IN THE DISTRICT COURT
AT NAPIER

CIV-2016-041-000371
[2017] NZDC 22579

BETWEEN	PHILLIP NICHOLAS ROSS First Plaintiff
AND	CLIFFORD ERNEST CHURCH Second Plaintiff
AND	BRIAN DAMIEN HUNTER Defendant

Hearing: 21 September 2017

Appearances: Plaintiffs In Person
No Appearance by or for the Defendant

Judgment: 20 February 2018

JUDGMENT OF JUDGE B A GIBSON

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[1] The plaintiffs are barristers and solicitors in practice in Hawke's Bay, the first plaintiff in Napier and the second in Hastings. The second plaintiff is also the holder a firearm's licence and is a registered firearms owner. They plaintiffs, who have acted at various times in their professional capacity for the defendant, allege they were the subject of a defamatory publication by the defendant on an internet site owned or controlled by him, the publications occurring on 14 December 2016 under the title *The Terrible Two* with a further publication on the defendant's website on 15 December 2016 concerning the first plaintiff and headed *Coward of the County.*

[2] On 19 December 2016 the plaintiffs commenced proceedings for defamation against the defendant, seeking both general and exemplary damages, and a permanent injunction restraining the defendant from publishing anything on his website imputing the plaintiffs as being liars, lazy, unethical, dishonest or incompetent.

[3] These proceedings began with the plaintiffs filing a statement of claim on 19 December 2016 and seeking, as well as the relief sought therein, an interim injunction directing the defendant to remove the articles complained of published on the internet site www.initiative.net.nz and not publish or permit others to publish on any website controlled by him, further defamatory material. Directions for service of the interim application and of the substantive proceeding were made enabling the defendant to be served by email at one or other of two email addresses, initiative@initiative.net.nz and brian@inzone.net.nz. I am satisfied that service has been effected in terms of the directions made by the Court, the defendant has not taken steps by filing and serving a statement of defence and accordingly the matter was able to proceed by way of formal proof on 21 September 2017.

[4] Delay in issuing the judgment has been occasioned in part because the second plaintiff obtained a suppression order in relation to his name in the disciplinary proceedings before the Lawyers and Conveyancers Disciplinary Tribunal on a complaint initiated by the defendant. Section 240(2) of the Lawyers and Conveyancers Act 2006 provides the order continues in force until the Disciplinary Tribunal, in its discretion, revokes it on the application of any party to the proceeding. On that being drawn to the attention of the second plaintiff he applied to the Tribunal seeking a variation of the suppression order. My attention was recently drawn to the order of the Tribunal dated 20 December 2017 which allowed publication of the second plaintiffs name in relation to these proceedings to the extent such is necessary and to enabling the publication of this judgment.

[5] The defendant is a criminal of some notoriety. He has, the plaintiffs say, a substantial criminal history. His website is published on the internet and functions as a blog where he publishes his views of various members of the Police, the Department of Corrections, and others involved in the administration of justice. The article published on 14 December 2016 on an internet site located at www.initiative.net.nz, although not authored by the defendant, was, I am satisfied, published by him. There are documents that link him to the website, in particular an email forwarded to the first plaintiff on 2 March 2014 authored by the defendant which concludes:

Finally, and to give you some understanding, you might be interested in my website at www.intiative.net.nz. This has been very successful in creating a culture, particularly with the local plods, that they are inclined to behave for fear of having their photos plastered on the internet. When a new article goes up unique hits on the site average around 1,200 per day which is not a bad result for this country.

The defamatory article 14 December 2016.

[6] Insofar as the first plaintiff is concerned, the first part of the article entitled *The Terrible Two* is alleged to be defamatory and with the defamatory words complained of underlined:

> *Starting with this as a basis for choosing a lawyer. If you are in Hawke's Bay then you can immediately eliminate Philip Ross from your lawyer shopping list. By his own admission he has stated that the police prosecutors are all fine people who would never do anything wrong, would never lie and is utterly condemning of anyone who does not see thing with same rose coloured glasses that he wears. Damion Davies is a known perjurer and yet Ross is quick to defend him and tell anyone who will listen what a fine chap he is.*
>
> *Don't ever turn your back on Philip Ross because he is as two faced as they come. His obsession with those who do not share his viewpoint and seek to challenge that is a well hidden but very mean streak. Ross is very good at acting on only half the information and seems to spend a lot of his spare time trolling the legal databases and coming up with conclusions and then offering unsolicited advice. The most recent examples being his unsolicited advice to Cliff Church on how me (sic) might close this website down, attempts that have of course met with spectacular failure. His latest stunt being to encourage Cliff Church to have someone declared a vexatious litigant, once again based on his very subjective viewpoint and only half the information.*
>
> *Ross is not always in favour with the local judiciary and is obsessed with Judge Tony Adeane, looking for any excuse to appeal one of his decisions. Now that could be good or bad depending on what side of the fence you are sitting, but consider that Ross' motives for appealing will have nothing to do with what is in your best interests and is entirely motivated by his desire to get one over Judge Adeane.*
>
> *An academic who came in to law as a second career Ross' major failing is that he has no people skills and completely fails to understand the human condition. An example of this being that he once made a client wait over an hour to see him, whilst he chatted to his secretary. He was then unable to understand why the client did not wait around and was ever so slightly pissed off with him.*
>
> *A conversation with Ross is 90% having to listen to his lawyer war stories about how good he thinks he is and 10% about what you are there for. He has an inability to listen to the client and it is all about doing things his way. His ego motivated relationship with Dompost gutter journalist Marty Sharpe*

> *is further proof that Ross will stab you in the back in favour of getting his own ego stroked.*
>
> *Philip Ross might well look at his own loyalties and consider whether integrity should take second place to loyalty. Initiative has direct knowledge of a situation where Ross was willing to retrospectively act as instructing lawyer to help a colleague avoid the wrath of the Law Society.*
>
> *Ross has been particularly scathing of the website, perhaps because it calls a spade a spade and outs the likes of police nark Brent Willis a client of his. Or perhaps just because he cannot handle the truth. He has described it as libellous.*
>
> ...

[7] As for the second plaintiff, Mr Church, he alleges the defamatory words in the article of 14 December 2016, insofar as they concern him, are as underlined. As with Mr Ross, he says not only were the defamatory words false but they were also published maliciously.

> *Cliff Church and Philip Ross are buddies and that is probably just as well for Church because there are very few lawyers in the area who want anything to do with him ...*
>
> *Strike Cliff Church from your lawyer shopping list immediately! Some of his colleagues even speak of complaining to the Law Society about him. The prosecutors hate him and regularly complain about him. In some circumstances that might be to the client's advantage but not with this guy, who is forever getting off side for filing documents late or not at all, not turning up for meetings, forgetting to turn up at court and generally annoying the hell out of people. Clients routinely complain that he is not on their side, does not return calls and is just doing the bare minimum to get the money from legal aid.*
>
> *Church has a track record for lying and seems oblivious to the consequences of his actions. He is directly responsible for one person losing custody in a Family Court matter where he lied to the Judge about not having received a draft affidavit and then kept lying. Court staff have become so frustrated with his regular claims that he did not receive emails that they now follow up, just to remove that excuse from his repertoire.*
>
> *His own now former office person Denise Woodhams quit because, in her own words, she could no longer sit in the same office and listen to Cliff Church lie to his clients.*
>
> *Speak to any of Church's former clients and you keep hearing the same thing, we did not feel that he was looking after our interests and did no work to advance the case. Recently he represented a person for whom he was supposed to be obtaining a limited license* (sic). *This is a straight forward job that requires no special skills. Church was so inept at this and his documents were rejected so many times that he was eventually admonished*

> *by the Judge and court staff eventually did it for him,* and encouraged the client to lay a complaint.
>
> *It is only a matter of time before it all catches up with him. Fortunately you will not have to deal with Cliff Church as duty solicitor at any of the Hawke's Bay courts because he is too incompetent to be permitted on that exclusive list. But he does manage to sneak out of town every now and then to be duty lawyer at Dannevirke. So watch out Tararua people if you draw that short straw.*
>
> *An obsessive collector he has an unhealthy collection of pistols and rifles, so don't piss him off. A peek at his Trademe feedback and you will see that he has his share of detractors there – bet they don't know how many guns he has stashed away.*

[8] The article was sub-headed '*Consumer Watch*' and displayed photographs of both plaintiffs.

[9] For the first plaintiff, Mr Ross, defamatory meanings in relation to the article of 14 December 2016 are that he was unethical and placed his loyalty to his clients behind his relationships with the Police, is unprofessional and ignores lawful instructions from clients, acts contrary to his clients' interests, makes false assertions without making necessary enquiries to establish their validity, is obsessed with successfully appealing a particular Judge, and does so for personal reasons rather than the interests of his client, is a narcissist, and is unethical and dishonest.

[10] For the second plaintiff, Mr Church, the defamatory meanings alleged were that he has poor relationships with other practitioners, is lazy, dishonest and incompetent, does not meet and maintain professional standards, as set out in the Lawyers: Conduct and Client Care Rules 2008, is a habitual liar, lies to his clients, someone who acts contrary to the interests of clients, an obsessive collector of firearms, and someone who will threaten anyone who annoys him with his firearms.

[11] The second article the first plaintiff alleged was maliciously published by the defendant on the initiative.net.nz website and was defamatory of him was a publication at about 9.00 pm on 15 December 2016, under the heading *Coward of the County*, featured a photograph of the first plaintiff and read as follows:

> *Philip Ross, featured in the Terrible Two is about as gutless as they come. Those who are regular followers of this site will know that there was recently an attempt to shut the site down. Ross made all sorts of extravagant claims*

about this site being "defamatory". But as a lawyer would know that this is not the case. But as a devious lawyer he used that position to threaten and intimidate a web hosting company to remove this site, when he knew that his claims had no basis.

> *His own self-fulfilling prophecy of biblical proportions is about to come true and his actions soon to be under investigation by the New Zealand Law Society and no doubt in his typical cowardly fashion his response will be one of attack, rather than to address the issues he has created head on.*

[12] The defamatory meanings the first plaintiff, Mr Ross, alleges in relation to this article are that he was a coward, had misused his position as a lawyer to threaten and bluff an internet company into terminating service to the defendant, and that he was dishonest and devious.

[13] The meaning words are capable of bearing is, of course, a question of law. In *The Law of Defamation in Australia and New Zealand, Federation Press 1998* the learned author, Michael Gillooly wrote:

> In general terms, an imputation (and hence the matter by which it is conveyed) is defamatory if it tends to damage the plaintiff's reputation or lead to his or her exclusion from society. Words, however insulting or objectionable which tend to produce neither effect, are not actionable.

[14] A summary of the relevant principles as to whether words are capable of an alleged defamatory meaning was given by Blanchard J in *New Zealand Magazines Ltd v Hadlee*[1] in which he said, at p 5 of his judgment:

> In determining whether words are capable of bearing an alleged defamatory meaning:
>
> (a) The test is objective: under the circumstances under which the words were published, what would the ordinary person understand by them?
>
> (b) The reasonable person is taken to be one of ordinary intelligence, general knowledge and experience of worldly affairs.
>
> (c) The Court is not concerned with the literal meaning of the words or the meaning which might be extracted on close analysis by a lawyer or academic linguist. What matters is the meaning which the ordinary reasonable person would as a matter of impression carry away in his or her head after reading the publication.

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[1] CA74/96, 24 October 1996

(d) The meaning necessarily includes what the ordinary reasonable person would infer from the words used in the publication. The ordinary person has considerable capacity for reading between the lines.

(e) But the Court will reject those meanings which can only emerge as a product of some strained or forced interpretation or groundless speculation. It is not enough to say that the words might be understood in a defamatory sense by some particular person or other.

(f) The words complained of must be read in context. They must therefore be construed as a whole with appropriate regard to the mode of publication and surrounding circumstances in which they appeared. I add to this that a jury cannot be asked to proceed on the basis that different groups of readers may have read different parts of an article and taken different meanings from them: *Charleston v Group Newspapers Ltd* [1955] 2 AC 65,72.

Mr Latimour referred the Court to what has been said about the qualities of the notional ordinary reader: someone "not avid for scandal" and "fair minded" (*Lewis v Daily Telegraph Limited* [1964] AC 234, 260 and 268: *Morgan v Odhams Press Limited* [1971] 2 All ER 1156, 1177), not "unduly suspicious" (*Morgan* at p 1177) and not prone to fasten on one derogatory meaning when other innocent or at least less suspicious meanings could apply" (*Mitchell v Faber & Faber Limited*, English Court of Appeal (Civil Division), 24 March 1994, p 3).

Are the words used defamatory?

[15] In para 2.1.19 *Gatley on Libel and Slander* Sweet & Maxwell 12th ed, 2013 the learned author notes:

> The present position is that to be defamatory in English law an imputation must tend to lower the claimant in the estimation of right-thinking members of society generally.

[16] The articles are plainly aimed at injuring the plaintiffs in their professional standing. To say of a solicitor that he is "two faced", that he is obsessed with a particular Judge and appeals his decisions regardless of his clients interests, that he would stab you in the back in favour of getting his ego stroked, and that he assisted a colleague by agreeing to "retrospectively act as an instructing lawyer" so as to "avoid the wrath of the Law Society" are plainly defamatory. The meaning of the words are such that they would appear to a reasonable person to reflect on Mr Ross's

skill, fitness and competence in his calling and meet the test proposed by Farwell J in *Leetham v Rank*[2] where it was said:

> ... It should be proved that the words are such as would produce a bad impression on the minds of average reasonable men.

[17] So also to call Mr Ross "gutless", or with reference to him, head an article *Coward of the County* is also plainly defamatory. To call someone a coward has long been held to be defamatory; see *Russell v Sheriffs*[3] and *McCarey v Associated Newspapers Ltd (No. 2).*[4] So also is the allegation that he is a "devious lawyer" who used his position to threaten and intimidate a web hosting company knowing his claims had no basis.

[18] As for Mr Church, the allegation that he has a track record for lying is plainly defamatory as it was asserted not only as abuse, but also as something that goes directly to his professional reputation and is compounded by the allegations that he lied to a Judge and lies to his clients. Statements however that he does not turn up for meetings and forgets to turn up at court and annoys "the hell out of people" are also, in the context of a professional man dependent on his reputation with the public, statements that harm his reputation in the eyes of right-thinking members of the community. Similarly the allegations that he is incompetent and because of his own incompetence is not permitted to act on the duty solicitor list is a defamatory allegation as it harms the second plaintiff in the eyes of right-thinking members of the community.

[19] I am satisfied that the plain meaning of the words complained of in the articles is such that they are defamatory of the plaintiffs, save for the last paragraph of the article of 14 December 2016 dealing with Mr Church's collection of pistols and rifles. Those remarks, which Mr Church said were factually untrue in any event, do not seem to me to meet the test of harming the plaintiff's reputation in the eyes of right-thinking members of the community. There is no suggestion that any firearms held by Mr Church are held unlawfully. The comment "don't piss him off" in the context of his collection of pistols and rifles would not, it seems to me, to be such as

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[2] (1912) 57 S.J. 111 CA at 112
[3] (1837) 15 S.881 (Ct of Sess)
[4] [1965] 2 QB 86

would be understood by a reasonable person as meaning the second plaintiff would threaten anyone with those firearms and would simply be seen as having been made mischievously.

[20] Overall, therefore, I am satisfied that with the exception of the remaining remarks about Mr Church's firearms and his possible use of them, the articles are defamatory of the plaintiffs in the way alleged in that they are calculated to lower the plaintiffs' personal and professional reputations in the estimation of right-thinking members of the community, and bring them into odium and contempt. There is nothing in the complete article that removes or ameliorates the sting of the defamatory remarks concerning the plaintiffs.

Were the articles actuated by malice?

[21] The plaintiffs seek punitive damages pursuant to s 28 of the Defamation Act 1992 which provides that such damages can only be awarded against the defendant where the defendant has acted in flagrant disregard of the rights of the plaintiff and, by s 44, are required to be particularised in the claim specifying the facts or circumstances that the plaintiff alleges justify an award of punitive damages against the defendant.

[22] The facts pleaded in respect of the articles, which the plaintiffs claim were motivated by malice, are that the defendant has a personal interest and had pursued disciplinary proceedings against the second plaintiff, Mr Church, that the first plaintiff gave evidence against the defendant in proceedings in those same proceedings before the Lawyers and Conveyancers Disciplinary Tribunal which led to the Dominion Post publishing an article about the proceedings on 15 October 2016. The disciplinary proceedings concerned a complaint that the practitioner, Mr Church, had misled the Court about the state of his instructions and that in sending his file to another lawyer he had omitted two items. The client was the defendant, with the decision noting that the defendant had over 160 criminal convictions, many of which were "obtaining by deception" or other varieties of fraud. The decision was given on 3 October 2016 and resulted in the complaints being dismissed, and with the defendant described as an unreliable witness. Mr Church was granted

permanent name suppression and costs were awarded against the New Zealand Law Society, the prosecutor, in a substantial sum.

[23] Consequently the plaintiffs allege the defendant was motivated by express malice in making the publications, in particular that he encouraged readers of the article to complain to the Law Society about the plaintiffs, or to contact his website for assistance in complaining, that he published the articles with the deliberate intention of humiliating and ridiculing the plaintiffs, and that he was upset that both this photograph and his name were published in connection with the proceedings by the Dominion Post with a description of him as a "*conman*". Accordingly the plaintiffs allege the defendant published the allegations for a private collateral advantage, knowing he was making false allegations.

[24] As such, the plaintiffs submit the publications were motivated by express malice which, as noted at para 32.33 of *Gatley on Libel and Slander* (supra) is a ground for claiming aggravated damages. Malice itself primarily involves spite, or ill-will, or a desire to injure the claimant as the motivating factor for publishing the defamatory material; para 32.34 *Gatley on Libel and Slander* (supra) and *Brooks v Muldoon*[5].

[25] I am satisfied that the publication was made for the improper motive of injuring the plaintiffs and their reputation, and as such, the publications were made maliciously and in retaliation for the outcome and subsequent publicity of the disciplinary proceedings involving the second plaintiff, at which the first plaintiff gave evidence.

[26] In his affidavit sworn 20 February 2017 Mr Ross refers to the source code of the website created by the defendant together with the meta data useful for instructing web search programmes such as Google, deposing:

> *In the email to me advising of the second publication, he boasted that "soon a Google search on your name will turn up some interesting results". He is referring to the inclusion of metadata tags for the purpose of search engine indexing of the page. In particular, the highlighted string, "tag-cathedral-*

[5] [1973] NZLR 1 at 10

blame-law tag-philip-ross-cop-lover tag-philip-ross-dodgy-lawyer tag-philip-ross-lawyer tag-philip-ross" are such metadata.

[27] Similar source code displaying meta data tags for search engine indexing in respect of the article "*The Terrible Two*" was created with meta tags for search engine indexing being "tag-cathedral-lane-law tag-cliff-church tag-cliff-church-dodgy-lawyer tag-cliff-church-law tag-cliff-church-lawyer tag-philip-ross tag-philip-ross-cop-lover tag-philip-ross-dodgy-lawyer tag-philip-ross-lawyer."

[28] Inclusion of the meta data into the defendant's website was plainly intended to lead to a Google search engine linking these words to the plaintiffs, again ample illustration of the express malice, spite and ill will aimed at the plaintiffs by the defendant.

[29] Accordingly I am satisfied that the plaintiffs have established that the defendant acted in flagrant disregard of their rights, was actuated by express malice and as such they are entitled to punitive damages against him.

Publication

[30] At common law publication means the communication of the defamatory material to third parties; *Pullman v Hill & Co*[6].

[31] At para 32.9 of *Gatley on Libel and Slander* the learned author notes, relying on the High Court of Australia decision in *Gutnick v Dow Jones*[7]:

> It has been decided that where defamatory material is posted on a website by an internet service provider there is publication of that material to any person who accesses that site and reads the material. The place of publication is the place or places where the material is downloaded.

[32] At para [44] of that decision Gleeson CJ for the majority said:

> In defamation, the same considerations that require rejection of locating the talk by reference only to the publisher's conduct, lead to the conclusion that ordinarily, defamation is to be located at the place where the damage to reputation occurs. ... In the case of material on the world wide web, it is not

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[6] [1891] 1 QB 524
[7] 210 CLR 575

> available in comprehensible form until downloaded onto the computer of a person who has used a web browser to pull the material from the web server. It is where that person downloads the material that the damage to reputation may be done. Ordinarily then, that will be the place where the tort of defamation is committed.

[33] I am satisfied there has been publication in this instance. The website on which the articles were posted was a "blog" site prepared using a template offered by Wordpress which offers a variety of templates for internet pages and blog sites, and has its own community of users, enabling them to record comments on the articles.

[34] I am satisfied from the evidence presented on behalf of the plaintiffs that several people other than the parties viewed the material. Mr Ross deposes to receiving a telephone call from a client on 15 December 2016 drawing his attention to the first article, and he also deposes to comment being placed on the blog site in response to the articles, including one from an individual in Dexter, Michigan, United States. Further, Mr Church, the second plaintiff, also deposes to copies of the article entitled *The Terrible Two* being posted to various of his clients, several of whom have communicated that fact to him. Also exhibited to an affidavit of Mr Ross was an email from the defendant to him dated 2 March 2014 drawing the first plaintiff's attention to his website at www.initiative.net.nz, the site on which the defamatory material was published subsequently, and noting that:

> *When a new article goes up unique hits on the site average around 1,200 per day which is not a bad result for this country.*

[35] Consequently, even if actual instances of publication were not to hand, I would be entitled to draw inferences that publication of the defamatory articles to third parties has occurred. As noted publication has occurred to a third party outside New Zealand. Although the defendant has not challenged the jurisdiction of the Court I am satisfied that it is appropriate for the matter to be determined in New Zealand given the plaintiffs are New Zealand citizens, resident in New Zealand, and that the full effect of the sting of the defamations will be felt in the community in which they reside and practice law. In any event, the plaintiffs do not rely on the publication in Michigan to support their cause of action.

[36] As to the extent of publication I have referred to the defendant stating, in an email addressed to Mr Ross on 2 March 2014 that the number of unique hits on the defendant's internet site average 1200 per day. Mr Ross also deposed that from the time the defamatory publications were available to be read on the internet, from approximately 9.00 pm on 14 December 2016 to about 5.30 pm on 19 December 2016, when they were withdrawn after service via email of these proceedings pursuant to the Pickwick procedure, he was contacted by at least one client who had seen the earlier of the two articles, and the articles themselves have what purport to be readers responses annexed to them.

[37] Copies of the articles were posted to clients of the first plaintiff prior to publication on the internet in December 2016. They arrived in envelopes posted within the North Island but without identifying the sender. A copy of the article entitled *The Terrible Two* was also posted to a sentenced prisoner in Auckland on 29 March 2017 with the article headed *Initiative, Illegitimi Non Carborundum,* a faux latin aphorism meaning "Don't let the bastards grind you down".

General Damages

[38] The defendant not having filed a statement of defence to the plaintiffs claim and with the publications clearly being defamatory and motivated, as I have found, by malice the plaintiffs are entitled to the relief they seek. Accordingly a permanent injunction is granted so that the defendant may not publish anything on his website that imputes about either plaintiff that they are liars, lazy, unethical, dishonest or incompetent.

[39] Insofar as monetary damages are concerned the plaintiffs seek general damages of $20,000 each for the first cause of action, with the first plaintiff seeking general damages of $10,000 for the defamatory publication of 15 December 2016, the article entitled *Coward of the County*, and a further $5000 for posting copies of the article to clients of the second plaintiff.

[40] The second plaintiff seeks, in addition to the claim for general damages under the first cause of action also seeks general damages of $20,000 for publication of the defamatory material sent to his clients.

[41] General damages include anticipated future loss as well as damages for pain and suffering and loss of amenity which are unable to be specified. In *Niven v Covey Poverty Bay Meat Co*[8] Edwards J said:

> The rule is very clearly stated in *Bullen v Leake's Prec of PL (7th Ed 37)*; 'the distinction between General and Special damage is this: General damage is such as the law will presume to be the natural or probable consequence of the defendant's act. It arises by inference of law, need not, therefore, be proved by evidence, and may be averred generally ...

[42] Mr Ross referred to a decision in the District Court, *O'Brien v Brown*[9] given by Judge Ross on 31 August 2001 where defamatory material was published on an electronic bulletin board and an email list available via the worldwide web. The plaintiff was accused of criminal behaviour by having used his office for private gain, and not having the interests of the organisation he was supposed to serve, as well as being a "buffoon". General damages of $30,000 were awarded, Judge Ross finding that the plaintiff had been injured, but not greatly so, had been exposed to some public odium and contempt, and had suffered some damage to reputation and character.

[43] While the defamatory material in these proceedings has been removed from the defendant's websites, which occurred after service of the proceedings, they were available to be read there for approximately five days and were, I am satisfied, seen by a number of people. The articles were plainly defamatory and were clearly designed to injure the plaintiffs in their professional reputation and expose them to public odium and contempt. Although the falsehoods were wounding and published with the deliberate intention of humiliating and ridiculing the plaintiffs, the degree of public odium and content and damage to reputation and character seems to me to be such that the damages claimed for the first cause of action, namely $20,000 each as general damages are awards that may properly be made, and I do so.

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[8] [1917] GLR 119 (SC) at 121
[9] [2001] DCR 1065

[44] Insofar as the second cause of action, which concerns the first plaintiff solely, the allegations of cowardice, misuse of the first plaintiff's professional position and allegations of dishonesty and deviousness are such that damage to the first plaintiff's personal and professional reputation must have occurred and he has, no doubt, suffered damage to reputation and character, as the defendant plainly meant to happen. In respect of that claim for general damages of $10,000 is well within the range of awards that ought to be made and accordingly the defendant is ordered to pay $10,000 to the first plaintiff in respect of that claim also.

[45] As for the third cause of action, namely the posting of copies of the articles to current clients of the second plaintiff, the envelopes sent to the second plaintiff's clients, two located in Napier and one in Wairoa were, I am satisfied, sent by the defendant again with the intention of injuring the plaintiffs in their professional reputation and character in bringing them into public odium and contempt. However publication was only to a limited number of people and accordingly, taking that factor into account, general damages of $10,000 are awarded to the second plaintiff and $4,000 to the first plaintiff.

Exemplary damages

[46] The plaintiffs also claim exemplary damages from the defendant in respect of the cause of action concerning publication of the two articles. They seek $10,000 each.

[47] Exemplary damages are awarded to punish defendants for their behaviour towards plaintiffs and by doing so, to deter defendants and others from engaging in similar conduct; *Civil Remedies in New Zealand, 2nd Edition,* para 12.1. Section 44 of the Defamation Act requires the plaintiff to give particulars specifying the facts or circumstances that the plaintiffs allege justify an award of punitive or exemplary damages.

[48] The particulars given, namely the defendant being ordered to pay costs in a civil proceeding for which he blamed the second plaintiff, and the publication in the Dominion newspaper and on the Stuff website of his name and a description of him

as a "*conman*" together with his photograph are the particulars pleaded as justifying the award of exemplary damages. The civil proceeding was the disciplinary proceeding before the Lawyers and Conveyancers Disciplinary Tribunal.

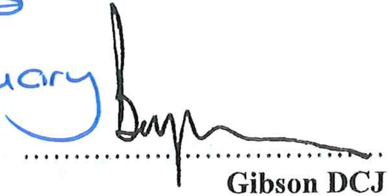
[49] One of the facts has not been substantiated, namely the costs award which was against the New Zealand Law Society, the prosecuting authority rather than the defendant personally, but I am satisfied the remainder have been and that publication of the articles was retaliation for the publication by the Dominion Post of an article about the proceedings, displaying the defendant's photograph and with the description of him as a "*conman*". The publications were motivated by malice. As such the retaliation through the publication of the defamatory material concerned is deserving of an award of exemplary damages and the first and second plaintiff are awarded $10,000 each respectively.

[50] In summary, judgment is entered for the first and second plaintiffs against the defendant on each cause of action. The first plaintiff is awarded the sum of $40,000 as general damages and $10,000 as exemplary damages against the defendant. The second plaintiff is awarded the sum of $24,000 general damages and $10,000 exemplary damages.

Costs

[51] The plaintiffs seek costs under scale 3C of the District Courts Rules 2014. If they wish to pursue this matter memoranda concerning the appropriateness of scale costs for solicitors acting in their own cause may be filed and served within 14 days of the date of this judgment.

Reserved decision delivered by me this 20th day of February 2018 at 4.30pm pursuant to Rule 11.14 DC Rules 2014.



Gibson DCJ