



## TABLE OF CONTENTS

	<b>Para No</b>
<b>Background</b>	<b>[9]</b>
<b>The proceedings</b>	<b>[22]</b>
<i>The initial claim against Fourth Estate</i>	[22]
<i>The s 35 conference</i>	[24]
<i>The amended claim against Fourth Estate and Mr Scott</i>	[26]
<i>The pleaded defences</i>	[30]
<b>High Court judgment</b>	<b>[33]</b>
<i>Claim against Fourth Estate</i>	[35]
<i>Claim against Mr Scott</i>	[48]
<i>Remedies</i>	[53]
<i>Costs judgment</i>	[55]
<b>Issues on appeal</b>	<b>[58]</b>
<b>The meaning of the relevant passages</b>	<b>[60]</b>
<i>Is a plaintiff confined to their pleaded meaning(s)?</i>	[60]
<i>The implications of the Judge's approach to the passages' meanings</i>	[64]
<i>Did the passages convey the meanings pleaded and/or found by the Judge?</i>	[67]
<i>Was it open to the Judge to adopt a meaning different from the pleaded meaning, if the difference was not material?</i>	[77]
<i>Were the meanings found by the Judge defamatory?</i>	[78]
<b>The claim against Mr Scott</b>	<b>[79]</b>
<b>Remedies</b>	<b>[81]</b>
<b>Result</b>	<b>[86]</b>

## REASONS OF THE COURT

(Given by Goddard J)

[1] On 2 March 2018 an article written by Mr Matthew Hooton was published in the National Business Review (NBR) newspaper in its print and website formats. The article was highly critical of the respondent (Mr Joyce), who was at the time

a Member of Parliament (MP), a member of the National Party, and a former Cabinet Minister. The first appellant, Fourth Estate Holdings (2012) Ltd (Fourth Estate), is the publisher of NBR. The second appellant (Mr Scott) is Fourth Estate's sole director and shareholder, who describes himself as NBR's "publisher".

[2] Mr Joyce brought proceedings against Mr Hooton and Fourth Estate in relation to two specific passages in the article (the passages). Mr Joyce did not claim damages. Rather, he made a claim under s 24 of the Defamation Act 1992 for a declaration that the defendants were liable to him in defamation, and for an award of solicitor and client costs.

[3] Mr Hooton settled the claim against him and apologised to Mr Joyce. The claim against him was discontinued. Mr Joyce continued the claim against Fourth Estate. He also added Mr Scott as a defendant, alleging that three tweets published by Mr Scott had the effect of republishing the article and the defamatory statements in it.

[4] Mr Joyce's claims against Fourth Estate and Mr Scott succeeded in the High Court.<sup>1</sup> Jagose J considered that the passages did not convey the particular imputations against Mr Joyce that had been pleaded. But the Judge found that they did convey certain other, less injurious, imputations against Mr Joyce: that Mr Joyce was prepared to engage in unethical and otherwise improper behaviour, in pursuit of his (rather than his party's) political objectives. The Judge concluded that those imputations defamed Mr Joyce.

[5] The Judge also concluded that Mr Scott's tweets conveyed, to those who had previously read the article, that Mr Scott considered the imputations made in the article were true. Those tweets therefore also defamed Mr Joyce.

[6] The Judge granted a declaration that Fourth Estate and Mr Scott were each liable to Mr Joyce in defamation. Mr Joyce was awarded solicitor and client costs against each of Fourth Estate and Mr Scott.

---

<sup>1</sup> *Joyce v Fourth Estate Holdings (2012) Ltd* [2019] NZHC 3356 [High Court judgment].

[7] On appeal Fourth Estate and Mr Scott advanced a number of criticisms of the approach adopted in the High Court judgment. In particular, they argued that it was not open to the Judge to find them liable on the basis of meanings of the passages that differed from the meanings pleaded by Mr Joyce. There was also a cross-appeal by Mr Joyce. He argued that if the Judge was not entitled to adopt the meanings that he attributed to the passages, then the passages bore the pleaded meanings so were defamatory in any event.

[8] We consider that the passages that Mr Joyce complains about, when read in context, do not convey either the meanings attributed to them by the Judge or the meanings pleaded by Mr Joyce. The appeal succeeds on the ground that the passages do not convey the relevant defamatory imputations. In those circumstances, we need not determine the other issues raised by the appellants in support of their appeal.

### **Background**

[9] In March 2018 Mr Joyce was, as noted above, an MP. He had held a number of positions in the National Party in the course of his career, including as its inaugural general manager from 2003 to 2005, and its campaign director for the 2005 and 2008 general elections. He chaired the party's campaigns for the 2011, 2014 and 2017 general elections. During his time in Parliament, Mr Joyce held a number of ministerial portfolios. One portfolio held by Mr Joyce, which is of particular relevance in these proceedings, was Minister for Communications and Information Technology. His successor in that portfolio was Ms Amy Adams.

[10] Following the 2017 general election, the National Party was unsuccessful in negotiations to form a coalition government. National found itself in opposition. The party's leader, Sir Bill English, resigned. There was a contest for the leadership. Mr Joyce was one of the contenders. His bid for the leadership did not succeed: in late February 2018 Mr Simon Bridges was chosen as National Party leader.

[11] Shortly before 2.00 pm on Thursday 1 March 2018, an NBR journalist visited Mr Joyce unannounced in his parliamentary office. He told Mr Joyce that a "very disparaging" article about him was to be published in the NBR the next day. Mr Joyce was invited to exercise a right of reply. After the House rose later that

afternoon, Mr Joyce called Mr Scott, who sent screenshots of the article for Mr Joyce to read.

[12] Mr Joyce advised Mr Scott that he considered the article to be false and defamatory, and said it should not be published. Mr Scott told Mr Joyce the article had gone to print, but Mr Joyce could exercise a right of reply. Mr Joyce said that would be a totally inadequate response. Mr Scott said he would see what could be done about publication of the article on NBR's website.

[13] The following morning, Friday 2 March 2018, the article was published in NBR's print and website formats. It appeared in a column headed "Weekly Hit", with Mr Hooton identified as the author. The full text of the article is set out in an appendix to this judgment. For ease of reference we set out below the relevant sections of the article, with the passages that were the subject of the proceedings italicised:

#### **Humiliation**

...

*As economic development minister, Mr Joyce's main legacy is his creation of MBIE, which acts as a brake on business, innovation and employment; his highly suspect all-of-government procurement system; and his out-of-control corporate welfare machine. Using Ms Adams as a proxy, he tried and failed to introduce the so-called copper tax to subsidise his friends at Chorus. He turned the good-news story of Auckland's new convention centre into a political debacle, including an adverse Auditor-General report.*

...

#### **Mettle**

... Mr Bridges will fail quickly if he entertains keeping Mr Joyce in the finance role or even on the front bench. At most, he should present Mr Joyce with the same offer made in 2006 by Mr Key to Don Brash: tertiary education, mid-way along the second row.

Party president Peter Goodfellow and his fellow board members fret – not without insight into Mr Joyce's character – that their campaign strategist would respond to such a slight by throwing in the towel altogether.

So be it. If National's board has left the party so vulnerable that it is entirely dependent on one man to manage its core business of running election campaigns, that is an utter failure of governance and all of them should resign.

*Mr Bridges has exceeded expectations in his first days as leader and already has the unequivocal support of many of the MPs who backed Ms Adams. He has an outside chance of limiting Ms Ardern to a single term. It will be*

*a terrible shame if he lacks the mettle that Mr Key showed in so brutally despatching Dr Brash and instead bows to blackmail by Mr Joyce.*

[14] That evening Mr Joyce's solicitors wrote to the NBR describing the entire article as defamatory. They foreshadowed legal proceedings against the NBR. They sought, by way of settlement of that foreshadowed claim, the immediate removal of the article from the website, publication of a retraction and an apology in both formats, and payment of Mr Joyce's solicitor and client costs.

[15] Mr Joyce's offer to resolve the foreshadowed claim on that basis was extended from the original cut-off date of 5 March 2018 to 7 March 2018 at the request of NBR's solicitors. However it was not accepted by that deadline. By letter dated 9 March 2018 Mr Joyce's solicitors then sought retraction of the particular passages that are in issue in these proceedings. The retraction was requested under s 25 of the Defamation Act. No agreement was reached on a retraction.

[16] On 29 March 2018 Mr Joyce filed proceedings against Mr Hooton and Fourth Estate, alleging that the two passages in the article (italicised at [13] above) were defamatory of Mr Joyce. He sought a declaration and solicitor and client costs under s 24 of the Defamation Act.

[17] In late April 2018 Mr Joyce settled his claim against Mr Hooton. Mr Hooton agreed to publish an apology, and to pay Mr Joyce's solicitor and client costs attributable to the claim against him. Mr Hooton apologised for allegedly suggesting "that the Hon. Steven Joyce had engaged in unethical, dishonest and/or corrupt behaviour during his tenure as a Minister in the previous National Government". The apology was published to Mr Hooton's Twitter and Facebook accounts.

[18] On 26 April 2018 the text of Mr Hooton's apology was published on NBR's website in place of the text of the article (though not, Mr Joyce says, with equal prominence to the article). On the same day, Mr Scott published the following message to Twitter:

Attn @MinterEllisonNZ I supported a contributor - relied on his integrity & sources – backed him when he pleaded, demanded that NBR not backdown, retract or apologise for his column. He might have lost his nerve, but I will fight for his right, even if he won't. Sources are SOLID

[19] MinterEllisonNZ is the username of Mr Joyce’s solicitors’ Twitter account. By publishing the message in this way, Mr Scott caused it to be published on his Twitter profile page, and to the Twitter timelines of his followers and the followers of Mr Joyce’s solicitors.

[20] Mr Scott subsequently engaged in dialogue with other Twitter users in relation to this and other tweets. On 10 May 2018 Mr Scott responded to another Twitter user, Mr Hamish Price, who had posted a tweet querying why Mr Scott continued to defend Mr Hooton’s column attacking Mr Joyce. Mr Scott tweeted:

I am defending freedom of speech. I don’t have to agree with what gets written in my publication, but I will fight for the right of my contributors to say it. I’m not fighting Mr Joyce, I am defending the integrity of the NBR that is being challenged in a court of law.

[21] On 6 June 2018, Mr Scott responded to a further tweet from Mr Price that “[no] publisher has successfully defended a defamation action which the author has already retracted and apologised for”. Mr Scott tweeted:

You make a valid point @hamishpricenz that’s why I believe Mr Hooton cut a deal with Mr Joyce, to prevent me from subpoenaing the five people he named from the shadow cabinet that would absolutely back up his statements. With a deal done, I was expected to roll over, I won’t.

## **The proceedings**

### *The initial claim against Fourth Estate*

[22] As noted above, proceedings were issued against Mr Hooton and Fourth Estate on 29 March 2018. The claim against Mr Hooton was discontinued following the settlement referred to above at [17].

[23] The claim pleaded against Fourth Estate focussed on the two paragraphs italicised in the extract from the article set out at [13] above. Mr Joyce pleaded a number of meanings which he claimed those passages conveyed to readers, and

which he said were defamatory. The pleaded meanings were summarised by the Judge in a minute dated 21 August 2018:<sup>2</sup>

[4] Mr Joyce complains the former of [the two passages] imputes Mr Joyce is:

- (a) prepared to abuse his public position in order to benefit others with whom he has a private relationship;
- (b) a corrupt politician; and
- (c) prepared to engage in unlawful or unethical behaviour including crony capitalism.

He further complains both [passages] together impute he is:

- (d) dishonest and unethical; and
- (e) prepared to engage in blackmail in order to further his personal interests.

*The s 35 conference*

[24] At Mr Joyce's request the Judge held a judicial conference under s 35 of the Defamation Act to consider whether the impugned passages could bear the pleaded meanings set out above, and (if so) to consider whether to make a recommendation under ss 26 and 27 of the Defamation Act that Fourth Estate publish a correction. The Judge set out his conclusions in relation to the meaning of the two passages as follows:<sup>3</sup>

[9] The contended imputations here are reasonably capable of being drawn from the published words on their face. The crucial words are "his friends at" in the former extract, and "blackmail [by]" in the latter extract. They enable characterisation of Mr Joyce as corrupt and prepared to act unlawfully for his personal benefit.

[10] However, I doubt the reasonable reader of Mr Hooton's column would go so far. Rather – on the evidence presently before me, recognising the column's objective is expressed in its title, and allowing also for Mr Hooton's reputation as a provocator – the reasonable reader would conclude Mr Joyce was prepared to engage in unethical (in terms of the 'friends' allegation) and otherwise improper (in terms of the 'blackmail' allegation) behaviour, in pursuit of his (rather than his party's) political objectives. I am conscious that is not Mr Joyce's pleaded imputation.

---

<sup>2</sup> *Joyce v Fourth Estate Holdings (2012) Ltd* HC Auckland CIV-2018-404-539, 21 August 2018 (Minute of Jagose J).

<sup>3</sup> Minute of Jagose J, above n 2.



[25] The Judge recommended a correction in terms of the imputations that he considered the passages conveyed, provided that a correction in those terms was acceptable to Mr Joyce.<sup>4</sup> Mr Joyce accepted the recommendation. But Fourth Estate did not accept the Judge's recommendation that it publish an apology in those terms. So the proceeding remained on foot.

*The amended claim against Fourth Estate and Mr Scott*

[26] On 18 October 2018 Mr Joyce amended his claim to add Mr Scott as a defendant. He alleged that Mr Scott's tweeted messages meant that Mr Hooton's article was true, was retracted by him for reasons other than that it was untrue, and was responsibly and properly published by Fourth Estate. Mr Joyce pleaded that these messages amounted to a republication of the defamatory imputations pleaded against Fourth Estate.

[27] In the amended statement of claim Mr Joyce also made some adjustments to the meanings that he alleged the two passages conveyed to readers of the article. He alleged that the first passage, referring to Mr Joyce's "friends at Chorus", conveyed the following defamatory imputations:

- (a) He is prepared to abuse his public position in order to benefit others with whom he has a private relationship.
- (b) He is a corrupt politician.
- (c) He is prepared to engage in unlawful behaviour.
- (d) He is prepared to engage in unethical behaviour.

[28] Mr Joyce alleged that the first and second passages taken together conveyed the following defamatory imputations:

- (a) He is dishonest and unethical.

---

<sup>4</sup> At [13]–[16].

- (b) He is prepared to engage in blackmail in order to further his personal interests.
- (c) He is prepared to engage in improper conduct in pursuit of his political objectives.<sup>5</sup>

[29] Mr Joyce sought substantially the same relief against each defendant:

- (a) a declaration under s 24 of the Defamation Act that the defendant is liable to him in defamation;
- (b) a recommendation under s 26 of the Defamation Act that the defendant publish a correction; and
- (c) solicitor and client costs in accordance with ss 24 and 26 of the Defamation Act.

*The pleaded defences*

[30] Fourth Estate denied that the relevant passages in the article were defamatory. Fourth Estate pleaded that they did not carry any of the meanings claimed by Mr Joyce or, if so, those meanings were true or not materially different from the truth. Fourth Estate also pleaded that the passages did not diminish Mr Joyce's reputation or, if so, did not do so materially beyond that caused by the truth of the balance of the article. Fourth Estate pleaded the truth of certain other passages in the article in support of that proposition.

[31] In support of its denial that the passages conveyed the meanings claimed by Mr Joyce, Fourth Estate pleaded that:

- (a) the Articles appeared as a "Weekly Hit" column commenting on matters of a political nature and/or made in a political context that was at times hard hitting and strongly opinionated;

---

<sup>5</sup> The amended statement of claim did not link this alleged imputation to either passage. But this was a relatively obvious cross-referencing error, and as counsel confirmed to us, this imputation was said to flow from both passages.

- (b) The tone of the articles are exclamatory by design intended to entertain readers through aggressive political critiquing of current affairs and that state of NZ politics;
- (c) Readers of the Articles would have read and/or understood the statements in the Articles in that context and therefore either not taken various statements in the Articles literally and/or would not have taken any meaning or imputations from the Articles that would have lowered their estimation of the plaintiff;

[32] Mr Scott also denied that the passages carried the meanings claimed by Mr Joyce, and denied that the passages were defamatory. He said that Mr Joyce's pleading of the inuendo conveyed by the tweets was deficient, and the tweets could not amount to a republication of the article.

### **High Court judgment**

[33] After setting out the background to the proceedings and describing the claims made by Mr Joyce, the Judge summarised the law governing defamation proceedings. As the Judge said, a statement is defamatory if it is an untrue statement that has a tendency to lessen the subject's reputation in the estimation of right thinking members of society generally.<sup>6</sup> The focus is on the broad impression that such a person would take from reading the relevant statements.<sup>7</sup> The statement's words should be given their natural and ordinary meaning (except where an innuendo is pleaded).<sup>8</sup> The Judge considered that the principles by which that meaning is derived were helpfully compiled in the following passage which he quoted from an English High Court decision, *Koutsogiannis v The Random House Group Ltd*.<sup>9</sup>

- (i) The governing principle is reasonableness.
- (ii) The intention of the publisher is irrelevant.
- (iii) The hypothetical reasonable reader is not naïve but [s/]he is not unduly suspicious. [S/h]e can read between the lines. [S/h]e can read in an implication more readily than a lawyer and may indulge in a certain amount of loose thinking but [s/]he must be treated as being a [wo/]man who is not avid for scandal and someone who does not, and should not, select one bad meaning where other non-defamatory meanings are available. A reader who always adopts a bad meaning

---

<sup>6</sup> High Court judgment, above n 1, at [21].

<sup>7</sup> At [22].

<sup>8</sup> At [23].

<sup>9</sup> At [23]; citing *Koutsogiannis v The Random House Group Ltd* [2019] EWHC 48, [2020] 4 WLR 25 (QB) at [12].

where a less serious or non-defamatory meaning is available is not reasonable: s/he is avid for scandal. But always to adopt the less derogatory meaning would also be unreasonable: it would be naïve.

- (iv) Over-elaborate analysis should be avoided and the court should certainly not take a too literal approach to the task.
- (v) Consequently, a judge providing written reasons for conclusions on meaning should not fall into the trap of conducting too detailed an analysis of the various passages relied on by the respective parties.
- (vi) Any meaning that emerges as the produce of some strained, or forced, or utterly unreasonable interpretation should be rejected.
- (vii) It follows that it is not enough to say that by some person or another the words might be understood in a defamatory sense.
- (viii) The publication must be read as a whole, and any “bane and antidote” taken together. Sometimes, the context will clothe the words in a more serious defamatory meaning (for example the classic “rogues’ gallery” case). In other cases, the context will weaken (even extinguish altogether) the defamatory meaning that the words would bear if they were read in isolation (eg bane and antidote cases).
- (ix) In order to determine the natural and ordinary meaning of the statement of which the claimant complains, it is necessary to take into account the context in which it appeared and the mode of publication.
- (x) No evidence, beyond publication complained of, is admissible in determining the natural and ordinary meaning.
- (xi) The hypothetical reader is taken to be representative of those who would read the publication in question. The court can take judicial notice of facts which are common knowledge, but should beware of reliance on impressionistic assessments of the characteristics of a publication’s readership.
- (xii) Judges should have regard to the impression the article has made upon them themselves in considering what impact it would have made on the hypothetical reasonable reader.
- (xiii) In determining the single meaning, the court is free to choose the correct meaning; it is not bound by the meanings advanced by the parties (save that it cannot find a meaning that is more injurious than the claimant’s pleaded meaning).

[34] The Judge noted that if a statement conveys a derogatory meaning, the defendant may plead the defence of truth set out in s 8 of the Defamation Act.<sup>10</sup>

---

<sup>10</sup> At [24].

*Claim against Fourth Estate*

[35] The Judge observed that there was no dispute the impugned article was about Mr Joyce, and was published by Fourth Estate in NBR's print and website formats. So the key issue that he needed to decide was whether the relevant passages were defamatory of Mr Joyce and, if so, were true or not materially different from the truth.<sup>11</sup>

[36] The Judge noted that he was required to put himself in the shoes of a hypothetical reader of each of the NBR print and website formats. He considered that some guidance about the characteristics of that group of readers could be drawn from NBR's media kit, which included the following description of the newspaper:<sup>12</sup>

For more than 45 years the National Business Review has produced edgy, award-winning journalism. We believe in a transparent democracy and all that means. We hate the suffocating red tape of bureaucracy.

We have championed private enterprise, applauded its success and paid tribute to our risk takers and innovators. We celebrate success with the NBR Rich List and its tall poppies.

Our readers trust us to expose the dishonest, incompetent and reckless and act as a watchdog against those who would wield undeserved power over them. They respect we are an icon that provides news coverage our rivals find legally too risky or too complex to report.

They would not be surprised to know we have never lost a defamation case in court. We have, consequently, built up a camaraderie, a bond with our readers. We know we're in good company.

The best.

[37] NBR's media kit said that the print edition is read by "36,000 rich, influential and powerful readers". On average, according to the media kit, 247,000 page impressions on NBR's website are accessed from 74,000 unique New Zealand browsers each week.

[38] The Judge noted that the article appeared in Mr Hooton's "Weekly Hit" column. Fourth Estate had pleaded that the column commented "on matters of a political nature and/or made in a political context". It "was at times hard hitting and

---

<sup>11</sup> At [25].

<sup>12</sup> At [26].

strongly opinionated”. Its tone was “exclamatory by design[,] intended to entertain readers through aggressive political critiquing of current affairs”.<sup>13</sup>

[39] The Judge recorded that Mr Joyce generally accepted NBR’s characterisations of the column, but added that “the NBR is a respectable and serious journalistic publication”.<sup>14</sup>

[40] The Judge considered that without any contextual evidence, he was constrained in the meaning he could give the impugned passages, which had to be drawn exclusively from the words used in the context of the article itself.<sup>15</sup>

[41] In relation to the first passage, the Judge considered that without any evidence of the relationship between Mr Joyce and Chorus, he was limited to the natural and ordinary meaning of the phrase “subsidise his friends”. That natural and ordinary meaning was that there was a personal relationship. The Judge did not accept the submission that the friendship referred to was not personal but political, having regard to the reference to “his friends” rather than “their friends”, and in the absence of any reference in the article to a ministerial or governmental disposition towards Chorus.<sup>16</sup>

[42] The Judge considered that the reference to Ms Adams’ claimed “proxy” role also implied that Mr Joyce had a separate and unofficial, and possibly surreptitious, interest in “his friends at Chorus”.<sup>17</sup>

[43] The Judge then went on to consider the meaning of the reference to “blackmail by Mr Joyce” in the second passage:

[33] Evidence also may have assisted in giving context to the “and instead bows to blackmail by Mr Joyce” passage. As the article’s concluding words, they seem a clear reference back to the article’s reasons for commending Mr Bridges not “[entertain] keeping Mr Joyce in the finance role or even on the front Bench”, of which the article makes gnomic reference to party officials ‘fretting’ “not without insight into Mr Joyce’s character[,] ... their campaign strategist would respond to such a slight by throwing in the towel altogether”.

---

<sup>13</sup> At [28].

<sup>14</sup> At [28].

<sup>15</sup> At [30].

<sup>16</sup> At [31]–[32].

<sup>17</sup> At [32].

[34] Those reasons, under the heading “Humiliation”, are a litany of Mr Joyce’s contended failings in political, ministerial, and strategic roles, to the extent “[t]he National caucus will only fully reunify when the divisive Mr Joyce is out of Parliament altogether”. If there was something about his performance in those roles on which to rely for his retention, a less derogatory meaning of ‘blackmail’ possibly could be argued, but the article diligently avoids any positive attribution to Mr Joyce, and there is no evidence of any other side to his alleged failures. Mr Joyce’s own evidence scrupulously avoids any such reference, preferring simple denials of the imputations against him.

[44] The Judge was confirmed in his previous view that:<sup>18</sup>

... the reasonable reader would conclude Mr Joyce was prepared to engage in unethical (in terms of the ‘friends’ allegation) and otherwise improper (in terms of the ‘blackmail’ allegation) behaviour, in pursuit of his (rather than his party’s) political objectives.

[45] The Judge did not consider that any more serious imputation could be taken from the passages.<sup>19</sup>

[46] The Judge dealt with the relationship between the meanings he had found and the pleaded meanings in a passage that attracted considerable attention at the hearing before us and which we therefore set out in full:

[37] I emphasise my meanings are the passages both imputed Mr Joyce’s preparedness to engage in poor conduct “in pursuit of his (rather than his party’s) political objectives”. They are not imputations of his poor conduct more generally. The limitation springs from the subject matter of Mr Hooton’s column. Their distinction from Mr Joyce’s pursuit of what may be his party’s political objectives also is important; even untrue allegations of sharp party-political conduct may not be defamatory. Although that is to find meanings divergent from those Mr Joyce pleads, their circumscription is less injurious than claimed by him, and I thus am free to find those lesser meanings established. Nonetheless, they are meanings of sufficient seriousness, of Mr Joyce’s significant and self-serving impropriety, to climb above defamation law’s disregard of trivialities.

(Footnotes omitted.)

[47] It is implicit in this passage that the Judge considered that the imputations he had identified would lessen Mr Joyce’s reputation in the estimation of right-thinking

---

<sup>18</sup> At [35].

<sup>19</sup> At [36].

members of society. The Judge found that the imputations were untrue. They were therefore defamatory.<sup>20</sup>

*Claim against Mr Scott*

[48] The Judge then went on to deal with the claim against Mr Scott. He noted that the pleading was of an innuendo: that is, the defamatory meaning alleged in relation to these tweets was different from the natural and ordinary meaning of the words used, and the words would have the alleged meaning if and only if they were read by a person with some additional background knowledge that provided the context for that meaning. As the Judge noted, s 37(3) of the Defamation Act required the plaintiff to give the following particulars in relation to the pleaded innuendo:<sup>21</sup>

- (a) the persons or class of persons to whom the defamatory meaning is alleged to be known; and
- (b) the other facts and circumstances on which the plaintiff relies in support of the plaintiff's allegations.

[49] Mr Scott had made a request for s 37 particulars. Mr Joyce had responded, by way of informal particulars, that “the persons or class of persons ... are all persons who had read the article and then subsequently read [Mr Scott's] tweets”.

[50] The Judge considered that it was apparent from the sub-tweets to the tweets that some people had read the article and then the tweets. Mr Price was one of them.<sup>22</sup>

[51] The Judge accepted Mr Scott's submission that “republication” is a term of art in defamation proceedings, which refers to the repetition of the defamatory words. The tweets were not a republication in that technical sense. But, the Judge said, Mr Joyce had pleaded the defamatory meaning to be taken from the tweets, which was essentially an endorsement of the truth of the article. The Judge considered that Mr Scott's disagreement with Mr Hooton, which was reflected in some of Mr Scott's contemporaneous tweets, did not dispute the article's substance. Nor could the impugned tweets be understood as Mr Scott simply relying on Mr Hooton.

---

<sup>20</sup> At [40].

<sup>21</sup> At [42].

<sup>22</sup> At [43].



The meaning of the first and third tweets was that the article was, or at least its defamatory imputations were, true, as based on “solid” sources.<sup>23</sup>

[52] The Judge considered that there was nothing additionally defamatory of Mr Joyce in the imputations the two passages were “retracted [by Mr Hooton] for reasons other than that they were untrue” or “responsibly and properly published by [Fourth Estate]”. Even if those imputations could be established, their only relevance was to imply that the article was true.<sup>24</sup>

### *Remedies*

[53] The Judge considered that declarations under s 24 of the Defamation Act should be made in respect of Fourth Estate and Mr Scott. Solicitor and client costs would follow.<sup>25</sup>

[54] The Judge rejected a submission for Mr Scott that no relief should be granted against him, as his joinder was unnecessary to obtain the vindication sought by Mr Joyce. The Judge did not consider that Mr Scott’s joinder was disproportionate.<sup>26</sup>

### *Costs judgment*

[55] The Judge dealt with a number of issues in relation to the award of costs in a separate judgment delivered on 11 June 2020.<sup>27</sup>

[56] The Judge observed that although declaratory relief is discretionary, the right to indemnity under s 24 of the Defamation Act is not. The Judge noted that he had not ordered “otherwise” so Mr Joyce was entitled to solicitor and client costs. Factors relevant to awards of indemnity costs under the High Court Rules 2016 were immaterial.<sup>28</sup>

---

<sup>23</sup> At [46].

<sup>24</sup> At [48].

<sup>25</sup> At [53].

<sup>26</sup> At [50]–[52].

<sup>27</sup> *Joyce v Fourth Estate Holdings (2012) Ltd* [2020] NZHC 1299 [Costs judgment].

<sup>28</sup> At [2].

[57] Fourth Estate and Mr Scott argued that some of the costs sought were not properly recoverable, and the overall amount was unreasonable. The Judge did not accept those submissions. He considered that “[i]ndemnity’ means what it says: the NBR’s liability coterminous with the solicitors’ costs incurred by Mr Joyce”.<sup>29</sup> The Judge considered that if Fourth Estate wished to propose something other than solicitor and client costs, the time to do so was at trial. The test for reasonableness of costs in this context was whether the costs were reasonable as between Mr Joyce and his solicitors, not whether it was reasonable to award them against the defendants. The level of costs was justified.<sup>30</sup> The Judge accepted Mr Joyce’s apportionment of costs as between Fourth Estate and Mr Scott.<sup>31</sup>

### **Issues on appeal**

[58] The appeal and cross-appeal raise issues in relation to:

- (a) the meaning of the two passages;
- (b) whether the passages were defamatory of Mr Joyce;
- (c) the pleading of the claim against Mr Scott in relation to his tweets;
- (d) the meaning of Mr Scott’s tweets;
- (e) whether the Judge turned his mind to the exercise of discretion in relation to the grant of a declaration, and if so, whether the Judge erred in granting a declaration;
- (f) whether the Judge erred in proceeding on the basis that the costs consequences following from a declaration under s 24 of the Defamation Act were not discretionary; and
- (g) certain specific aspects of the Judge’s approach to costs.

---

<sup>29</sup> At [7].

<sup>30</sup> At [10]–[11].

<sup>31</sup> At [12].

[59] The focus of the argument before us was on the issues concerning the meaning of the two passages in the article. The issues raised by the parties in relation to the meaning of those passages can be broken down into a number of sub-issues:

- (a) Is it open to a Judge to depart from the specific meaning(s) pleaded by a plaintiff?
- (b) Did the meanings found by the Judge differ materially from the pleaded meanings?
- (c) Did the passages convey the meanings found by the Judge?
- (d) Did the passages convey the pleaded meanings?

### **The meaning of the relevant passages**

*Is a plaintiff confined to their pleaded meaning(s)?*

[60] The Judge proceeded on the basis that he was able to find that the challenged passages had meanings that were different from the pleaded meanings, provided that the meaning he preferred was less injurious than the meaning pleaded by Mr Joyce.<sup>32</sup> As authority for this proposition he referred to the English decision that he had quoted from at some length: *Koutsogiannis v The Random House Group Ltd*.<sup>33</sup> It was common ground before us that although that approach may be correct as a matter of English law, it is not the approach adopted by the leading New Zealand authorities.

[61] In *Broadcasting Corp of New Zealand v Crush* this Court held that it is not open to a defendant to plead that a statement has a meaning different from the meaning alleged by the plaintiff, and to seek to establish the truth of that different meaning. The Court said:<sup>34</sup>

As we see it, [the jury] cannot be entitled to find for the plaintiff on a basis which he has disclaimed or never put forward and which the defendant has not been called upon to meet. If the plaintiff has nailed his colours to the mast as to the meaning of which he complains, it does not seem rational to suppose

---

<sup>32</sup> High Court judgment, above n 1, at [37], set out at [46] above.

<sup>33</sup> *Koutsogiannis*, above n 9, at [12(xiii)].

<sup>34</sup> *Broadcasting Corp of New Zealand v Crush* [1988] 2 NZLR 234 (CA) at 239–240.

that the jury can legitimately give a verdict for him on finding some different and less serious meaning. If the recent English cases hold otherwise, we would have to respectfully disagree, but it is not clear that they do.

[62] In *Television New Zealand Ltd v Haines* this Court held that the enactment of the Defamation Act in 1992 did not affect the rule in *Crush*.<sup>35</sup> A defendant cannot set up alternative meanings and prove the truth of those meanings. A defendant can deny that the words used are capable of bearing the meanings alleged by the plaintiff, or prove that the meanings alleged are substantially true, but it cannot attempt to prove the truth of alternative meanings. By pleading a meaning, the plaintiff sets a threshold which it must meet if it is to succeed in its claim.<sup>36</sup>

If the meaning which is alleged, or something not materially dissimilar, is not established, then the plaintiff loses its case. It is only when that meaning is established that the defendant needs to respond to it, but not to some other issue which might have been complained about but has not been the subject of complaint.

[63] Thus, as the Court went on to say, if a defendant establishes that a publication does not convey the meanings asserted by the plaintiff, that defendant will not be liable. The plaintiff will have failed in their case.<sup>37</sup>

*The implications of the Judge's approach to the passages' meanings*

[64] Mr McKnight, for Fourth Estate and Mr Scott, submitted that the meanings of the passages adopted by the Judge were, as the Judge himself recognised, materially different from the meanings which had been pleaded by Mr Joyce.<sup>38</sup> It is clear from the decisions of this Court in *Crush* and *Haines*, he said, that it was not open to the Judge to find the defendants liable on the basis of materially different meanings. So the claims should have been dismissed.

[65] Mr Kennedy, for Mr Joyce, accepted that Mr Joyce could not succeed on the basis of meanings that were materially different from those that had been pleaded. But he offered two responses to the appellants' argument. First, he said, the meaning adopted by the Judge was not in fact materially different from the pleaded meaning.

---

<sup>35</sup> *Television New Zealand Ltd v Haines* [2006] 2 NZLR 433 (CA) at [54]–[55].

<sup>36</sup> At [62].

<sup>37</sup> At [63]. See also *Craig v Slater* [2020] NZCA 305 at [15].

<sup>38</sup> High Court judgment, above n 1, at [37], set out at [46] above.

It was open to the Judge to adopt a meaning that was not materially dissimilar from the pleaded meaning, and to find the defendants liable on that basis. Alternatively, Mr Kennedy submitted, if the Judge was wrong to proceed on the basis of his preferred meanings then the Judge had erred in finding that the passages did not convey the pleaded meanings. The natural and ordinary meaning of the relevant passages was (as pleaded) that:

- (a) Mr Joyce is prepared to engage in unethical behaviour.
- (b) Mr Joyce is prepared to engage in improper conduct in pursuit of his political objectives.

[66] We will address these arguments by considering the meanings conveyed by the passages, and in particular whether the passages convey the pleaded meanings and/or the meanings found by the Judge.

*Did the passages convey the meanings pleaded and/or found by the Judge?*

[67] Mr Kennedy provided a helpful table in which he set out the key excerpts from the defamatory passages, the pleaded meanings relied on by Mr Joyce before us, and the meanings adopted by the High Court:

	<b>Key excerpt from Defamatory Passages</b>	<b>Pleaded Meanings</b>	<b>High Court’s meanings</b>
<b>Chorus Passage</b>	<i>Using Ms Adams as a proxy, he tried and failed to introduce the so-called copper tax to subsidise his friends at Chorus.</i>	The plaintiff is prepared to engage in unethical behaviour.	Mr Joyce was prepared to engage in unethical (in terms of the ‘friends’ allegation) ... behaviour, in pursuit of his (rather than his party’s) political objectives.
<b>Blackmail Passage</b>	<i>It will be a terrible shame if [Mr Bridges] lacks the mettle that Mr Key showed in so brutally dispatching Dr Brash and instead bows to blackmail by Mr Joyce.</i>	The plaintiff is prepared to engage in improper conduct in pursuit of his political objectives.	Mr Joyce was prepared to engage in ... otherwise improper (in terms of the ‘blackmail’ allegation) behaviour, in pursuit of his (rather than his party’s) political objectives.

(Footnotes omitted.)

[68] We have concluded that the two passages, when read in context, convey neither the pleaded meanings nor the meanings adopted by the Judge.

[69] In determining whether the passages complained of are capable of bearing the alleged meanings, we apply the principles identified by Blanchard J in this Court in *New Zealand Magazines Ltd v Hadlee (No 2)*:<sup>39</sup>

- (a) The test is objective: under the circumstances in which the words were published, what would the ordinary reasonable person understand by them?
- (b) The reasonable person reading the publication 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.
- (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 the 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 News Group Newspapers Ltd* [1995] 2 AC 65; [1995] 2 All ER 313 (HL) at p 72; 318.

[70] And, as Barker J added, that notional reasonable person is:<sup>40</sup>

... fair-minded, not avid for scandal, not unduly suspicious, nor one prone to fasten on to one derogatory meaning when other innocent or at least less serious meanings could apply.

---

<sup>39</sup> *New Zealand Magazines Ltd v Hadlee (No 2)* [2005] NZAR 621 (CA) at 625.

<sup>40</sup> At 630.

[71] The reference in the first passage to “friends at Chorus” needs to be read in the context of that paragraph as a whole, and the preceding paragraph. The thrust of these paragraphs is that Mr Joyce was (in Mr Hooton’s view) a failure as a Cabinet Minister and political strategist. These paragraphs list various initiatives Mr Joyce was involved in, and the ways in which they were said to be failures. The relevant passage refers to Mr Joyce’s “out-of-control corporate welfare machine”. That is the context in which there then comes a reference to an attempt to introduce a copper tax “to subsidise his friends at Chorus”. We consider that an ordinary and reasonable reader would take this as an allegation that Mr Joyce was well disposed (friendly) to big businesses such as Chorus, and attempted to “pick winners” and channel funds to such businesses in various ways, including in the case of Chorus via a “copper tax”. A reasonable reader would not, without more, understand this passage as alleging that Mr Joyce had personal connections with Chorus, and that in pursuing a “copper tax” he was engaging in unethical behaviour in pursuit of his own personal objectives. There is nothing in the balance of the article to suggest it should be read in this way. Rather, the context indicates that this forms part of a sustained attack on Mr Joyce’s competence as a Cabinet Minister and strategist.

[72] The reference to Ms Adams as a “proxy” also would not in our view be understood by a reasonable reader as conveying an allegation of concealment, or pursuit by Mr Joyce of personal objectives. Rather, it would be understood by such a reader as a claim that Mr Joyce continued to advocate for this policy after he was succeeded in the relevant portfolio by Ms Adams. It might be understood as conveying a flavour of Mr Joyce seeking to exercise influence outside his own portfolios, or interfering in the portfolios of other Ministers — but that would not suggest unethical behaviour on Mr Joyce’s part.

[73] We consider that reading the first passage as an allegation of unethical behaviour in pursuit of personal objectives fails to give sufficient weight to context. The article was written by Mr Hooten, a well-known political pundit with, as the Judge said, a reputation for being a *provocateur*.<sup>41</sup> It vigorously attacks Mr Joyce’s political strategies and personal style. The Judge’s interpretation was based on a close analysis

---

<sup>41</sup> High Court judgment, above n 1, at [17]; referring to the Minute of Jagose J, above n 2, at [10].

of the pronoun used (“his” versus “their”) and the ordinary meaning of the word “friends”. That is an example of the close linguistic analysis against which this Court counselled in *Hadlee*. A reasonable reader of the article’s exaggerated and colourful prose would understand that it was, as Fourth Estate pleaded, intended to be an entertaining “hit”. If the words “his friends” meant anything at all — and a reasonable reader might well conclude that they were merely emotive surplusage — they were simply an embellishment of this limb of the article’s aggressive attack on Mr Joyce’s political legacy, including what was said to be an “out-of-control corporate welfare machine”. They would not be understood by most readers as advancing a new and quite distinct charge of unethical behaviour in pursuit of personal objectives. That reading involves “[fastening] on to one derogatory meaning when other innocent or at least less serious meanings could apply”.<sup>42</sup>

[74] The position is, in our view, even clearer so far as the second passage is concerned. The article encourages Mr Bridges to demote Mr Joyce, offering him at most a position “mid-way along the second row”. The article suggests that the party President and fellow board members might be concerned that this would lead to Mr Joyce “throwing in the towel altogether”, that is, resigning from all his party and parliamentary roles. We consider that a reasonable reader would be likely to understand that this anticipated threat of resignation is the “blackmail” that the passage is referring back to. This is a very loose and imprecise use of the term “blackmail”. It is not consistent with the dictionary definition of the word. But we have concluded that an ordinary reasonable person who read this article, without reference to a dictionary and without over-thinking the issue, would understand the article to be alleging no more and no less than that Mr Joyce is likely to threaten to quit completely if he does not get the job he wants. That reader would not consider that Mr Hooton was alleging that Mr Joyce was prepared to engage in actual blackmail, in the sense of Mr Joyce threatening to reveal discreditable information about Mr Bridges (or someone else) if Mr Joyce did not get his way. That would be an overly literal, strained and speculative reading of the relevant passage, for which the context provides no support.

---

<sup>42</sup> *Hadlee*, above n 39, at 630, quoted at [70] above.



[75] There is nothing improper in the conduct that this passage, properly understood, alleges. It might perhaps be described as petulant. But we do not consider that right-thinking members of society would think less of a senior politician who threatens to resign if they are not offered a position that they see as commensurate with their ability, experience and seniority. Such behaviour is an unexceptional feature of political life.

[76] It follows that Mr Joyce's claim against Fourth Estate must fail. The passage (whether standing alone or read in conjunction with the first passage) does not convey the pleaded meaning that Mr Joyce was prepared to engage in improper conduct in pursuit of his political objectives. Nor does it convey the meaning preferred by the Judge: that Mr Joyce was prepared to engage in otherwise improper behaviour in pursuit of his (rather than his party's) political objectives.

*Was it open to the Judge to adopt a meaning different from the pleaded meaning, if the difference was not material?*

[77] In light of our finding that neither the pleaded meanings nor the Judge's preferred meanings are made out, we need not express a view on whether it was open to the Judge to uphold the claim on the basis of a meaning that differed from the pleaded meaning, provided the difference was not material. This Court has recognised that there may be limited circumstances in which it is appropriate for a Judge to reformulate the plaintiff's pleaded meanings, while ensuring fairness to the parties and having due regard to the importance of pleadings in defamation cases.<sup>43</sup> But it seems to us that the scope for any reformulation of pleaded meanings must be narrowly confined, having regard to the rule in *Crush*.

*Were the meanings found by the Judge defamatory?*

[78] We also need not address the appellants' submission that these passages were simply vigorous and "exclamatory" contributions by Mr Hooten to the rough and tumble of politics, and that set in that context the meanings found by the Judge would not lower Mr Joyce in the estimation of right-thinking members of society so were not

---

<sup>43</sup> *Pauanui Publishing Ltd v Montgomerie* [2004] NZAR 702 (CA) at 708–709.

defamatory.<sup>44</sup> In circumstances where neither the pleaded meanings nor the Judge's preferred meanings are made out, that issue does not arise.

### **The claim against Mr Scott**

[79] It follows from our conclusion in relation to the meaning of the passages in the article that the tweets — which are said to assert the truthfulness of the article — also do not convey any of the pleaded defamatory imputations.

[80] If we had considered that the passages conveyed the defamatory imputations complained of by Mr Joyce, we would have needed to consider whether the tweets would have been understood by a reasonable reader who had previously seen the article as conveying the same imputations. That would turn, among other matters, on whether there was a sufficient connection in time and content between the article and the tweets that a reader of the tweets would have understood them as an endorsement by Mr Scott of the specific meanings complained of by Mr Joyce.<sup>45</sup> Bearing in mind the time that passed between the article and the three tweets (52 days for the first tweet, 96 days for the third), there is some force in the appellants' submission that a reasonable reader of the tweets would not have remembered the detail of the article. The tweets would at most have been understood by a reasonable person in the relevant subset of readers as endorsing the core themes of the article concerning Mr Joyce's competence as a Minister and his standing with his colleagues, and the allegation that he garnered only a handful of votes in the leadership contest; not the specific passages complained about and their pleaded meanings. The imputations that were the subject of the claim were peripheral, rather than central, to the article's thrust. But again, that is not an issue on which we need to express a concluded view.

### **Remedies**

[81] Because we have found that the pleaded defamatory imputations were not published by the appellants, it is unnecessary to consider the question of remedies in

---

<sup>44</sup> *Massey v New Zealand Times Co Ltd* [1912] UKPC 38, (1912) NZPCC 503; *Arnold v Stuff Ltd* [2018] NZHC 539 at [34]–[39]; *Arnold v Stuff Ltd* [2018] NZHC 1641 at [10]–[11] and [33]–[34]; Matthew Collins *Collins on Defamation* (1st ed, Oxford University Press, Oxford, 2014) at [6.29]; and Alastair Mullis, Richard Parkes and Godwin Busuttill (eds) *Gatley on Libel and Slander* (12th ed, Sweet and Maxwell, London, 2013) at [2.42].

<sup>45</sup> *Craig v Slater*, above n 37, at [36]–[43].

any detail. However we make three brief points about relief under s 24 of the Defamation Act.

[82] First, the grant of a declaration does not follow automatically from the fact that the elements of the claim are made out. As this Court said in *Smith v Dooley*:<sup>46</sup>

[95] Declaratory relief is always discretionary. In the defamation context this Court held in *Salmon v McKinnon*: “Section 24 does not give a successful plaintiff an entitlement to a declaration. Such relief is discretionary”.

[83] In *Smith v Dooley*, this Court found that the Judge had erred in failing to exercise a discretion, and proceeding on the basis that a declaration followed as a matter of course from his decision upholding Mr Dooley’s claims.<sup>47</sup> This Court concluded that declaratory relief should have been declined in the circumstances of that case.<sup>48</sup>

[84] Second, under s 24(2) of the Defamation Act, the starting point is that, where the court makes the declaration sought, the plaintiff will receive indemnity costs. But there is an express power to direct otherwise, which should be exercised on a principled basis. In *Smith v Dooley*, this Court held that the High Court’s decision awarding 70 per cent of the plaintiff’s solicitor and client costs was well justified.<sup>49</sup> We agree with the Judge that general costs principles in the High Court Rules do not guide the exercise of the s 24(2) discretion.<sup>50</sup> But there plainly is a discretion, albeit starting from the point that an award of indemnity costs will normally accompany a s 24 declaration.

[85] Third, in this case we are inclined to think that if the defamatory meanings contended for by Mr Joyce had been made out, the various matters raised by the appellants in relation to remedies<sup>51</sup> would for the most part have gone to costs rather than to the appropriateness of granting a declaration. It seems to us that a plaintiff

---

<sup>46</sup> *Smith v Dooley* [2013] NZCA 428 (footnote omitted).

<sup>47</sup> At [94] and [96].

<sup>48</sup> At [104].

<sup>49</sup> At [129].

<sup>50</sup> At [128].

<sup>51</sup> Including the rejection of the graver meanings pleaded; the apology by the article’s author; delay in joining Mr Scott; a claimed risk of “chilling” political comment in the media by granting relief under s 24 and making large awards of solicitor and client costs.

who has chosen to seek a declaration under s 24 rather than claiming damages should not lightly be denied any relief at all, and (as a result) exposed to an award of costs. If a claim for damages would have succeeded, it will generally be inconsistent with the policy rationale for enacting s 24 to refuse relief. If the courts are too ready to deny declaratory relief under s 24, plaintiffs will be discouraged from pursuing a s 24 claim for a declaration in place of a claim for damages. Rather, it seems to us that any concerns about the way in which the claim has been pursued by the plaintiff are more likely to be reflected in the costs award that is made following grant of a declaration.

### **Result**

[86] The appeal is allowed.

[87] The High Court judgment is set aside.

[88] Costs should follow the event in the usual way. The respondent must pay costs to the appellants for a standard appeal on a band A basis with usual disbursements. We certify for second counsel.

Solicitors:  
Morrison Kent, Auckland for First and Second Appellants  
MinterEllisonRuddWatts, Auckland for Respondent

## **APPENDIX: Text of article (print version)**

### **Joyce sacking first test of Bridges' leadership**

*National MPs have finally been allowed to express what they really think of the party's unelected strategist*

New National leader Simon Bridges has had a solid start.

In his first 24 hours, the new leader rattled the prime minister on the floor of Parliament and raised questions about the competence of the MBIE officials administering the coalition's provincial growth fund.

Earlier, after reading out an unfortunately humdrum victory speech, Mr Bridges went off the cuff to answer the media's questions with aplomb. On the matter that most preoccupied the insular Wellington press gallery – his vote five years ago against same-sex marriage – Mr Bridges did not renounce his social conservatism but indicated he is reconciled to the status quo.

Mr Bridges then conducted interviews with all major media outlets with the light touch and polish of a John Key or Jacinda Ardern. He unmistakably signalled policy modernisation and conceded ground in areas where the previous government clearly failed, including housing and the environment.

Looking to the inevitable magazine spreads, Mr Bridges and his wife Natalie are as good looking and media savvy as Ms Ardern and Clarke Gayford. Their three young children are as cute as any new-born. National made the right choice under the circumstances.

### **Humiliation**

In the leadership race, Ms Adams turned out to be Mr Bridges' only credible opponent. As predicted here a week ago, right-wing favourite Judith Collins was trounced. Mark Mitchell didn't even stand. Most satisfying for Mr Bridges, Steven Joyce mustered only four votes, excluding his own.

This was the first time Mr Joyce has stood for any elected office, avoiding even National's formal list selection process in 2008. His utter humiliation came as a complete surprise to him, being the first time his colleagues have felt safe to express what they think of him. The National caucus will only fully reunify when the divisive Mr Joyce is out of Parliament altogether.

For nine years, Mr Joyce has stood before his colleagues claiming to be the great political genius and policy guru while belittling all their ideas. They despise him for it.

His legacy as transport minister is Auckland's traffic chaos, after he fought against public transport initiatives while interfering in the rollout of the Hop card. The rude and abusive way Mr Joyce dealt with officials and local people alike following the Rena disaster shocked the local MP, one Simon Bridges.

As economic development minister, Mr Joyce's main legacy is his creation of MBIE, which acts as a brake on business, innovation and employment; his highly suspect all-of-government procurement system; and his out-of-control corporate welfare machine. Using Ms Adams as a proxy, he tried and failed to introduce the so-called copper tax to subsidise his friends at Chorus. He turned the good-news story of Auckland's new convention centre into a political debacle, including an adverse Auditor-General report.

As finance minister, Mr Joyce's legacy was a fixation on a post-election tax-cut package at the expense of infrastructure and social spending, widely credited with losing National a crucial couple of points in the polls. He turned legitimate questions about Labour's budget projections into the fiasco of his fake \$11.7 billion fiscal hole. He then demanded a lead role in the failed negotiations with Winston Peters, despite knowing the NZ First leader then suspected his involvement in leaking his superannuation details.

As a long-term party strategist, Mr Joyce's record is no better. He is responsible for National's 2003 constitution which removed democracy from the party apparatus. He has lost every election and by-election he has run, except the three with the

politically unsurpassable Mr Key as his candidate – a detail Mr Joyce seems to regard as irrelevant. His approach to political management is simply to reflect back to the most ignorant voters their own views. It appears never to have occurred to him that the purpose of political strategy is to advance a policy agenda of one kind or another. If there really is an example of Mr Joyce's techniques rather than Mr Key's talents materially improving the party's fortunes, the caucus couldn't recall it when he sought to be their leader.

### **Mettle**

Mr Bridges has promised change in National's lineup. With Paula Bennett confirmed as deputy leader and Gerry Brownlee expecting reward for his strong support during the leadership race, Mr Bridges will fail quickly if he entertains keeping Mr Joyce in the finance role or even on the front bench. At most, he should present Mr Joyce with the same offer made in 2006 by Mr Key to Don Brash: tertiary education, mid-way along the second row.

Party president Peter Goodfellow and his fellow board members fret – not without insight into Mr Joyce's character – that their campaign strategist would respond to such a slight by throwing in the towel altogether.

So be it. If National's board has left the party so vulnerable that it is entirely dependent on one man to manage its core business of running election campaigns, that is an utter failure of governance and all of them should resign.

Mr Bridges has exceeded expectations in his first days as leader and already has the unequivocal support of many of the MPs who backed Ms Adams. He has an outside chance of limiting Ms Ardern to a single term. It will be a terrible shame if he lacks the mettle that Mr Key showed in so brutally despatching Dr Brash and instead bows to blackmail by Mr Joyce.