IN THE HIGH COURT OF NEW ZEALAND
AUCKLAND REGISTRY

I TE KŌTI MATUA O AOTEAROA
TĀMAKI MAKAURAU ROHE

CIV-2017-404-1065
[2018] NZHC 2520

BETWEEN	COLIN GRAEME CRAIG Plaintiff
AND	JORDAN HENRY WILLIAMS Defendant

Hearing:	19 March 2018
Further Submissions:	14 May 2018
Counsel:	C G Craig in person P A McKnight for Defendant
Judgment:	26 September 2018
Reissued:	9 October 2018

RECALLED AND RE-ISSUED JUDGMENT OF ASSOCIATE JUDGE SMITH

This judgment was delivered by me on 9 October 2018 at 11.00am, pursuant to r 11.5 of the High Court Rules

Registrar/Deputy Registrar

Solicitors / Counsel:
Langford Law, Wellington
P A McKnight, Wellington
A J Romanos, Wellington

Copy to:
Mr C Craig

The following judgment was issued on 26 September 2018. Interim suppression orders were then made at the request of the defendant. After receiving memoranda from the parties and hearing from them by telephone on 8 October 2018 I recalled my judgment. The judgment is now re-issued on a "public" basis. The only change is the addition of the Addendum at the end of the judgment.

[1] The defendant (Mr Williams) applies for the following orders:

(a) striking out the plaintiff's (Mr Craig's) claim as an abuse of process;

(b) if the proceeding is not struck out, transferring the proceeding to the Wellington Registry of the Court; and

(c) if the proceeding is not struck out, ordering Mr Craig to provide security for Mr Williams' costs.

[2] Those orders are opposed by Mr Craig.

The parties

[3] Mr Craig is an Auckland businessman, who was formerly the leader of the Conservative Party of New Zealand. Mr Williams is the executive director of the Taxpayers Union.

The claims made by Mr Craig

[4] On 29 May 2017, Mr Craig filed this proceeding ("the Craig proceeding") against Mr Williams, alleging that Mr Williams made defamatory statements about Mr Craig in the period between 26 May 2015 and 26 June 2015.

[5] Mr Craig's statement of claim pleads six separate causes of action, each relating to statements allegedly published by Mr Williams. I will return to the detail of Mr Craig's allegations later in this judgment, but for the moment it is enough to say that the publications in question consisted of:

(a) statements made in a text message from Mr Williams to Ms Christine Rankin, the former Chief Executive of the Conservative Party, on or about 26 May 2015;

(b) statements made by Mr Williams to Mr Dobbs and Mr Day (both then Board members of the Conservative Party) at a meeting between Mr Williams and those gentlemen on or about 18 June 2015;

(c) statements made by Mr Williams in a blogpost for the Whale Oil Blog on or about 19 June 2015;

(d) statements made by Mr Williams in conversations with Mr John Stringer, then a board member of the Conservative Party, on or about 19 June 2015;

(e) statements made by Mr Williams in an email sent to Mr Stringer on 26 June 2015; and

(f) further publications made by Mr Williams on the Whale Oil Blog between 19 June 2016 and 30 June 2016.

[6] On each of his causes of action Mr Craig seeks a declaration under s 24 of the Defamation Act 1992 that Mr Williams is liable in defamation to Mr Craig for publishing the relevant statements. Damages, including aggravating damages, are also sought on each cause of action.

Mr Williams' statement of defence and strike-out application

[7] Mr Williams has filed a brief statement of defence, in which he says that all of the publications sued upon were published before 29 September 2015. He says that the proceeding was not served until 29 September 2017, and for that reason is to be regarded as not having been commenced within the two-year limitation period prescribed by ss 11 and 15 of the Limitation Act 2010.

[8] Mr Williams said in his statement of defence that he reserved the right to plead a full statement of defence if his strike-out application, which was filed with his statement of defence, was unsuccessful.

[9] In the strike-out application Mr Williams relies on the limitation point, and a contention that the Craig proceeding is vexatious and has been brought for a collateral purpose. A supporting affidavit has been sworn by Mr Williams. He says that Mr Craig is raising in the Craig proceeding issues that were considered by the jury in an earlier defamation case between the parties ("the Williams proceeding"), in which Mr Williams was the plaintiff and Mr Craig was the defendant. Mr Williams says that the jury in the Williams proceeding clearly rejected Mr Craig's contentions in that case, and that it is an abuse of process for Mr Craig to repeat the same allegations in the Craig proceeding (noting that the allegations Mr Craig now makes in the Craig proceeding could have been pleaded as a counterclaim in the Williams proceeding if Mr Craig had chosen to do so).

The Williams proceeding

[10] Following a trial that ran for nearly four weeks in September 2016, a jury found for Mr Williams in the Williams proceeding, and awarded him damages of $1.27 million. The trial Judge declined to enter judgment in accordance with the jury's verdict, and she later set aside the verdict. She ordered a new trial of Mr Williams' claim on both liability and damages.[1]

[11] That judgment was the subject of an appeal to the Court of Appeal, and the Court of Appeal delivered its decision on 5 March 2018.[2] Judgment was entered for Mr Williams in accordance with the jury's verdict on liability, but an order was made directing a re-trial of Mr Williams' claim for damages. The Court of Appeal took the view that Mr Williams' claim had been pitched at a plainly extravagant level; an appropriate direction from the trial Judge would have been that the jury should consider an award of damages up to $250,000 for compensatory damages, including aggravation, and up to $10,000 for punitive damages.

---

1 *Williams v Craig* [2017] NZHC 724; [2017] 3 NZLR 215.
2 *Williams v Craig* [2018] NZCA 31.

[12] The following summary of the background facts is taken substantially from the Court of Appeal judgment in the Williams proceeding.

[13] Ms Rachel MacGregor had been Mr Craig's secretary while he was leader of the Conservative Party. She resigned suddenly in September 2014, two days before the general election.

[14] Later that year Ms MacGregor disclosed to Mr Williams (who was described by the Court of Appeal as a former supporter of the Conservative Party and its political philosophy of fiscal and social conservatism) that Mr Craig had sexually harassed her, including by:

(a) sending her unsolicited letters and cards of a deeply personal nature with romantic poetry and compliments about her physical and personal attributes;

(b) falling asleep on her lap once during the 2011 general election campaign, and telling her subsequently that he dreamed or imagined himself lying or sleeping on her legs which helped him sleep; and

(c) stopping salary payments because of a dispute over her pay rate which she believed was attributable to her failure to reciprocate his romantic interest.

[15] Ms MacGregor alleged that the nature of Mr Craig's harassment started off as comments and shoulder touches but progressed to kissing and physical affection on the night of the 2011 election. She said Mr Craig sent her inappropriate text messages; would change his clothes in front of her and say he wanted her to move into an apartment above his office; had installed a curtain in her office which he would often close when they were together; and had entered her hotel room uninvited and without knocking, leaving her uncomfortable about staying in the same building when they travelled together.

[16] Mr Craig denied any impropriety with Ms MacGregor. At the trial, he acknowledged there was an emotionally close and intense mutual friendship, but said that it was kept on a purely brother/sister basis. He denied any sexual harassment, although he acknowledged that his behaviour had been inappropriate at times for a married man. He pointed out that there had been no intimate or inappropriate physical contact other than on election night 2011. For her part, Ms MacGregor acknowledged that Mr Craig had not sent her any sexually explicit ("sext") messages.

[17] Mr Williams agreed to receive Ms MacGregor's disclosures in confidence, and initially he maintained that confidence, but following a mediation between Mr Craig and Ms MacGregor in May 2015, at which they reached a confidential agreement acknowledging a degree of inappropriate conduct, Mr Williams began to divulge details of Mr Craig's alleged sexual harassment of Ms MacGregor to senior figures in the Conservative Party. As the Court of Appeal put it, Mr Williams did not consider that Mr Craig was fit for leadership, and he began to mount a campaign to remove Mr Craig.

[18] In her decision on Mr Craig's application for a re-trial on both liability and damages, Katz J said she was satisfied that Mr Williams' accounts to others of Mr Craig's alleged sexual harassment of Ms MacGregor were more serious than the account Ms MacGregor herself gave at the trial. The Judge said:

> [13] … [Mr Williams] told [senior Conservative Party figures] that Mr Craig had sexually harassed Ms MacGregor, and showed some of them Mr Craig's letters to Ms MacGregor. He referred repeatedly to Mr Craig having sent sext messages to Ms MacGregor, an allegation that Mr Williams acknowledged at trial was particularly damaging. Mr Williams also indicated to people that he had copies of the sexts, which he had not. He claimed that Mr Craig had made a big payout to settle Ms MacGregor's claim in the Tribunal.
>
> [14] Witnesses at trial also claimed (but Mr Williams disputed) that he had told them that the election night incident was non-consensual. Indeed one of Mr Williams' own witnesses, Mr [John] Stringer, said that Mr Williams told him that Mr Craig had sexually assaulted Ms MacGregor on election night in 2011. Other witnesses said that Mr Williams had told them that they had to keep his identity secret as he was breaching the confidentiality of the Tribunal processes, that Mr Craig had put pressure (including financial pressure) on Ms MacGregor to sleep with him, and that Ms MacGregor had resigned as a result of Mr Craig's sexual harassment in 2013 but had been lured back by an increased pay offer. Some of this evidence was supported by contemporaneous file notes made by the relevant witnesses.

[19] By mid-to-late 2015, Mr Williams and Ms MacGregor had become romantically involved. But Ms MacGregor became suspicious that Mr Williams was breaching her confidence, and she requested him not to disclose Mr Craig's correspondence which she had given him, and that he return any copies of that correspondence that he might have taken. She said that she did not want these documents to be used against Mr Craig: she wanted "this whole thing to go away and for there to be no more trouble".

[20] As the Court of Appeal noted, Mr Williams ignored Ms MacGregor's request, and persisted. On 19 June 2015, he sent a draft blogpost to Mr Cameron Slater, for publication on the Whale Oil website. The draft blogpost made allegations of sexual harassment against Mr Craig. The Whale Oil website published this blogpost immediately prior to (or possibly simultaneously with) a press conference called by Mr Craig to announce he was stepping aside from the Conservative Party leadership. (That occurred on 19 June 2015).

[21] Over the course of the next three days, Whale Oil published a number of further articles containing allegations against Mr Craig and speculating about the leadership of the Conservative Party. In her decision on the re-trial application, Katz J found Mr Williams was involved in instigating or drafting most of that material.

[22] Following his stepping down from the leadership of the Conservative Party, Mr Craig launched a counter-offensive against Mr Williams and others. He called a press conference on 29 July 2015, at which he read out a statement in which he said that individuals had been running a defamatory strategy against him, as part of their "dirty politics agenda". He referred to what he described as false claims that he had been guilty of sexual harassment, and asserted that he had never sexually harassed anyone. He also rejected claims which had been made (by the "Dirty Politics Brigade") that he had made a pay-out or pay-outs to "silence the supposed victims". Specifically in respect of Ms MacGregor, he acknowledged that he had paid her the sum of $16,000, being part-payment of her final invoice.

[23] In his press statement, Mr Craig identified three people who he said were involved in the campaign against him. One of them was Mr Williams. Mr Craig said that he would be commencing proceedings against all three.

[24] Mr Craig concluded his press statement by saying:

> Today the line is drawn. Either the dirty politics brigade is telling the truth or I am. The New Zealand public needs certainty about the truth of these claims. This is about who is honest. Is Colin Craig telling the truth or is it the Dirty Politics Brigade. Let the courts judge this matter so we know whom to trust.

[25] About one week after the press conference, Mr Craig made available for the press a leaflet ("the Leaflet"). The Leaflet, which was also distributed to 1.6 million households in New Zealand, followed similar themes to those adopted by Mr Craig at the press conference. He referred to "corrupt people", and the "Dirty Politics Brigade", who were said to be seeking to hijack the political debate in New Zealand. He went on to describe Mr Williams as "a well-known member of the Dirty Politics Brigade". He said that it was Mr Williams who gathered the initial information and accusations against Mr Craig, Mr Williams having obtained the information from Ms MacGregor, with whom he was then in a romantic relationship.

[26] In the Leaflet, Mr Craig accused Mr Williams of building "a compelling story" of Ms MacGregor's alleged harassment which he supported by an "attack dossier" of information. Mr Williams' presentation of events was said to be in part Ms MacGregor's story, as Mr Williams says she told it to him, some personal notes by Ms MacGregor relating to the matter, and selected details of alleged correspondence from Mr Craig to Ms MacGregor.

[27] False allegations by Mr Williams were said to have included claims that Mr Craig sent Ms MacGregor sext messages, that Ms MacGregor had resigned due to harassment but was lured back by big money, and that Mr Craig stopped paying Ms MacGregor for six months and put sexual pressure on her with requests she stay the night.

[28] Mr Craig alleged in the Leaflet that once Mr Williams had put together the "attack dossier" he provided the details to Mr Slater, who ensured that there would be a media agenda at work against Mr Craig.

[29] Mr Craig also alleged in the Leaflet that Mr Williams had had confidential meetings/discussions with some of Mr Craig's key supporters and board members. In these "confidential" discussions Mr Williams was said to have attacked Mr Craig's character, undermining support for him. Mr Craig alleged that Mr Williams was always careful that Mr Craig did not know of the meetings, that no copies of the supposed "evidence" were taken, and that Mr Williams' involvement was kept secret.

[30] Part of the Leaflet distributed by Mr Craig narrated 14 alleged lies, which were attributed largely to Mr Williams. Another part of the Leaflet described "the campaign of lies", and a further part was described as an "Exclusive Interview: With Mr X".

[31] The Court of Appeal noted that the Mr X interview had assumed some importance in the trial. Mr X's identity was anonymous, but he had been portrayed in the Leaflet as somebody closely associated with Mr Craig and others. The interviewer was quoted as asking Mr X questions of a leading nature, favourable to Mr Craig. Mr X's reported answers were extensive, and always favourable to Mr Craig.

[32] The interview was in fact fictional, and Mr Craig admitted at the trial that it was a fabrication. There was no Mr X, or to the extent that there was, he was Mr Craig himself (who claimed he was merely articulating "information and viewpoints" of others).

[33] Mr Williams sued Mr Craig, contending that certain statements made by Mr Craig about Mr Williams in the press release ("the Remarks"), and in the Leaflet, were false and defamatory of Mr Williams. Mr Williams pleaded that in their natural and ordinary meaning, the Remarks meant that Mr Williams:

1. was, and is, a party to a "*strategy*", "*agenda*" and "*web of deceit*" to spread lies about Mr Craig for the deliberate purpose of defaming him – that is, to falsely and maliciously denigrate Mr Craig's reputation;

2. lied by falsely alleging that Mr Craig has sexually harassed one or more persons;

3. lied by falsely alleging Mr Craig has made a pay-out (or pay-outs) of large sums of money to silence Mr Craig's "*victims*" of sexual harassment;

4. lied by falsely alleging Mr Craig has sent sexually explicit text messages or "*SEXTS*";

5. lied by falsely alleging that there is another victim of Mr Craig's sexual harassment other than Ms MacGregor;

6. is dishonest;

7. is deceitful;

8. cannot be trusted; and

9. lacks integrity.

[34] Mr Williams pleaded that certain statements made in the Leaflet, in their natural and ordinary meaning, meant that Mr Williams:

1. was, and is, a party to a "*strategy*" to spread lies about Mr Craig for the deliberate purpose of defaming him – that is, to falsely and maliciously denigrate Mr Craig's reputation;

2. lied by falsely alleging that Mr Craig had sent Ms MacGregor "*SEXT*" messages;

3. lied by falsely alleging that Ms MacGregor had resigned due to harassment but was lured back by big money;

4. lied by falsely alleging that Mr Craig stopped paying Ms MacGregor for 6 months and put sexual pressure on her with requests she stay the night;

5. has made allegations about Mr Craig relating to sexually explicit texts, resignations, and payments which Mr Craig can easily prove to be false;

6. prepared fictitious material and allegations for the purpose of attacking Mr Craig's reputation, undermining his career and embarrassing him;

7. gathered a dossier of information and allegations relating to Mr Craig knowing them to be false;

8. made up allegations relating to Mr Craig in an attempt to assassinate Mr Craig's character;

9. is a serial liar;

10. is dishonest;

11. is deceitful;

12. cannot be trusted; and

13. lacks integrity.

[35] In respect of the "interview with Mr X", Mr Williams contended that, in publishing the interview Mr Craig made representations that were knowingly dishonest and deceitful, or he was reckless in that regard. The fabrication of the existence and context of the Mr X interview were said to be part of Mr Craig's strategy designed to deceive the general public into believing he was a man of integrity, honesty and probity, in contrast to his accusers.

[36] Mr Craig's defensive strategy at the trial of the Williams proceeding was based largely on proving the truth of his statements that Mr Williams was a liar, by showing his bad reputation for being dishonest, deceitful, lacking in integrity, and untrustworthy on issues of political interest. This in turn was intended to disprove the allegation of sexual harassment against Mr Craig.[3]

[37] A defendant whose character or conduct has been attacked is entitled to a privilege against liability in his or her answer, provided the statements are made bona fide and are relevant to the allegations made in the original attack. As the Court of Appeal noted, the response can be either strictly defensive or by way of counter-attack, enabling the person to speak freely and answer to the same public audience which received the original attack. A certain freedom or latitude is appropriate to allow the degree of vindication which is fairly warranted by the occasion.[4]

[38] However, the "defence or counter-attack" form of qualified privilege can be lost if the defendant was predominantly motivated by ill-will towards the plaintiff in publishing the matter that is the subject of the proceeding, or if the defendant otherwise took improper advantage of the occasion of publication.[5] In this case, Mr Williams claimed that Mr Craig was predominately motivated by ill-will, and accordingly could not rely on the protection of the privilege.

[39] The trial judge ruled, as a matter of law, that the allegedly defamatory statements made by Mr Craig *were* published by him on occasions of qualified privilege.[6] The issue of whether that privilege was lost because Mr Craig was motivated by ill will towards Mr Williams in making the statements was left to the jury.

[40] The jury rejected the qualified privilege defence, and awarded damages against Mr Craig.

---

3 At [27]-[28].
4 At [82].
5 Defamation Act 1992, s 19(1).
6 See *Williams v Craig* [2016] NZHC 2496, in which Katz J gave her reasons for ruling that the publications were made on occasions of qualified privilege.

[41] On the appeal from the decision of Katz J directing a new trial, the Court of Appeal described the implications of the jury's damages award (insofar as it reflected a rejection of Mr Craig's qualified privilege defence) as follows:[7]

> [44] Second, in order to find that Mr Craig acted with ill will in responding to Mr Williams' attack, the jury must have found: Mr Craig had in fact sexually harassed Ms MacGregor; that Mr Craig did not genuinely believe otherwise, and that, as a consequence, Mr Craig's characterisation of Mr Williams as a liar for making the allegation was false to Mr Craig's knowledge and one in which he did not have a genuine belief. The jury must also have found … that in making the wider attack on Mr Williams' reputation Mr Craig was predominantly motivated by ill will. However, given the centrality that the sexual harassment issue assumed at the trial, we find it likely that the jury's implicit finding of sexual harassment also dominated the damages award. That being so, Mr Williams' related allegations of being defamed by being called dishonest, deceitful and untrustworthy for making the allegation, assumed secondary importance. In a sense, Mr Craig's attack on Mr Williams became a collateral issue.
>
> (Footnotes omitted.)

[42] In considering how the judge might direct the jury on a retrial limited to damages, the Court of Appeal said that the judge could properly direct the jury to the effect that: [8]

> (a) Mr Craig defamed Mr Williams in two separate publications, the Remarks and the Leaflet, at least a week apart, by stating that Mr Williams had acted dishonestly, untruthfully and deceitfully for making the allegation that Mr Craig had sexually harassed Ms MacGregor, which was necessarily rejected by the first jury;
>
> (b) Mr Williams is entitled to a compensatory award … taking into account that:
>
> …
>
> – some of the allegations made by Mr Craig about Mr Williams' conduct relating to the defamatory statements had elements of truth in that some aspects of his conduct had been dishonest, deceitful and untrustworthy, but not in making the allegation of sexual harassment;
>
> – Mr Craig's statements were made in a political context and in a counter-attack to criticisms made by a man whose own attitude to women was questionable;
>
> …

---

7 *Williams v Craig*, above n 2.

8 At [78].

[43] Later in its judgment, the Court of Appeal said:[9]

> … the jury must have accepted Ms MacGregor's evidence that Mr Craig did sexually harass her, and inferred that he knew that was what he was doing. It must also have been satisfied that Mr Craig's statement that Mr Williams lied in making the initial allegation was itself a deliberate falsehood. The evidential foundation for these findings is beyond question.

[44] In his statement of claim in the Williams proceeding (as finally amended) Mr Williams specifically pleaded that Mr Craig had not filed any formal claim against Mr Williams, despite repeated assurances to the media that he would do so.

[45] In response, Mr Craig referred in his statement of defence to certain communications between the parties between 31 July 2015 and 14 August 2015 (when Mr Williams filed the Williams proceeding), and then said:

> 16.1 he intended to bring proceedings against [Mr Williams] to ensure that the issues he considered to be important about how politics is conducted in New Zealand (often called "dirty politics") were heard and subjected to proper scrutiny;
>
> 16.2 whether proceedings against [Mr Williams] were (and are) necessary depended on the extent to which those issues were and remained in issue in these proceedings;
>
> 16.3 at present, those issues are central to this proceeding and if that remains the position and based on current information he does not intend issuing defamation proceedings against the plaintiff.

The judgments of Katz J in the Williams proceeding

[46] At the end of the evidence given at trial in the Williams proceeding, Her Honour heard legal argument on the question of whether the Remarks and the Leaflet were published on occasions of qualified privilege. On 26 September 2016 she ruled that they were. The jury then retired to consider their verdict, and, as we have seen, awarded Mr Williams substantial damages (indeed, all that he had claimed). Her Honour gave her reasons for her privilege ruling in a later judgment delivered on 19 October 2016.[10]

---

9 At [116].

10 *Williams v Craig*, above n 6.

[47] In her reasons for judgment, Katz J noted that it is for the Judge to determine whether the defamatory statements were made on an occasion of privilege, but the judge may only do so (where the trial proceeds before a jury) on the basis of undisputed facts. If factual issues need to be resolved in order for the Judge to determine the issue, then those factual issues must be put to the jury for determination. Only then can the Judge determine whether the occasion was one of qualified privilege.[11]

[48] Her Honour found that it was possible, on the basis of undisputed facts, to determine that the Remarks and the Leaflet were both published on occasions of qualified privilege.

[49] The following were the facts (relevant to the issues with which I am now concerned) which Her Honour found (in her privilege ruling) were undisputed:

(a) Mr Williams' statements to Mr Dobbs, the Conservative Party Board Chairman, and others that Mr Craig had been sending sext messages to Ms MacGregor was not true. There was no evidence that Mr Craig ever sent the alleged text, or any other sexually explicit text, or indeed any letters or cards containing sexually explicit material. Nor, apart from a relatively minor and fleeting incident on election eve 2011, was there any evidence to suggest that there was ever any physical contact between Mr Craig and Ms MacGregor that was overtly sexual in nature.[12]

(b) Without Ms MacGregor's knowledge or consent, Mr Williams flew to Hamilton and met with Mr Dobbs and Mr Day. Mr Williams told Messrs Day and Dobbs that Mr Craig had sexually harassed Ms MacGregor over an extended period, and that he had kissed Ms MacGregor and touched her in a sexual way on election night 2011. The undisputed evidence at trial was that the 2011 election night incident was consensual.

---

11 At [5].
12 At [29].

(c) Mr Williams told Mr Day and Mr Dobbs that Ms MacGregor had settled the sexual harassment claim for a significant sum, and that Mr Craig had stopped paying Ms MacGregor for a period prior to her resignation, but had lent her money, with the effect or intent of putting pressure on her.

(d) Mr Williams showed Mr Dobbs and Mr Day a bundle of letters and cards Ms MacGregor had received from Mr Craig, together with some handwritten notes Ms MacGregor had made (together, "the dossier"). The general tenure of the disclosures made to Mr Dobbs and Mr Day on 18 June 2015 was that Mr Craig's attention had been unwelcome and unreciprocated by Ms MacGregor (and hence constituted sexual harassment).

(e) On 19 June 2015 Mr Williams sent a draft blogpost to Cameron Slater for publication on the Whale Oil website. Mr Williams used the nom-de-plume "Concerned Conservative". The draft blogpost made allegations against Mr Craig of sexual harassment, a pay-out to a former staff member, and inappropriate touching. Mr Williams attached (without Ms MacGregor's knowledge or consent) a photo of a poem Mr Craig had sent to Ms MacGregor, and a photograph of Mr Craig's signature at the bottom of a letter to Ms MacGregor. Mr Williams acknowledged that he knew and intended that the publication of the blogpost would attract all sorts of media attention, and that his intention was that this would put Mr Craig under pressure and place the Board in a position where it would be forced to sack Mr Craig.

Mr Williams remained in frequent communication with Mr Slater following the publication of the blog. He provided Mr Slater with a list of questions that could be asked of Mr Craig, including such questions as: "Did you try to use a financial dispute to try to pressure a young staff member to sleep with you?"

(f) Mr Williams did attack Mr Craig's character and reputation in the first six months or so of 2015. The disclosures that Mr Williams made were undoubtedly damaging to Mr Craig's reputation, as Mr Williams acknowledged.

[50] In her judgment on Mr Craig's application for a new trial,[13] Katz J made some further observations on what had and what had not been proved at the trial. Her Honour noted that the undisputed evidence at trial was that Mr Williams did tell a number of people that Mr Craig had sent Ms MacGregor sext messages, and that that was not true. That information was a key factor in the pressure on Mr Craig to step down as leader of the Conservative Party.[14] Mr Williams had also pleaded that Mr Craig had defamed him by saying that he [Mr Williams] had lied by falsely alleging that Mr Craig had made a pay-out (or pay-outs) of large sums of money to silence Mr Craig's victim(s) of sexual harassment, but the evidence established that Mr Williams did tell people that Mr Craig had paid large sums of money to settle Ms MacGregor's sexual harassment claim. Mr Williams acknowledged that he knew that any settlement sum was likely to be small, not the large figure he had mentioned.

[51] Her Honour noted that there was also undisputed evidence at trial that provided at least some support for a number of the other defamatory imputations pleaded, such as imputations that Mr Williams had been dishonest, deceitful, and could not be trusted. Examples of undisputed evidence at trial that supported such imputations included Mr Williams' admitted breach of his undertaking to Ms MacGregor to keep her information and documents as confidential as if he were her lawyer, his disclosing of her confidential documents to Messrs Day and Dobbs within hours of Ms MacGregor requesting their return, his lying to Ms MacGregor about going to Hamilton to meet with Messrs Day and Dobbs, his claims that he had seen copies of "sexts" from Mr Craig to Ms MacGregor when he had not, his creation of the nom-de-plume "Concerned Conservative" to provide confidential information and a draft blog posted to Cameron Slater for publication on the Whale Oil website, and his subsequent denials to Ms MacGregor when he was confronted regarding this. Her Honour inferred from the fact that the jury awarded the maximum sum of damages

---

13 *Williams v Craig*, above n 1.
14 At [53].

available to them that they had ignored her direction not to take into account any meanings that Mr Craig proved were true.[15]

[52] Her Honour was nevertheless satisfied that it was open to the jury on the evidence to find that Mr Craig had lost his qualified privilege, because he was predominantly motivated by ill-will towards Mr Williams when he made the defamatory statements in the Remarks and the Leaflet. In particular, the jury was entitled to reject Mr Craig's evidence that he did not believe that his actions amounted to sexual harassment. It was not for the Court to substitute its own views for that of the jury on a disputed factual issue. If the jury did conclude that Mr Craig had sexually harassed Ms MacGregor, and that he did not genuinely believe otherwise, that was a matter that could have supported a finding of ill-will sufficient to defeat the qualified privilege.[16]

The Craig Proceeding – statements that are alleged to have been defamatory

[53] In his first cause of action, Mr Craig pleads that Mr Williams made the following defamatory statements by text message to Ms Rankin on 26 May 2015:

(1) "Gosh [Mr Craig] is incredible. He's posting on his Facebook about speaking at Westlake Girls High on the Marriage Amendment Bill and Conservatism. What incredible hypocrisy to be lecturing people about the sanctity of Marriage. Makes me sick."

(2) "Haven't bought into? I've read the explicit hand written letters from [Mr Craig] where he talks about his fantasises [sic]. It's why I was so relieved when you said you'd left the Conservative Party. I assumed you had found out all the things [Mr Craig] had been doing."

(3) "Yes I read the letters myself late last year. Wouldn't have believed it".

(4) "I presume he's paid to keep her quiet. I know she made a big claim to the Human Rights Tribunal (separate to her claim about her invoices

---

15 At [55] to [56].
16 At [92].

not having been paid for months!). Recently won't talk to me at all about it and presumably she wants to move on / That's fair enough".

(5) "Happy to talk further as long as you don't attribute the information to me"

(6) "From what I understand the loan/invoice stuff was complicated. Re the letters I read the originals late last year when I visited [Ms MacGregor] in Rodney. [Mr Craig] wrote stuff like "I slept well because I dreamt of being between your legs" and "I wish there were two of me so I could marry you". Wouldn't have believed it had I not read it with my own eyes. It was sexual fantasies, poems, kisses etc and even at one point an acknowledgement it was unwanted! The man makes me sick."

[54] Mr Craig pleads that in their natural and ordinary meaning, those statements conveyed the meanings that Mr Craig is a hypocrite, and that he sexually harassed Ms MacGregor in a serious way.

[55] In his second cause of action, Mr Craig pleads that Mr Williams made the following defamatory statements to Mr Dobbs and Mr Day on or about 18 June 2015:

(1) Mr Craig was "smitten" by Ms MacGregor and began harassing her shortly after she started her employment and he continued harassing until her resignation in 2014.

(2) A non-consensual incident occurred on election night 2011 in which Mr Craig kissed Ms MacGregor and touched her breast.

(3) Ms MacGregor required boundaries to be put in place after this, including an assurance this would not happen again.

(4) Following a series of incidents and letters in 2013 Ms MacGregor resigned as a result of Mr Craig's behaviour. She subsequently agreed to come back to work after receiving a new pay offer with more hours

and a guarantee they would always stay in separate accommodation when travelling.

(5) Mr Craig stopped paying Ms MacGregor for a period of 6 months.

(6) As a result of this non-payment Ms MacGregor was forced to go into debt and take out a loan. This put her in a position of financial dependency on Mr Craig.

(7) Mr Craig put sexual pressure on Ms MacGregor to sleep with him, including asking her a number of times to "stay the night".

(8) Mr Craig gave Ms MacGregor inappropriate gifts of jewellery.

(9) Mr Craig took Ms MacGregor on shopping trips and told her what to wear.

(10) Mr Craig sent sexually explicit text messages to Ms MacGregor. As an example Mr Williams said Mr Craig sent a text message which said "I wish I was lying between your naked legs".

(11) There was a series of one-way communications of affection from Mr Craig to Ms MacGregor by text/card/letter.

(12) That Mr Craig had settled a claim made by Ms MacGregor to the Human Rights Commission by payment of a six figure sum.

[56] Mr Craig pleads that, in their natural and ordinary meaning, those statements conveyed that Mr Craig:

(1) had sexually harassed Rachel MacGregor for a period of nearly 3 years;

(2) had been guilty of sexual harassment of Ms MacGregor that was so serious it warranted the payout of a six figure sum;

(3) had lied to the board about the amount he paid Ms MacGregor;

(4) had sexually assaulted [Ms] MacGregor;

(5) failed to honour contractual obligations to make payments to Ms MacGregor;

(6) was not honest in his business and contractual dealings.

[57] Mr Craig's third cause of action is concerned with the following allegedly defamatory statements said to have been made by Mr Williams on 19 June 2015 in the blogpost for the Whale Oil website:

(1) "Whaleoil can reveal that [Mr] Craig failed to tell the Conservative Party's board that he previously faced serious allegations of sexual harassment from a former staff member in a complaint laid with the Human Rights Commission. It is understood that the claim led to a confidential payout which until recently the board were unaware of."

(2) "Whaleoil Media understands that no sexual relationship resulted, but [Mr] Craig is alleged to have pursued the staffer including sending a large volume of text messages letters and inappropriate touching".

(3) "A source which was supporting the victim as the events unfolded last year, has provided Whaleoil Media with some of the letters and text messages".

(4) Included a poem entitled "Two of Me".

(5) "Editor's note: comments on this article will be moderated carefully. Remember that we are dealing with an innocent victim which Whale Oil Media will not be naming".

[58] Mr Craig says that the natural and ordinary meaning conveyed by those statements was that Mr Craig:

(1) Lied to the board of the Conservative Party.

(2) Is dishonest.

(3) Sexually harassed Ms MacGregor by sending text messages and letters to her that were known to be unwelcome.

[59] Mr Craig's fourth cause of action pleads the following allegedly defamatory statement made to Mr Stringer on 19 June 2015:

(1) Mr Craig sent Ms MacGregor a text message which said "I slept well because I dreamed I was between your legs".

(2) Mr Craig sent Ms MacGregor a text message which included the phrase "Magic hands down your panties".

(3) "Mr Craig grabbed Ms MacGregor by the breasts and forced her onto a bed".

(4) Mr Craig sent texts and letter to Ms MacGregor over a three year period to which she did not respond.

[60] Mr Craig says that, in their natural and ordinary meaning, those statements conveyed the meanings that Mr Craig sexually assaulted Ms MacGregor, and that he seriously sexually harassed her over a long period of time.

[61] Mr Craig's fifth cause of action alleges that he was defamed by the following statements made by Mr Williams in an email sent to Mr Stringer on 26 June 2015:

(1) I presume to [sic] are now aware of the other victim who also made a claim to the Human Rights Commission.

[62] Mr Craig says that, in their natural and ordinary meaning, that statement conveyed the meanings that Mr Craig:

(a) had sexually harassed Ms MacGregor;

(b) had sexually harassed another woman in addition to that; and

(c) was a repeat offender having two or more victims.

[63] Mr Craig's last cause of action alleges that he was defamed by the following statements that Mr Williams continued to publish on the Whale Oil Blog from 19 June to 30 June 2015:

(1) "Remember folks, "never makes up stories or lies". So does that mean he was honest with the Conservative Party Board, did they know all along, or did he make up a story?" [19 Jun 2015 10:06 am]

(2) "So maybe someone should call [Mr] Craig and ask him where he was last night? Was he in the Waikato in a crisis meeting with the only four people left supporting him on the Board? Why would you drop everything to travel all that way if none of the board members had expressed any unhappiness?" [19 Jun 2015 10:13 am]

(3) "Has [Mr] Craig the most cunning SOB in NZ Politics? Talk of the Conservative Party board being unable to fire [Mr] Craig because of the loan suggests that while we've all been mocking crazy [Mr Craig], when in actual fact he's locked himself in but 'loaning' the money" [19 Jun 2015 10:54 am]

(4) "did you lie to your board about the allegations made against you in a court claim? [19 Jun 2015 10:05 am]

(5) "did you lie to them about how much you paid a former staff member to STFU? [19 Jun 2015 10:05 am]

(6) "did you not pay a staff member for 6 months? [19 Jun 2015 10:05 am]

(7) "did you send her love letters begging for a relationship? [19 Jun 2015 10:05 am]

(8) "does your wife know? [19 Jun 2015 10:05 am]

[64] Mr Craig says that, in their natural and ordinary meanings, those statements conveyed the meanings that Mr Craig:

(1) Had sexually harassed Ms MacGregor.

(2) Had used a financial dispute to pressure her for sex.

(3) Did not pay a staff member for six months.

(4) Did not honour his contractual arrangements.

(5) Lied to the board of the Conservative Party.

(6) Sought to use a loan to secure his leadership of the party.

(7) Is dishonest.

(8) Is corrupt.

Evidence on the strike-out application in the Craig proceeding

Mr Williams

[65] Mr Williams said that the notice of proceeding and statement of claim were filed in late May 2017, but service was not effected (purportedly by email to Mr Williams' lawyers) until 29 September 2017. He suggested that Mr Craig has abused the process of the Court by deliberately failing to serve the proceeding at the earliest practicable time. He also contends that Mr Craig was not bringing the Craig proceeding to vindicate his reputation – rather, Mr Craig's purpose has been to cause Mr Williams emotional and financial distress.

[66] Mr Williams referred to a total of nine proceedings in various courts or tribunals in which Mr Craig has been involved which either have traversed or are traversing the issues raised by Mr Craig in the Craig proceeding. Mr Williams said that he struggled to see the necessity for yet another proceeding in order for Mr Craig to seek to vindicate his reputation.

[67] Mr Williams said the Craig proceeding is likely to involve the same witnesses as the Williams proceeding, including Ms MacGregor. Mr Williams suggested that Mr Craig has issued at least some of his claims for ulterior and collateral purposes, including subjecting Ms MacGregor (a defendant in one of the claims brought by Mr Craig in this Court) to further litigation. He referred to media reports in June 2017 that Mr Craig had filed proceedings against Ms MacGregor in November 2016, but had not served them. He suggested that there had been an abuse of process in that case, and that the same thing has happened with the delay in serving the Craig proceeding.

[68] Mr Williams alleged that Mr Craig has wrongly used documents discovered in other proceedings to formulate his claim in this proceeding. For instance, the first cause of action in the Craig proceeding is based on text messages sent by Mr Williams to Ms Rankin in May 2015. Mr Williams said that Mr Craig would not have obtained these messages had they not been available for inspection in the Williams proceeding. He said that the same applies to the third and sixth causes of action in the Craig proceeding.

Mr Craig

[69] In his affidavit in opposition, Mr Craig said that he does not take legal action lightly, and that he considered long and hard whether to pursue the Craig proceeding. In the end, he decided to proceed with the claim, as the damage to his reputation arising from Mr Williams' statements "has been huge and is ongoing".

[70] Mr Craig acknowledged that he did not immediately serve the Craig proceeding. He said that he was representing himself in another court case at the time, and it was a very steep learning curve that took all of his focus. He knew that once the claim was served he would then have to attend to all the paperwork and various

communications that go with the claim, and he could not see how he could attend to that as well as his other court case. So he got the Craig proceeding filed on time, and then put it aside to serve once he got clear of his other trial.

[71] Mr Craig said that his understanding is that a plaintiff has one year to serve a claim before it becomes invalid.

[72] Mr Craig referred to other difficulties of a personal nature, including his office manager leaving, which required him to go straight back into work, doing two jobs, after the trial in the other proceeding was finished. He said that it took him about 12 weeks to get replacement staff and to deal with the immediate dramas. At that point, he contacted his lawyers to check on the service procedure, and service was arranged.

[73] Mr Craig denied Mr Williams' allegation that he had wrongly used documents discovered in the Williams proceeding. He said that he first became aware of the text messages underlying the first cause of action when he met with Ms Rankin in May 2015. Mr Craig said that Ms Rankin read the contents of the text messages directly to him from her phone. She did not say who the messages were from, but said that they were from her "source".

Evidence in reply

[74] In a reply affidavit, Mr Williams rejected Mr Craig's reasons for failure to serve the Craig proceeding promptly after filing. The other proceeding referred to by Mr Craig was finished "months ago", and cannot provide any excuse for the late service. Nor did Mr Williams consider that staffing difficulties at Mr Craig's work justified the late service.

[75] Mr Williams said that Mr Craig elected not to proceed against him in the Williams proceeding, where all the very same issues were canvassed. He expressed the view that that was the appropriate time for Mr Craig to have his defamation claims against Mr Williams heard, if he wished to have them heard.

[76] On the question of Mr Craig's alleged wrongful use of documents disclosed on discovery in other proceedings, Mr Williams pointed out that Mr Craig acknowledged in his affidavit (filed in the Craig proceeding) that the documents he provided by way of initial disclosure were copies of documents taken from the agreed bundles in the Williams proceeding (or in a proceeding issued by Mr Craig against Mr Slater). (Mr Craig had said that his understanding was that once a document was tabled in a Court bundle and becomes evidence in open court a party can refer to it in filing any new claim.)

[77] Mr Williams noted in respect of the first cause of action in the Craig proceeding (relating to the text message from Mr Williams to Ms Rankin on 26 May 2015) that the text messages in Mr Craig's discovery have the discovery tag "JHW.C.018", identifying the document as one discovered by Mr Williams in the Williams proceeding. Mr Williams denied Mr Craig's contention that he learned the content of the text message from Ms Rankin at a meeting he had with her in May 2015, noting that the text was not referred to in a letter of demand sent by Mr Craig's solicitors to Mr Williams in July 2015. Nor was there any evidence at the trial in the Williams proceeding of Ms Rankin having read the text to Mr Craig at the May 2015 meeting.

[78] On the use of documents relied upon by Mr Craig in his third and sixth causes of action (both relating to emails sent by Mr Williams to Mr Slater), Mr Williams contended that Mr Craig (while obviously aware of the Whale Oil blogs themselves) could not have been aware of Mr Williams' involvement, except through discovery in the separate proceedings (and in particular, the discovery in the Williams proceeding). Mr Williams referred to part of Mr Craig's brief of evidence in the Williams proceeding, in which Mr Craig said that he understood:

> … from discovery in the case that [Mr Williams] had established a temporary Gmail account that he used to send emails and draft blog posts to [Mr Slater]. The email account was "concerned.conservative.2015@gmail.com.
>
> … from discovery by Mr Slater I have seen that the "Concerned Conservative" email address was used on 19 June to send material to Mr Slater.

[79] There was a short reply affidavit from Ms Rankin in which she denied that, during a meeting with Mr Craig in May 2015, she read out to him the contents of text messages she had received from Mr Williams.

The strike-out submissions

Mr McKnight

[80] Mr McKnight relied first on a submission that the claims in the Craig proceeding are an impermissible attempt to relitigate the same issues that have been extensively canvassed in previous litigation between the parties (and between Mr Craig and others). He produced a table, linking many of the allegedly defamatory statements relied upon by Mr Craig in the Craig proceeding with Mr Craig's statement of defence in the Williams proceeding. In the alternative, he submitted that the claims should be struck out for failure to comply with the Limitation Act 2010 and/or the High Court Rules.

[81] On the first argument, Mr McKnight submitted that a key factual dispute in the Williams proceeding was whether Mr Craig sexually harassed Ms MacGregor. That was traversed in much detail, with Ms MacGregor and Mr Craig both cross-examined at length. Rather than file a counterclaim – which he had threatened to do – Mr Craig ran his defence by saying (a) Mr Williams had defamed him; and (b) Mr Craig therefore had available to him the defence of qualified privilege (response to attack).

[82] Mr Williams argued in the Williams proceeding that qualified privilege should fail because, inter alia, Mr Craig knew he had sexually harassed Ms MacGregor. The manner in which these issues were put in the Williams proceeding therefore required the jury to assess the respective credibility of Mr Craig and Ms MacGregor, and the jury found in favour of Mr Williams.

[83] Further, this issue (whether Mr Craig sexually harassed Ms MacGregor) was traversed, again, in a four-week trial before Toogood J in May 2017.[17] Mr Craig cross-examined Ms MacGregor at length in that proceeding. Another four-week trial has been set down for September 2018, where the same issue will be traversed again.[18] The issue will also be traversed in another case, *Craig v Stringer*, and in yet a further proceeding (*Stringer v Craig & Ors*).

---

17 *Craig v Slater* HC Auckland CIV-2015-404-1923.
18 *Craig v MacGregor* HC Auckland CIV-2016-404-2915.

[84] If the Craig proceeding is not struck out, then the same subject matter will have to be traversed once more. Another tribunal of fact will have to assess the truth of the allegations of sexual harassment. This is just an attempt to re-run the Williams proceeding in a way that will subject both Mr Williams and Ms MacGregor to yet more litigation.

[85] There are also two other cases Mr Craig has brought against Mr Williams. One of them relates to Mr Williams' disclosure of one of Mr Craig's "love letters" to Ms MacGregor. Mr Craig has brought claims for breach of copyright, breach of confidence, and invasion of privacy. The case was struck out as an abuse of process, but was reinstated on appeal.

[86] Mr McKnight referred to three authorities in support of the strike-out application on the first ground: *New Zealand Social Credit Political League v O'Brien*,[19] the recent decision of the Court of Appeal in *Sutcliffe v Tarr*, [20] and the House of Lords decision in *Hunter v Chief Constable of West Midlands*.[21]

[87] On the issue of the late service of the Craig proceeding, Mr McKnight referred to s 6 of the Limitation Act 2010 and r 5.72(2) of the High Court Rules. Section 6(1) of the Limitation Act provides:

> **6 Date on which claim is filed defined**
>
> (1) For a claim made in a civil proceeding commenced in a specified court or tribunal, the **date on which the claim is filed** means the date on which a statement of claim, or any other initiating document, that contains the claim, is filed in, or lodged with, the specified court or tribunal in accordance with rules of court or other laws relating to the claim.
>
> …

[88] Rule 5.72 of the High Court Rules, requires that a statement of claim and notice of proceeding must be served "as soon as practicable after they are filed."[22] Rule 5.72(2) then provides:

---

19 *New Zealand Social Credit Political League v O'Brien* [1984] 1 NZLR 84 (CA).
20 *Sutcliffe v Tarr* [2018] NZCA 135.
21 *Hunter v Chief Constable of West Midlands* [1981] 3 All ER 727.
22 Or in a case where directions as to service have been sought, as soon as practicable after the directions have been given.

> **5.72 Prompt service required**
>
> …
>
> (2) Unless service is effected within 12 months after the day on which the statement of claim and notice of proceeding are filed or within such further time as the court may allow, the proceeding must be treated as having been discontinued by the plaintiff against any defendant or other person directed to be served who has not been served.

[89] Mr McKnight submitted that there has been a serious breach of the Rules, and the claim may either be regarded as time-barred or the Court might regard the circumstances, considered with the previous litigation between the parties, as amounting to a material breach justifying strike-out on the grounds of abuse of process.

[90] Mr McKnight also contended that Mr Craig has based several of his causes of action upon documents obtained in the Williams proceeding through discovery. Again, that is a factor the Court should take into account in ruling on the abuse of process submission.

Mr Craig

[91] Mr Craig acknowledged that the Court of Appeal did draw an inference that the jury in the Williams proceeding found that he had sexually harassed Ms MacGregor. However he submitted that his claims in the Craig proceeding are not really about whether he sexually harassed Ms MacGregor. Mr Williams made additional statements beyond the allegations of sexual harassment (eg allegations that Mr Craig sent sext messages to Ms MacGregor, that he sexually assaulted her, that he bought her silence with a large pay-out, and that Mr Craig engaged in corrupt and deceitful behaviour), and it is for these additional statements that Mr Craig seeks to hold him to account. Mr Williams should not be allowed to prove one matter, and therefore get a free pass to seriously defame Mr Craig on other matters. Mr Craig has not had his day in Court on the other matters.

[92] To succeed with an argument that Mr Craig is re-litigating matters already determined, Mr Williams will need to establish that res judicata applies to the claims in the Craig proceeding. It is not enough for the general facts to have been litigated in

an earlier proceeding; there must be a final decision regarding the particular matters on the merits, which binds both parties. It is only then that an abuse of process can exist, as the new claims would involve challenging the facts already determined between the parties.

[93] On the issue of alleged improper motive, Mr Williams has the onus of showing that the Craig proceeding was not brought for the purpose of obtaining damages against him, but predominantly for an improper purpose. That is a heavy onus, and the Court should exercise its discretion to strike-out on this ground only in exceptional circumstances.[23]

[94] On his decision not to file a counterclaim in the Williams proceeding, Mr Craig submits that he was entitled to take the time to properly consider his position and make his best possible claim against Mr Williams. He was entitled to defend himself in the Williams proceeding, and had no obligation to go on the offensive and bring his own claim at that time.

[95] This is not a case like *New Zealand Social Credit Political League v O'Brien*. There is no suggestion here of a plaintiff dressing up the same claim in a different garb.

[96] Mr Craig rejected the allegation that the Craig proceeding has been brought for an improper purpose, or for a collateral advantage. Specifically, the Craig proceeding has not been brought to vex Mr Williams. Mr Craig referred to "strong evidence from other proceedings" that is said to lend substance to his claims (including evidence from the *Craig v Slater* case, in which Ms MacGregor was said to have denied under oath that Mr Craig had sent sext messages to her).

[97] Mr Craig submitted that there is no basis for finding that the Craig proceeding is time-barred. Section 6(1) of the Limitation Act refers to "the date on which the claim is filed", and in this case the claim was filed within the prescribed two year limitation period. Mr Williams is wrongly attempting to conflate filing with service, and r 5.27(2) itself contemplates that a proceeding which has not been served within

---

[23] *McGechan on Procedure* (online ed., Thomson Reuters) at [HR 15.1.05(4)].

12 months after filing remains a valid proceeding (it is treated as having been discontinued if it is not served within 12 months). Filing and service are viewed separately by the law.

[98] Alternatively, Mr Craig relied on r 1.5, which provides that a failure to comply with the Rules is to be treated as an irregularity, and "does not nullify the proceeding; or any step taken in the proceeding".

DISCUSSION AND CONCLUSIONS ON THE STRIKE-OUT APPLICATION

Issue estoppel/abuse of process

The sexual harassment issue

[99] In my view, the issue of whether Mr Craig sexually harassed Ms MacGregor (by means falling short of sexual assault[24]) has been conclusively determined against him in the Williams proceeding. That is clear from both the judgment of Katz J on the retrial application, and from the judgment of the Court of Appeal in *Williams v Craig*.[25] It is therefore no longer open to Mr Craig to claim in the Craig proceeding that he has been defamed by Mr Williams by statements made by the latter to the effect that Mr Craig did sexually harass Ms MacGregor. As in *Sutcliffe v Tarr* and *Hunter v Chief Constable of the West Midlands Police*, to permit Mr Craig to do so would be to permit him to mount a collateral attack on a final finding made against him by the Court in the Williams proceeding, as interpreted by Katz J and the Court of Appeal. To the extent the Craig proceeding pleads defamation by publication by Mr Williams of statements that Mr Craig sexually harassed Ms MacGregor (other than by committing sexual assault) then, the Craig proceeding is an abuse of process and must be struck out.

[100] Mr Craig seeks to get around that difficulty by arguing that the defamatory statements relating to sexual harassment pleaded in the Craig proceeding, including the statements that he sent Ms MacGregor sexually explicit texts, are more serious, or of greater magnitude, than those that were in issue (as part of Mr Craig's

---

[24] There was no evidence of sexual assault given at the trial of the Williams proceeding.

[25] *Williams v Craig*, above n 2, at [44], [78] and [116].

"defence/counter-attack") in the Williams proceeding. But I think that is not a distinction that would justify Mr Craig effectively running the same issues again in the Craig proceeding. The issue of sexual harassment of Ms MacGregor by Mr Craig was squarely in issue in the Williams proceeding, and I do not understand Mr Craig to be relying on statements about any different alleged episodes of sexual harassment in the Craig proceeding than were at issue in the Williams proceeding. It is true that there is an issue over the precise nature of the sexual harassment, and in particular whether it involved the sending of sexually explicit messages or material. Katz J found that there was no evidence that any material of that sort was sent. But I think the sending of sext messages formed only a subset of the broader allegation of sexual harassment, on which the jury found against Mr Craig.

[101] As the Court of Appeal observed in *Williams v Craig*, it would be wrong to allow Mr Craig to re-litigate issues which have been exhaustively traversed in evidence and argument and decisively determined,[26] and I think the issue of sexual harassment (in whatever form it may have taken) fits into that category. Mr Craig elected not to counterclaim in the Williams proceeding, and he will have the opportunity to argue at the damages retrial in the Williams proceeding that the damages award was excessive given that there was no evidence that he sent sext messages. Taking all of those considerations into account, I conclude that Mr Craig has "had his day in Court" on the sexual harassment issue and the issue of whether the alleged sext messages were sent, and that Mr Williams should not be "twice vexed" by having to litigate that issue again.

The first cause of action

[102] Applying that view, all of the first cause of action, relating to the text messages from Mr Williams to Ms Rankin dated 26 May 2015, must be struck out. The principal defamatory meaning pleaded on this cause of action is that Mr Williams' statements meant that Mr Craig "sexually harassed Ms MacGregor in a serious way". That issue was raised in the Williams proceeding,[27] and it has been finally determined against

---

26 At [77].

27 For example, at para [34.7] of Mr Craig's third amended statement of defence, where he pleaded (as part of the foundation for his "defence to attack" qualified privilege defence) that Mr Williams

Mr Craig. He cannot re-run this claim in the Craig proceeding. The second pleaded meaning said to have been conveyed by the statements made to Ms Rankin is that Mr Craig is a hypocrite. The relevant "hypocrisy" appears to be that of a married person guilty of sexually harassing a woman who was not his wife, lecturing others about the sanctity of marriage. In my view the pleaded meaning of hypocrisy, in the context of the alleged statements, is so closely linked to the sexual harassment meaning that the two pleaded meanings must stand or fall together. The jury found that Mr Craig did sexually harass Ms MacGregor, and that he knew that he had done so. The Court of Appeal said that the evidential foundation for those findings was "beyond question". It must follow from those findings that Mr Craig was not "practising what he preached" (conservative views on the institution of marriage) when he sexually harassed Ms MacGregor.

[103] In reaching my view that the first cause of action should be struck out I take into account the public policy objective of fairness to litigants and the need to bring an end to litigation.[28] When a party seeks to raise an issue which was or should have been raised in an earlier proceeding between the same parties, if it was to be raised at all, a broad merits-based judgment must be made on the issue of whether the process of the Court is being abused.[29] The underlying public interest is that there should be finality in litigation, and that a party should not be vexed twice in the same matter.[30] That public interest is reinforced by the current emphasis on efficiency and economy in the conduct of the litigation.[31]

[104] In this case, the Court of Appeal said that it would be wrong to allow Mr Craig to re-litigate issues which have been exhaustively traversed in evidence and argument and decisively determined. It referred to Mr Craig's "objective of using a retrial on liability to secure a different verdict on the same facts" as calling into question the proper administration of justice.[32]

---

alleged that Ms MacGregor "made a sexual harassment claim against [Mr Craig] which he settled by paying her a six figure sum".

28 *New Zealand Social Credit Political* League, above n 19 at 95 and *Sutcliffe v Tarr*, above n 20, at [44], citing *Wire Supplies Ltd v Commissioner of Inland Revenue* [2006] 2 NZLR 384 at [57].

29 *Sutcliffe v Tarr*, above n 20, at [26], citing *Johnson v Gore Wood & Co* [2002] 2 AC 1 (HL) at 31.

30 At [44], citing *Wire Supplies Ltd v Commissioner of Inland Revenue* [2006] 2 NZLR 384 at [57].

31 *Johnson v Gore Wood & Co (a firm)* [2002] 2 AC 1 (HL) at [60], per Bingham LJ, referred to by the Court of Appeal in *Beattie v Premier Events Group Ltd* [2014] NZCA 184 at [44].

32 *Williams v Craig*, above n 2, at [77].

[105] In this case, I think the issue of whether Mr Craig sexually harassed Ms MacGregor, whether "seriously" or otherwise, was "exhaustively traversed in evidence and argument", and it was decisively determined against Mr Craig. If he were allowed to pursue his first cause of action in the Craig proceeding, he would inevitably be met by a defence of truth, and he would be precluded from challenging that defence by the decision on the sexual harassment issue of the jury, as interpreted by the Court of Appeal.

The second cause of action

[106] Mr Craig's second cause of action is concerned with defamatory statements allegedly made by Mr Williams to Messrs Dobbs and Day on or about 18 June 2015. The relevant pleadings are set out at [55] and [56] of this judgment.

[107] The pleadings reproduced at subparagraphs [55](1), (3), (4), (7), (8), (9), (11) and (12), and at [56](1) and (2), all appear to be concerned with the sexual harassment issue which was exhaustively traversed in the Williams proceeding and determined against Mr Craig. Those pleadings will be struck out, for the same reasons I gave for striking out Mr Craig's first cause of action.

[108] The pleadings reproduced at subparagraphs [55](2) and [56](4) relate to the alleged non-consensual sexual assault on Ms MacGregor. It is clear from the judgments of Katz J that this never happened. Ms MacGregor acknowledged that the one incident that did occur, on election night 2011, was consensual. Clearly the jury could have had no basis to find that such an assault took place, and I infer that they made no such finding. It seems to me that any allegation of sexual assault, being an allegation of a criminal offence, is a more serious allegation and should be regarded differently from the lesser behaviours that the jury considered to be sexual harassment. I think it at least arguable for Mr Craig that someone who has been guilty of sexual harassment might still be defamed by an allegation that that person has been guilty of (criminal) sexual assault. (At any rate I do not think the issue is sufficiently clear for me to strike out this part of Mr Craig's claim.)

[109] I do not consider any issue estoppel can arise in respect of a determination made in an earlier proceeding *in favour* of a party now seeking to make a claim based

on that determination. And I doubt that there could be any issue of Mr Williams being "vexed twice" if Mr Craig is allowed to proceed with his claim based on alleged defamation by publication of a statement that Mr Craig sexually assaulted Ms MacGregor. The starting point (based on the evidence at the trial in the Williams proceeding, and the judgments of Katz J) would presumably be that no such sexual assault occurred. The statement (if made) was clearly defamatory, and the only potential issues would appear to be over publication and any affirmative defences Mr Williams might run. As far as I am aware, there were no findings in the Williams proceedings that would create an issue estoppel on any such matters.

[110] There may be a question whether Mr Craig had some obligation to counterclaim on this issue in the Williams proceeding. Counsel did not refer me to any authority on the question of whether the *Henderson v Henderson* principle,[33] by which a party is generally required to bring all claims of which he or she is aware (and which should properly be heard with the party's other claims) in the same proceeding, requires a defendant setting up an affirmative defence to also bring any claim for damages based on the facts underpinning that affirmative defence, by way of counterclaim filed in the same proceeding. Clearly if the affirmative defence is rejected by the earlier Court there is unlikely to be any such later counterclaim. But what if the defence is upheld?

[111] In the absence of reference to clear authority on this point I am not inclined to strike out the subparagraphs concerned with the sexual assault allegations.

[112] I have not overlooked Mr Craig's pleading in the Williams proceeding that, if the "dirty politics" issues remained central in the Williams proceeding, he did not intend to issue defamation proceedings against Mr Williams.[34] But the pleading there is not unequivocal, and Mr McKnight did not place reliance on it in argument. In those circumstances I do not think there is sufficient for me to find that the later filing of the Craig proceeding amounted to an abuse of process by Mr Craig, at least insofar as he is claiming that he was defamed by the publication of a statement or statements that he sexually assaulted Ms MacGregor.

---

33 *Henderson v Henderson* (1843) 3 Hare 100, 67 ER 313 (Ch).
34 The pleading is set out at para [45] of this judgment.

[113] The allegations reproduced at subparagraphs [55](5) and (6) of this judgment are that Mr Craig stopped paying Ms MacGregor for six months, and that as a result, she was forced to go into debt and take out a loan. Mr Williams is said to have stated that that put Ms MacGregor in a position of financial dependency on Mr Craig. The pleaded meaning conveyed by these statements appears to be that Mr Craig failed to honour contractual obligations to make payments to Ms MacGregor (subparagraph [56](5) of this judgment), or possibly that Mr Craig was "not honest in his business and contractual dealings" (subparagraph [56](6)). To the extent those were intended to be the meanings conveyed by those particular statements, I do not think there was any finding in the Williams proceeding that would create an issue estoppel, or otherwise preclude Mr Craig from bringing a defamation claim based on the statements. I see no basis to strike out the allegations reproduced at subparagraphs [55](5) or (6), or subparagraph [56](5) or (6), on the abuse of process ground for which Mr Williams argued.

[114] To the extent subparagraphs [55](5) and (6) may have been intended to provide a foundation for the sexual harassment "ordinary and natural meanings" pleaded at subparagraphs [56](1) and (2), it will be for Mr Craig to decide whether subparagraphs [55](5) and (6) are still necessary or appropriate given that the sexual harassment "natural and ordinary meaning" pleadings at [56](1) and (2) have now been struck out.

[115] The statement pleaded at subparagraph [55](10) alleges that Mr Craig sent "sext messages" to Ms MacGregor. While Katz J found in the Williams proceeding that there was no evidence that Mr Craig ever sent such messages, this statement must form part of the basis of Mr Craig's "natural and ordinary meaning" pleadings (at subparagraphs [56](1) and (2)) that he was guilty of sexually harassing Ms MacGregor. (There is no other "natural and ordinary meaning" pleaded in paragraph [56] that could reasonably be derived from the alleged defamatory statement in paragraph [55] about sext messages.) In those circumstances there appears to be no proper basis for the pleading at subparagraph [55](10) to remain. It will be struck out.

[116] The remaining pleading in Mr Craig's second cause of action that I need to address is the pleading at subparagraph [56](3), that the statements at para [55], in their natural and ordinary meaning, conveyed that Mr Craig "had lied to the board about the amount he paid Ms MacGregor".

[117] It is difficult to see how this pleaded meaning could be derived from any of the statements reproduced at [55], whether read individually or together. It appears that the pleading at subparagraph [56](3) might be struck out on the basis that none of the statements pleaded at paragraph [55] is capable of bearing the meaning pleaded at [56](3), but Mr McKnight did not rely on that argument. In those circumstances I think the correct course is to allow Mr Craig to amend the pleadings at [55] and [56](3) if he can, to clarify which particular statement or statements are said to have conveyed the meaning pleaded at [56](3). Any such amended pleading is to be incorporated in an amended statement of claim, to be filed and served within 20 working days of the date of this judgment. Any amendment to the pleadings reproduced at [55] and [56](3) of this judgment will not preclude Mr Williams from raising any limitation or other defences which may appear to be available to him.

[118] The result on the strike-out application insofar as it affects the second cause of action is that subparagraphs (1), (3), (4), (7), (8), (9), (10), (11) and (12) of Mr Craig's pleading as reproduced at [55] of this judgment will be struck out, as will subparagraphs (1) and (2) of the pleading reproduced at [56]. Mr Craig is directed to provide further particulars of the pleading reproduced at [56](3), in accordance with paragraph [117] of this judgment. Otherwise, the strike-out application is dismissed insofar as it relates to those parts of the second cause of action that are reproduced at paragraphs [55] and [56] of this judgment.

The third cause of action

[119] The third cause of action relates to allegedly defamatory statements said to have been made by Mr Williams on 19 June 2015 in the blogpost for the Whale Oil website. The statements pleaded by Mr Craig are reproduced at paragraph [57] above, and the natural and ordinary meanings they were said to convey are at [58].

[120] The statements reproduced at subparagraphs [57](2)-(5) all appear to relate to the issue of whether Mr Craig sexually harassed Ms MacGregor. They are said to have conveyed the meaning that Mr Craig "sexually harassed Ms MacGregor by sending text messages and letters to her that were known to be unwelcome".[35] As I have found on the earlier causes of action, Mr Craig has had his day in Court on the issue of whether or not he sexually harassed Ms MacGregor. The jury found that he did, and he is bound by that finding. These subparagraphs will be struck out.

[121] There remains the pleading that Mr Williams said in the blogpost that Mr Craig failed to tell the Conservative Party's board that Mr Craig "previously faced serious allegations of sexual harassment from a former staff member in a complaint laid with the Human Rights Commission. It is understood the claim led to a confidential payout which until recently the board was unaware of".[36] In its natural and ordinary meaning, this statement is said to have conveyed the (defamatory) meanings that Mr Craig lied to the board of the Conservative Party and/or that he is dishonest.[37]

[122] I am not aware of any finding in the Williams proceeding that would create an issue estoppel against Mr Craig on the question of whether he lied to the Conservative Party board. The only clear findings that can be taken from the jury verdict are that he did sexually harass Ms MacGregor, that he knew he had done so and that he was guilty of a deliberate falsehood when he said Mr Williams lied in making the initiating allegation.[38] Neither Katz J nor the Court of Appeal made any finding against Mr Craig on the issue of whether he lied to the Conservative Party board, and Mr McKnight did not draw my attention to any part of the pleadings in the Williams proceeding where that matter was put in issue. In those circumstances I do not see a clear basis on which this part of the third cause of action could be struck out on abuse of process grounds.

[123] The result on the third cause of action is that the alleged statements and meanings reproduced at subparagraphs [57](2)-(5) and [58](3) of this judgment will

---

35 Paragraph [58](3) of this judgment.
36 Reproduced at [57](1) of this judgment.
37 At [58](1) and (2) of this judgment.
38 *Williams v Craig*, above n 2, at [116].

be struck out. The alleged statements and meanings reproduced at subparagraphs [57](1) and [58](1) and (2) of this judgment are allowed to stand.

The fourth cause of action

[124] This relates to statements Mr Williams is alleged to have made to Mr Stringer on 19 June 2015. The alleged statements relied upon are set out at [59] of this judgment, and their alleged meanings are set out at [60].

[125] The alleged statement that Mr Craig grabbed Ms MacGregor by the breasts and forced her into bed[39] is an allegation of (criminal) sexual assault, as is the pleaded meaning ("that Mr Craig sexually assaulted Ms MacGregor").[40] This statement and meaning will stand for the reasons stated in respect of the sexual assault allegation in my consideration of the second cause of action. The remaining allegations (those reproduced at subparagraphs [59](1), (2) and (4), and their alleged meaning (that Mr Craig seriously sexually harassed Ms MacGregor over a long period of time[41]), all relate to the issue of whether or not Mr Craig sexually harassed Ms MacGregor. Those pleadings will be struck out for the same reasons as are stated in respect of the sexual harassment pleadings in the earlier causes of action.

The fifth cause of action

[126] The allegation is that Mr Williams defamed Mr Craig in an email sent to Mr Stringer on 26 June 2015, when he allegedly said:[42]

> I presume to [sic] are now aware of the other victim who also made a claim to the Human Rights Commission.

[127] Mr Craig pleads that, in their natural and ordinary meaning, this statement conveyed the meaning that Mr Craig had sexually harassed Ms MacGregor, that he had sexually harassed another woman in addition to that, and that Mr Craig was a repeat offender having two or more victims.[43]

---

39 Reproduced at [59](3).
40 Reproduced at [60].
41 Reproduced at [60].
42 Reproduced at [61].
43 Reproduced at [62].

[128] The pleaded meaning that Mr Craig had sexually harassed Ms MacGregor will be struck out, for the reasons discussed earlier.

[129] I do not consider there is a sufficient basis to strike out the other pleaded meanings, both of which are concerned with sexual harassment of women other than Ms MacGregor. This does not appear to have been put in issue by the pleadings in the Williams proceeding, although Mr McKnight referred me to Mr Craig's pleading in another claim he has brought as plaintiff (*Craig v Slater and Social Media Consultants*), where Mr Craig is alleged to have made essentially the same allegations against Mr Slater.

[130] I am not aware of any findings in the Williams proceeding or in any other case that (i) Mr Williams did not send the pleaded email to Mr Stringer, or (ii) (if he did) it did not bear the meanings for which Mr Craig now contends, or (iii) (if it did), the pleaded meanings were in substance true. In those circumstances I do not have sufficient before me to conclude that there is any issue estoppel that would prevent Mr Craig from making this claim against Mr Williams. I am here concerned with a particular statement in a particular document published on a particular occasion, and it is not clear whether *Craig v Slater and Social Media Consultants* was concerned at all with what was said or not said in the email sent by Mr Williams to Mr Stringer on 26 June 2015, or whether any judgment in the case (or in any other case apart from the Williams proceeding) has found as a fact that Mr Craig *has* sexually harassed other women (in addition to Ms MacGregor). Without more, I think it would be unsafe to conclude that the fact that Mr Craig has made similar allegations in a case against other parties (apparently not including Mr Williams) is sufficient to establish abuse of process by making similar allegations in the Craig proceeding. There would appear to be no issue of Mr Williams being vexed twice over the same issue (sexual harassment of women other than Ms MacGregor) if this part of the Craig proceeding is allowed to continue.

[131] A broad merits-based assessment is required for any finding of abuse of process, and there is insufficient evidence to justify any abuse of process finding on this part of Mr Craig's case.

[132] The result on the fifth cause of action is that the subparagraphs that are reproduced at paragraphs [61] and [62] of this judgment will be struck out to the extent they plead statements and meanings concerned with alleged sexual harassment of Ms MacGregor. To the extent these subparagraphs are concerned with sexual harassment of other women, they will be allowed to stand.

The sixth cause of action

[133] This cause of action is concerned with statements said to have been published on the Whale Oil Blog from 19 June 2015 to 30 June 2015.[44]

[134] The first two pleaded meanings (that Mr Craig sexually harassed Ms MacGregor and used a financial dispute to pressure her for sex[45]) appear to be allegations of sexual harassment that were traversed in the Williams proceeding and were the subject of findings against Mr Craig. For the reasons discussed earlier, these pleaded meanings, and the statements on which they are apparently based ("did you send her love letters begging for a relationship?", and "does your wife know?"[46]) will be struck out.

[135] For the reasons set out above, I am not satisfied that Mr Williams has made out a sufficient case to strike out the other meanings pleaded in Mr Craig's sixth cause of action (not paying a staff member for six months, not honouring contractual arrangements, lying to the board of the Conservative Party, seeking to use a loan to secure his leadership of the party, and being dishonest and/or corrupt[47]) on abuse of process grounds. None of those alleged meanings appears to have been the subject of a specific identifiable finding against Mr Craig in the Williams proceeding (at least to the extent the meanings are said to be meanings conveyed by the statements relied on by Mr Craig that are reproduced at [63] of this judgment).

[136] Five of the statements (those reproduced at [63](1)-(5)) appear to be concerned with Mr Craig's relationship with the board of the Conservative Party, including

---

44 Reproduced at [63].
45 Reproduced at [64](1) and (2).
46 Reproduced at [63](7) and (8).
47 The natural and ordinary meanings pleaded at [64](3)-(8).

alleged lies told to the board, and the other (at [63](6)) was the alleged question "did you not pay a staff member for 6 months?" Mr McKnight did not rely on any pleading in the Williams proceeding that put in issue lies allegedly told by Mr Craig to the board of the Conservative Party about the payment and amount paid to Ms MacGregor, and he did not rely on any pleading in the Williams proceeding to the effect that Mr Craig allegedly sought to use a loan made to the Conservative Party to secure his leadership of the party. In those circumstances there is no basis on which I could safely conclude that the jury verdict or any of the judgments in the Williams proceeding created an issue estoppel on any of the pleaded statements and meanings relating to what Mr Craig did or did not tell the Conservative Party board.

[137] Likewise it would not be safe to conclude that the jury must have found that Mr Craig "did not pay a staff member for six months" (at least to the extent that that alleged non-payment is said to have been separate and distinct from the allegation that Mr Craig used a financial dispute to pressure Ms MacGregor for sex).

[138] The result of the strike-out application on the sixth cause of action is that the two pleaded meanings relating to the sexual harassment allegations against Mr Craig (those reproduced at subparagraphs [64](1) and (2) above) will be struck out, as will the corresponding subparagraphs reproduced at [63](7) and (8) above. The remaining subparagraphs in this cause of action that are reproduced at paragraphs [63] and [64] of this judgment will be allowed to stand.

The issue of late service of the Craig proceeding

[139] I do not consider that the late service of the proceeding on Mr Williams provides a sufficient basis to strike out those parts of Mr Craig's statement of claim as have not already been struck out.

[140] Mr McKnight accepted in his written submissions that the Craig proceeding was lodged in the High Court within the period of two years allowed by the Limitation Act 2010.[48] (It is not clear from the Court file that that was the case with Mr Craig's first cause of action, but that cause of action has already been struck out on other

[48] Limitation Act 2010, ss 11 and 15.

grounds.) The argument is that Mr Craig breached the Rules of Court in respect of service, in a serious way, in that he failed to serve the Craig proceeding as soon as practicable after it was filed.[49] Mr McKnight submitted that the previous litigation between the parties (the Williams proceeding) may be taken into account by the Court in deciding that the failure to effect prompt service was such a material breach that the Craig proceeding should be struck out.

[141] As far as the Limitation Act 2010 is concerned, the critical matter for limitation purposes is the date of filing in Court, not the date of service on the defendant. In those circumstances, there is no basis for striking out the remaining causes of action in the Craig proceeding on the basis that they are statute-barred under the Limitation Act.

[142] Mr Craig acknowledged that he did not immediately attend to service of the Craig proceeding. He pointed to various other commitments that were taking his attention at the time, including another trial in which he was engaged, and said that he put the service of the Craig proceeding on one side until he got clear of his other trial. He also referred to personal difficulties which were taking his attention, which contributed to his delay in contacting his lawyers to check on the service procedure.

[143] The delay between the filing of the Craig proceeding and service appears to have been approximately four months. I do not accept that a delay of that period is sufficient to justify striking out the Craig proceeding for failure to comply with r 5.72, regardless of the earlier litigation between the parties. It appears from his affidavit that Mr Craig did not appreciate the need for prompt service of the Craig proceeding: his understanding was that he had one year to effect service before the Craig proceeding would become invalid. It appears that he contacted his lawyers towards the end of the four month period after he filed the Craig proceeding, and that service was arranged promptly thereafter.

[144] While Mr Williams has challenged Mr Craig's evidence on the issue of the delayed service, I am not in a position to resolve that challenge in a summary proceeding such as this, where the parties were not cross-examined on their affidavits.

---

[49] As required by r 5.72 of the High Court Rules 2016.

I have no basis to find that what Mr Craig has said in his affidavit on the delay issue is untrue.

[145] I take into account also that an unserved proceeding is not deemed to have been discontinued until 12 months have elapsed after filing, and that Mr Craig appears to have been acting without legal advice, at least on the service issue. I accept Mr Craig's submission that the late service was an irregularity that was and is capable of being "cured" under r 1.5 of the High Court Rules.[50] I decline to strike out the Craig proceeding on this ground.

Was the claim filed for a collateral purpose (to cause emotional harm and stress)?

[146] Again, I do not consider Mr Williams has made out a case for striking out the remaining parts of the Craig proceeding on this ground.

[147] First, Mr Craig said in his affidavit that he considered long and hard whether to pursue the Craig proceeding. In the end, he decided to proceed with the claim, as the damage to his reputation arising from Mr Williams' alleged statements "has been huge and is ongoing".

[148] I have already concluded that those parts of Mr Craig's statement of claim that plead defamatory meanings conveyed by statements to the effect that Mr Craig sexually harassed Ms MacGregor will be struck out. I do not see any basis for striking out the remaining parts of the claim on the grounds of alleged improper collateral purpose.

[149] It is to be remembered that, when Mr Craig filed the Craig proceeding, Katz J had ordered a new trial in the Williams proceeding, on both liability and quantum. It was not until shortly before the hearing of the strike-out application in the Craig proceeding that the Court of Appeal overturned the decision of the trial Judge on the liability issue, and directed that there would be a new trial, limited to damages. Mr Craig probably drew some support from the judgment of Katz J on the retrial

---

[50] Under r 1.5(1), a failure to comply with the requirements of the Rules must be treated as an irregularity that does not nullify the proceeding. The Court may nevertheless exercise its discretion to set aside a proceeding to which r 1.5(1) applies.

application, in which Her Honour detailed a number of respects in which statements made by Mr Williams about Mr Craig were not true. Her Honour also noted that there was undisputed evidence at trial that provided at least some support for a number of imputations, including imputations that Mr Williams had been dishonest, deceitful, and could not be trusted.

[150] In those circumstances, I do not see any basis for a finding that the Craig proceeding was wrongly commenced for the purpose of causing emotional harm and distress to Mr Williams (or to the individuals who may be required to give evidence at trial).

Should the Craig proceeding be struck out because Mr Craig has wrongfully used material obtained on discovery in other proceedings?

[151] This argument appears to be concerned only with the first, third and sixth causes of action. I have struck out the first cause of action, so there is no need to address the argument in respect of it.

[152] Mr Williams appears to have been relying on r 8.30(4). That sub-rule provides:

> **8.30 Use of documents**
>
> …
>
> (4) A party who obtains a document by way of inspection or who makes a copy of a document under this rule—
>
> (a) may use that document or copy only for the purposes of the proceeding; and
>
> (b) except for the purposes of the proceeding, must not make it available to any other person (unless it has been read out in open court).

[153] In his affidavit in opposition, Mr Craig acknowledged that the documents he provided by way of initial discovery in the Craig proceeding were copies taken from the agreed bundles in the Williams proceeding or in the *Craig v Slater* case. He said that his understanding was that, once a document had been tabled in a Court bundle and became evidence in open Court, he was able to refer to it in making his claim.

[154] Mr Craig said that he first became aware of the contents of the Whale Oil blogpost referred to in the third cause of action when it was published to the public on the Whale Oil blog site on 19 June 2015. Similarly, he said that he first became aware of the publications to the Whale Oil blog referred to in his sixth cause of action when they were published in full or in part on the Whale Oil blog site on or after 19 June 2015. He said that he suspected Mr Williams was the source for the Whale Oil blogposts, and that was confirmed when he met with a subcommittee of the Conservative Party board on 21 June 2015 and the chairman confirmed that the source was Mr Williams. Mr Craig also said that Mr Williams acknowledged on oath at a hearing in the Human Rights Review Tribunal that he was the source to Whale Oil, and had provided pictures of confidential documents.

[155] In a reply affidavit, Mr Williams contended that while Mr Craig may very well have been aware of the content that ultimately appeared on the Whale Oil blog, he was unaware of Mr Williams' involvement, and only became aware of that involvement through discovery in separate proceedings. He contended that, were it not for discovery in the separate proceeding (that I take to be the Williams proceeding) Mr Craig never would have known that it was Mr Williams who sent the material to Mr Slater.

[156] It is difficult to reconcile that evidence with Mr Craig's statement in his reply affidavit sworn on 25 October 2017 that the chairman of a subcommittee of the Conservative Party confirmed on 21 June 2015 that the Whale Oil source was Mr Williams.

[157] I have insufficient evidence before me to conclude that Mr Craig has wrongly used material obtained on discovery in his proceeding against Mr Stringer, and to the extent that Mr Craig may have relied on documents disclosed by Mr Williams in the Williams proceeding, it is not clear whether the documents were read out in open Court during the trial in the Williams proceeding. If they were, it would appear that any confidentiality in them would have been lost.[51]

---

[51] See *Telstra NZ Ltd v Telecom NZ Ltd* (1999) 14 PRNZ 108 (HC) and *Wilson v White* [2005] 3 NZLR 619 (CA), where the Court confirmed that there is no confidentiality constraint on use of a document volunteered as an exhibit to an affidavit, in the absence of specific application for confidentiality orders.

[158] At this stage, I do not have sufficient evidence to justify striking out Mr Craig's statement of claim on the ground that he has wrongfully used documents disclosed on discovery in other proceedings. The first cause of action has been struck out and is no longer in issue. As for the third and sixth causes of action, both relating to Whale Oil blogposts, the issue appears to be how Mr Craig learned that Mr Williams was the source behind the statements published on the blogpost. If Mr Craig was indeed told by the chairman of the subcommittee that the Whale Oil source was Mr Williams, it would appear that he has not used material disclosed on discovery in the Williams proceeding to formulate his claim. And to the extent Mr Williams may have acknowledged in open Court in the Williams proceeding that he was the source, there would have been no restriction on Mr Craig using any such evidence as the basis for a further proceeding if he wished to do so. The relevant evidence would have lost its confidentiality.

What about Mr Craig's numerous claims against other parties?

[159] Mr Williams points to numerous Court proceedings Mr Craig has now filed against a number of parties, including Mr Slater, Ms MacGregor, and Mr Stringer. It appears that all of these claims relate broadly to the same series of events in 2015.

[160] I do not think I can make anything of these other claims in the context of the present application. I did not receive any detailed submissions on the nature of the other claims, and I have no basis for finding that they were unnecessary or improper, or otherwise an abuse of the Court's process. I am dealing here with a strike-out application in respect of this one proceeding, and I think it would be dangerous to conclude from the fact that there are a number of other proceedings commenced by Mr Craig that this proceeding was commenced for an improper collateral purpose, or was otherwise an abuse of the Court process. I decline to strike out the Craig proceeding on the basis of the existence of these other proceedings.

THE APPLICATION FOR SECURITY FOR COSTS

The relevant rule

[161] Rule 5.45 of the High Court Rules materially provides:

> **5.45 Order for security of costs**
>
> (1) Subclause (2) applies if a Judge is satisfied, on the application of a defendant,—
>
> …
>
> (b) that there is reason to believe that a plaintiff will be unable to pay the costs of the defendant if the plaintiff is unsuccessful in the plaintiff's proceeding.
>
> (2) A Judge may, if the Judge thinks it is just in all the circumstances, order the giving of security for costs.
>
> (3) An order under subclause (2)—
>
> (a) requires the plaintiff or plaintiffs against whom the order is made to give security for costs as directed for a sum that the Judge considers sufficient—
>
> (i) by paying that sum into court; or
>
> (ii) by giving, to the satisfaction of the Judge or the Registrar, security for that sum; and
>
> (b) may stay the proceeding until the sum is paid or the security given.
>
> …
>
> (5) A Judge may make an order under subclause (2) even if the defendant has taken a step in the proceeding before applying for security.
>
> …

[162] Mr Williams contends that there is reason to believe that Mr Craig will be unable to pay Mr Williams' costs if Mr Craig is unsuccessful in the Craig proceeding.

The evidence

[163] In his affidavit in support of the security for costs application, Mr Williams referred to several large awards of damages and or costs against Mr Craig, and a claim apparently made against Mr Craig by Mr Stringer for damages in excess of $900,000.

There is a damages claim by Mr Slater pending against Mr Craig, and Ms MacGregor has a substantial counterclaim against Mr Craig in the proceeding he has brought against her. There is also the judgment on liability in Mr Williams' favour in the Williams proceeding, with the quantum of that liability to be the subject of a second trial.

[164] Mr Williams referred to Mr Craig's evidence in the Williams proceeding, in which Mr Craig acknowledged he could not afford to pay for legal representation in the three cases that, at that time, he was running. Since then, Mr Craig has instructed Chapman Tripp to act for him in two further cases where, previously, he was self-represented.

[165] Mr Williams also referred in his evidence to a letter from his solicitors to Mr Craig, in which the solicitors sought to infer from the fact that Mr Craig was acting for himself in the Craig proceeding that there may be an issue as to his ability to meet a costs order in the event of one being made against him. The solicitors said that they understood Mr Craig had approached litigation funders seeking their assistance with funding the Craig proceeding, but had been turned down. They asked Mr Craig to provide financial information sufficient to satisfy them that he would be able to meet a costs order, and said that a failure to do so would be taken as an acknowledgment of problems with Mr Craig's ability to meet a costs award. In response, Mr Craig did not provide the information requested, but said simply that the application would be opposed.

[166] In his affidavit in opposition, Mr Craig said that he is a successful business person and qualified accountant, and is carefully budgeting his finances through the process of the legal actions in which he is involved. He is representing himself in some cases to ensure that he is not over-committed in terms of costs. Mr Craig expressed concern at providing any financial details to Mr Williams, in view of Mr Williams' past disclosure of Ms MacGregor's confidential documents. He said that he did not trust Mr Williams or anyone associated with him, and would therefore not be providing financial details to Mr Williams.

[167] Mr Craig said that he has always paid his bills, including legal fees and disbursements, and would continue to do so. He said that he has met all costs and awards that he has been ordered to pay in other litigation. He said that he is the owner of a successful business with a turnover in the millions of dollars, and that he owns his own house in Auckland with a substantial equity.

[168] Mr Craig submitted a further affidavit sworn on 12 March 2018. The affidavit was filed purportedly in response to a reply affidavit from Mr Williams. In it, Mr Craig referred to the Court of Appeal's very recently delivered judgment on the appeal in the Williams proceeding, in which the Court of Appeal found that the damages awarded by the jury were "plainly extravagant". The Court of Appeal indicated that at most the damages could be $260,000.

[169] Mr Craig said that he had the means to pay an award at that upper limit. He also contended that he would have a claim for solicitor/client costs against Mr Williams for making a grossly excessive claim against him.[52]

[170] Finally, Mr Craig added that he and his wife are the joint shareholders of a number of companies, one of which owns two commercial properties, each having a value in excess $2 million. He said there was "significant equity" in both properties, as well as various other assets which could be drawn on in the event of a costs award being made against him.

Submissions for Mr Williams

[171] Mr McKnight submitted that Mr Craig has not furnished any details of his financial position, and that it would be just and reasonable to order security.

[172] Mr McKnight relied on the following passage from the judgment of the Court of Appeal in *A S McLachlan v MEL Network Ltd*:[53]

> [15] The rule itself contemplates an order for security where the plaintiff will be unable to meet an adverse award of costs. That must be taken as contemplating also that an order for substantial security may, in effect, prevent

---

52 An apparent reference to the Court's jurisdiction to make an award of solicitor/client costs in such circumstances, conferred by s 43(2)(c) of the Defamation Act 1992.

53 *A S McLachlan v MEL Network Ltd* (2002) 16 PRNZ 747 (CA).

> the plaintiff from pursuing the claim. An order having that effect should be made only after careful consideration and in a case in which the claim has little chance of success. Access to the Courts for a genuine plaintiff is not lightly to be denied.
>
> [16] Of course, the interests of defendants must also be weighed. They must be protected against being drawn into unjustified litigation, particularly where it is over-complicated and unnecessarily protracted.

[173] Mr McKnight submitted that Mr Craig is not a "genuine plaintiff", and is attempting to draw Mr Williams into "unjustified litigation" that will be "over-complicated and unnecessarily protracted". Mr McKnight also refers to a comment Mr Craig made in the media that his costs in the Williams proceeding were in the vicinity of $1 million (a statement made well before the appeal was heard). Mr McKnight asked for an order for security for costs in the vicinity of $100,000, to be paid into Court.

Discussion and conclusion on the security for costs application

[174] In my view, Mr Williams has not provided sufficient evidence that Mr Craig will be unable to pay costs if he is unsuccessful in the Craig proceeding. Certainly there are a number of proceedings that Mr Craig has issued, but so far it appears that he has met any orders for costs or damages that have been made against him. He has provided evidence that he and his wife own companies that have substantial value, and he says that he runs a successful business that has a turnover in the millions of dollars per annum.

[175] I note too that one of the contentions in the Williams proceeding appears to have been that Mr Craig had significant financial resources, which he allegedly used to lend money to the Conservative Party and thus secure his role as leader. There is no evidence (apart from the existence of a number of Court proceedings, in some of which Mr Craig has been unsuccessful) to suggest that his apparently strong financial position has been weakened to the point where he might not now be able to meet any substantial award of costs if he is unsuccessful in the Craig proceeding. And I doubt that much can be inferred from the fact that Mr Craig is now appearing for himself in a number of the Court proceedings – it seems apparent from both his evidence and his submissions that he has been taking legal advice where he has required it, and the fact that he may have decided to marshal his financial resources by not engaging counsel

does not provide a sufficiently reliable basis for the inference Mr Williams seeks to draw.

[176] I have no means of assessing Mr Craig's chances of success in the various other proceedings, nor any means of assessing any exposure he might have on the claims of the various parties who have either sued him or made counterclaims against him.

[177] Having regard to those considerations, I am not satisfied that Mr Williams has made out the jurisdictional basis for a security order under r 5.45(1)(b). I decline to make any order for security for costs against Mr Craig.

APPLICATION TO TRANSFER THE PROCEEDING TO THE WELLINGTON REGISTRY

[178] When the Craig proceeding was filed, in the Auckland Registry of the Court, Mr Williams was described in the statement of claim as a "political lobbyist residing in Auckland".

[179] Under the High Court Rules, a plaintiff is normally required to file a Court proceeding in the registry nearest to the place where the defendant is resident or has a principal place of business. However, if the place where the cause of action sued on, or some material part of it, arose nearer to the place where the plaintiff resides than to the place where the defendant resides, the proper registry of the Court for filing purposes is, at the option of the plaintiff, the registry nearest to the residence of the plaintiff.[54]

[180] If a plaintiff wishes to exercise the option of filing in the registry nearest to the place where the plaintiff resides (on the ground that a material part of the cause of action arose nearest to that place), the plaintiff is required to file with his or her statement of claim an affidavit stating the place where the cause of action or the material part of it arose.[55]

---

54 High Court Rules 2016, r 5,1(1) and (2).
55 Rule 5.1(3).

[181] If it appears to a Judge that the statement of claim has been filed in the wrong registry, he or she may direct that the statement of claim or all documents filed in the proceeding be transferred to the proper registry.[56]

[182] In his affidavit in support, sworn on 11 October 2017, Mr Williams said that he used to live in Auckland, but now lives in Wellington. He said that on 27 July 2017 he filed a fifth amended statement of claim in the Williams proceeding, in which he pleaded that he lives in Wellington. On 11 September 2017 Mr Craig filed a statement of defence in which that allegation was admitted. Mr Williams said that, at the time the Craig proceeding was served on him, Mr Craig knew that he lived in Wellington.

[183] In a reply affidavit Mr Williams repeated his assertion that Mr Craig knew, when he served the Craig proceeding, that Mr Williams lives in Wellington. He noted also that Mr Craig had failed to file any notice in the High Court stating why the proceeding should nonetheless be heard in Auckland.

[184] In Mr Craig's further affidavit sworn on 12 March 2018, Mr Craig said that he was unaware of any requirement to file "notice" electing to have the proceeding in Auckland, although he has since become aware of the requirement to file an affidavit verifying that the causes of action, or material parts of them, occurred closer to where he resides than to where Mr Williams resides. Mr Craig went on to identify various parts of his causes of action in the Craig proceeding which are said to be material for the purposes of r 5.1 and which occurred closer to Mr Craig's Auckland residence than to Mr Williams' Wellington residence (for example, the allegedly defamatory publications to Mr Dobbs and Mr Day took place in Hamilton, which is closer to Mr Craig's residence, and the various publications made through the Whale Oil blog occurred in Auckland, where Mr Slater resides. The fourth cause of action relates to an alleged publication to Mr Stringer. While Mr Stringer resides in Christchurch, Mr Craig deposed that Mr Stringer was in Auckland at the time of the publication).

---

[56] Rule 5.1(4).

Discussion and conclusions on the application to transfer

[185] I am not prepared to make the order sought by Mr Williams. First, the Rules as to the proper registry for filing that are contained in r 5.1 are concerned with the situation as at the commencement of the proceeding. In this case, the proceeding was commenced by filing in the Auckland Registry in late-May 2017. Mr Williams acknowledges that he used to live in Auckland, but he did not say when he moved from Auckland to Wellington. He said only that when the Craig proceeding was served on him (on 29 September 2017) he was residing in Wellington, and Mr Craig knew that fact.

[186] There is no evidence of *when* Mr Williams moved from Auckland to Wellington, and in particular no evidence that Mr Williams did not reside or have a principal place of business in Auckland at the time Mr Craig *filed* the Craig proceeding.

[187] In those circumstances, I have no basis to conclude that the proceeding was filed in the wrong registry of the Court.

[188] Further, there appears to be no sufficient basis for an order transferring the proceeding to the Wellington Registry, or directing that the hearing take place in Wellington. It appears that Mr Craig is correct when he says that a number of the publications for which damages are sought, including the publications to Messrs Dobbs and Day and the publications to Mr Slater, occurred closer to Mr Craig's Auckland residence than to Mr Williams' Wellington residence. Mr Williams has not provided the names of any witnesses who are likely to be called at trial who live in or near Wellington, and it appears that a number of those who might give evidence at trial live in Auckland (or at least closer to Auckland than to Wellington).

[189] For all of those reasons, the application to transfer the proceeding to the Wellington Registry is dismissed.

RESULT

[190] I make the following orders:

(1) Mr Craig's first cause of action, relating to allegedly defamatory statements made to Ms Christine Rankin, is struck out.

(2) Subparagraphs (1), (3), (4), (7), (8), (9), (10), (11) and (12) of that part of Mr Craig's second cause of action that is reproduced at paragraph [55] of this judgment, are struck out, as are subparagraphs (1) and (2) of that part of his second cause of action that is reproduced at paragraph [56] of this judgment. Mr Craig is ordered to provide further particulars of his pleading which is reproduced at paragraph [56](3) of this judgment, in accordance with paragraph [118] of this judgment, within 20 working days of the date of this judgment. Subject to those orders, those parts of Mr Craig's second cause of action that are reproduced at paragraphs [55] and [56] of this judgment are allowed to stand.

(3) Subparagraphs (2)-(5) in that part of Mr Craig's third cause of action that is reproduced at paragraph [57] of this judgment, are struck out, as is subparagraph (3) as reproduced at paragraph [58] of this judgment. Subject to those orders, those parts of Mr Craig's third cause of action that are reproduced at paragraphs [57] and [58] of this judgment are allowed to stand.

(4) Subparagraphs (1), (2) and (4) of that part of Mr Craig's fourth cause of action which is reproduced at paragraph [59] of this judgment, are struck out, as is the allegation (reproduced at paragraph [60] of this judgment) that one of the meanings conveyed by the published words relied upon was that Mr Craig "sexually harassed [Ms MacGregor] over a long period of time". Subject to those orders, the remaining parts of Mr Craig's fourth cause of action that are reproduced at paragraphs [59] and [60] of this judgment are allowed to stand.

(5) Those parts of Mr Craig's fifth cause of action that are reproduced at paragraphs [61] and [62] of this judgment are allowed to stand to the extent that they plead that Mr Williams stated to Mr Stringer that

another victim made a claim [about Mr Craig] to the Human Rights Commission, and that the statement conveyed the meanings that are reproduced at paragraphs [62](b) and (c) of this judgment. Subject to those orders, those parts of Mr Craig's fifth cause of action that are reproduced at paragraphs [61] and [62] of this judgment (ie those parts that rely on the statement or implication that Ms MacGregor made a claim to the Human Rights Commission against Mr Craig, and the pleaded meaning that Mr Craig had sexually harassed Ms MacGregor) are struck out.

(6) Those parts of Mr Craig's sixth cause of action that are reproduced at subparagraphs (7) and (8) of paragraph [63] of this judgment, and at subparagraphs (1) and (2) of paragraph [64] are struck out. The remaining subparagraphs in Mr Craig's sixth cause of action that are reproduced at paragraphs [63] and [64] of this judgment are allowed to stand.

(7) Mr Craig is directed to file and serve an amended statement of claim, reflecting the above orders striking out parts of his statement of claim, within 20 working days of the date of this judgment.

(8) Mr Williams' application for an order for security for costs is dismissed.

(9) Mr Williams' application for an order transferring the proceeding to the Wellington registry of the Court is dismissed.

(10) Each side having had a measure of success on the applications, and as Mr Craig represented himself on the applications where he has prevailed, costs on the three applications are reserved.

Addendum

I record that Mr Craig has filed an appeal to the Supreme Court against the judgment of the Court of Appeal in which the Court of Appeal allowed the jury finding on liability to stand but confirmed that there should be a new trial

limited to damages. Mr Williams has filed a cross-appeal, in which he has contended that the entire jury verdict should have been allowed to stand.

I further record that the following issues or contentions remain highly contested between the parties, and these matters have not yet been the subject of any decision by the Supreme Court:

Mr Williams

(i) whether Mr Williams lied in any way whatsoever about his allegations against Mr Craig;

(ii) whether Mr Williams made any allegation of Mr Craig making a substantial or six-figure pay-out to Ms MacGregor;

(iii) whether Mr Craig had proved he did not send sexts to Ms MacGregor;

(iv) whether Mr Williams alleged Mr Craig had sexually assaulted Ms MacGregor; and

(v) whether Mr Williams was dishonest, deceitful, had a lack of integrity or could not be trusted.

Mr Craig

(i) that the discretion to order a total retrial exercised by the trial Judge should not have been overridden by the Court of Appeal;

(ii) there was insufficient evidence to find Mr Craig had sexually harassed Ms MacGregor and knew he had done so;

(iii) Mr Craig had not lost the right to reply to the attack made on him by Mr Williams.

Associate Judge Smith