

IN THE SUPREME COURT OF NEW ZEALAND

I TE KŌTI MANA NUI

SC 61/2021
[2021] NZSC 112

BETWEEN COLIN GRAEME CRAIG
Applicant

AND RACHEL JOY MACGREGOR
Respondent

Court: O'Regan, Ellen France and Williams JJ

Counsel: S J Mills QC, J W J Graham and T F Cleary for Applicant
H J P Wilson, L Clark and B A Mathers for Respondent

Judgment: 9 September 2021

JUDGMENT OF THE COURT

A The application for leave to appeal is dismissed.

B The applicant must pay the respondent costs of \$2,500.

REASONS

Introduction

[1] Mr Craig, the applicant, seeks leave to appeal from a decision of the Court of Appeal.¹ The Court of Appeal dismissed Mr Craig's appeal against a decision of the High Court ruling, relevantly, that Mr Craig was liable in damages to Ms MacGregor, the respondent, for defamation.²

¹ *Craig v MacGregor* [2021] NZCA 156 (Kós P, Clifford and Collins JJ) [CA judgment].

² *Craig v MacGregor* [2019] NZHC 2247 (Hinton J) [HC judgment].

Background

[2] The present application arises out of the fall-out from the collapse of the Conservative Party after the 2014 general election. Mr Craig was the leader of the Conservative Party and Ms MacGregor was his press secretary. Ms MacGregor resigned suddenly from her position as press secretary just before the 2014 election. She also filed a claim of sexual harassment by Mr Craig under the Human Rights Act 1993. This claim was ultimately settled. For present purposes, we only need note that Ms MacGregor's allegations of sexual harassment were subsequently publicised and that Mr Craig responded to the various publications, making statements in various fora, including a press conference in July 2015 and a leaflet which was delivered nationwide.

[3] This set of facts has given rise to a number of other proceedings.³ To put the present application in context, we need refer only to one of these proceedings, aspects of which were considered by this Court in *Craig v Williams*.⁴ That case concerned an action for defamation brought against Mr Craig by Jordan Williams, a former supporter of the Conservative Party, in whom Ms MacGregor had confided. One of the issues in this Court was whether Mr Craig used an occasion the subject of privilege for an improper purpose, because he had known that the allegations of sexual harassment were true and therefore had no belief in the statements he made to respond to them.

[4] The current proceeding began as a claim brought by Mr Craig against Ms MacGregor, to which she filed a defence and a counter-claim. But what remains is, effectively, Ms MacGregor's claim for damages for defamation. In terms of that claim, the relevant assertions can be described very generally as assertions by Mr Craig that Ms MacGregor had made false claims of sexual harassment against him and was a liar.⁵ The only issue now is whether Mr Craig's defence of qualified

³ The Court of Appeal sets out a brief chronology at [12] of its judgment, above n 1.

⁴ *Craig v Williams* [2019] NZSC 38, [2019] 1 NZLR 457.

⁵ There are a number of variations on these assertions, for example, that Ms MacGregor had victimised Mr and Mrs Craig and was the kind of person who would victimise and hurt a family, had withdrawn false claims of sexual harassment and had falsely played the victim. The detail of these assertions is not material for present purposes.

privilege invoking the right to reply to an attack was correctly rejected by the Courts below.

[5] On this issue, the High Court said that the allegations were not protected by qualified privilege as they went beyond what was necessary to respond to the attack.⁶ In relation to one of the causes of action, the Judge also said this:⁷

The Craigs' press statements did contain factual inaccuracies. Inter alia, it was factually inaccurate for Mr Craig to say he had never sexually harassed anyone and that allegations he had done so were incorrect. It was also factually incorrect to say Mr Craig had been "falsely accused". While I would not say Mr Craig lied, I consider he did deliberately mislead the media with the comments he made in the 22 June 2015 joint press statement. He structured his side of the story to make it sound as if he was blameless and Ms MacGregor was blame-worthy in terms of making false accusations.

[6] The Court of Appeal agreed that the statements were not protected by qualified privilege. The Court set out a number of factual matters on which the Court relied in reaching this view.⁸ It is helpful to set out in full the last of these matters, as follows:⁹

[46] Fourthly, the gravamen of his defamation of Ms MacGregor was false, and he must have known there was a good prospect that, on examination, his conduct would be found to be sexual harassment. He had faced and settled a claim of sexual harassment in the Human Rights Commission mediation process. The settlement recorded both parties acknowledging that "on occasions some of their conduct was inappropriate" (for which he apologised, though Ms MacGregor did not). These important details were omitted from the sanitised account he offered in his reply. Further, he acknowledged in evidence before the Judge that some of his communications "went too far", were "too intimate" and had "sexual connotations".

The proposed appeal

[7] Leave to appeal is sought on the ground that a question of general or public importance arises in relation to the scope of the defence of qualified privilege when the right to reply to an attack is invoked.¹⁰ The applicant wishes to argue that the approach of the Court of Appeal in this case contradicts that of this Court in *Craig v Williams*.¹¹ In summary, the applicant says first that the Court of Appeal has

⁶ HC judgment, above n 2, at [215].

⁷ At [224].

⁸ CA judgment, above n 1, at [42]–[46].

⁹ Footnotes omitted.

¹⁰ Senior Courts Act 2016, s 74(2)(a).

¹¹ *Craig v Williams*, above n 4.

unduly limited the defence of qualified privilege to reply to an attack, in particular by introducing an assessment of objective and genuine necessity for the reply. Second, it is said that the Court has narrowed the right to reply in a case such as the present where, unlike the position in *Craig v Williams*, the plaintiff is not the attacker. The applicant also submits that the Court of Appeal erred in relying on matters outside the notice of particulars of ill will which was given under s 41 of the Defamation Act 1992.

Our assessment

[8] As the applicant says, the principles applicable to qualified privilege where a defendant invokes a reply to an attack are set out by this Court in *Craig v Williams*. We do not see the proposed appeal as ultimately raising questions about those settled principles. Rather, the appeal would come down to a consideration of the factual findings of the Courts below on the question of whether the statements made were protected. In particular, the Court would be undertaking a consideration of whether those findings can be treated as sufficiently negating honest belief in the truth of the assertions and, as well, consideration of the cogency of the additional factual considerations addressed by the Court of Appeal. As such, the proposed appeal raises no issue of general or public importance. Nor, given the factual findings made in both Courts, do we see any appearance of a miscarriage of justice.¹²

Result

[9] The application for leave to appeal is dismissed. The applicant must pay the respondent costs of \$2,500.

Solicitors:
Chapman Tripp, Auckland for Applicant
Dentons Kensington Swan, Wellington for Respondent

¹² Senior Courts Act, s 74(2)(b); and *Junior Farms Ltd v Hampton Securities Ltd (in liq)* [2006] NZSC 60, (2006) 18 PRNZ 369 at [4]–[5].