign to remove Mr Craig from the leadership of the Conservative Party. Evidence that Mr Stringer thinks Mr Williams to be "a fair, legally minded person" is opinion evidence which is not admissible. The balance of paragraph 39 appears to be evidence of fact relevant to the allegation that Mr Williams, Mr Slater and Mr Stringer conducted a campaign to remove Mr Craig from the leadership.

[21] I am not satisfied, at this stage of the proceedings, that paragraphs 40-44 of the brief of evidence are relevant to a fact likely to be in issue at the trial. They should be excluded unless Katz J rules otherwise in the context of the evidence and issues at trial.

Paragraph 46: The paragraph is irrelevant as it is non-responsive to the matter on which Mr Stringer's reply has been sought.

[22] Katz J will be better placed to determine the relevance of the paragraph in the context of the evidence and issues at trial.

A handwritten signature in black ink, appearing to read 'Toogood J', is written over a horizontal dotted line.

Toogood J